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:	:	
	:	
IRIS MCCOLLUM GREEN,	:	
	:	Board Docket No. 24-BD-013
Respondent.	:	Disciplinary Docket No. 2021-D173
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 932590)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Iris McCollum Green, is charged with violating Rules 1.1(a) and (b), 1.3(c), 3.4(c) and (d), and 8.4(c) and (d) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from her representation of a client in a divorce proceeding in the Superior Court of the District of Columbia ("D.C. Superior Court" or "Superior Court"). Disciplinary Counsel contends that Respondent committed all of the charged violations and should receive a lengthy suspension with a fitness requirement as a sanction for her misconduct. Respondent contends that she did not violate any Rules and should not be sanctioned.

As set forth below, the Ad Hoc Hearing Committee (the "Hearing Committee" or the "Committee") finds that Disciplinary Counsel has proven violations of Rules 1.1(a) and (b), 1.3(c), 3.4(c) and (d), and 8.4(c) and (d) by clear and convincing

---

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

evidence and Respondent should be suspended for six months, with three months stayed in favor of one year of probation with conditions.

I. PROCEDURAL HISTORY[1]

On March 4, 2024, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). After receiving an extension of time, Respondent filed an Answer on April 17, 2024, and an Amended Answer on April 19, 2024. On June 4, 2024, the Hearing Committee Chair ordered Respondent to make redactions to the exhibits attached to her Amended Answer, as required by Board Rule 19.8(g), and to re-file her answer no later than June 21, 2024. On June 21, Respondent moved for an extension until June 24 to file her properly redacted Answer. The motion was granted, but the redacted Answer was not filed until August 9, 2024.

[1] The following summary references the proceedings that are primarily relevant to the pending disciplinary case. As is evident from the docket sheet, documenting the proceedings in *Berry v. Berry*, the case underlying this disciplinary action, from its beginning through February 4, 2025 (DCX 10), there were multiple pleadings filed by both parties and a number of hearings held that are not recounted here. By way of example, Respondent filed multiple motions for reconsideration (*see, e.g.*, DCX 10 at 2, 11, 21), which are not permitted under the Superior Court Rules Governing Domestic Relations Proceedings. DCX 59 at 10. However, if such motions are filed, they should raise arguments or facts that were not raised in arguments about the original rulings. Both judges to whom the case was assigned, first Judge Elizabeth Wingo and then Judge Kelly Higashi (DCX 10 at 12, 31), rejected a number of Respondent's motions to reconsider because they attempted to reargue the prior rulings. *See, e.g.*, FF 43, *infra*; RX 46 at 687. Although the judges' actions indicate concerns about some of Respondent's actions not recounted here, not every action is relevant to our analysis or findings.

On March 7, 2024, the Hearing Committee Chair issued an Order setting a pre-hearing conference and directing the parties to provide their availability to appear for a hearing between May 13 and June 6, 2024. On March 27, 2024, before the pre-hearing conference could be held, Respondent filed a *Motion to Stay Proceedings*, contending that the hearing should be stayed indefinitely until the underlying litigation was resolved because the disciplinary proceedings would hamper Respondent's ability to represent her client and could create a conflict of interest. During the pre-hearing conference, the Hearing Committee Chair denied the motion and scheduled the hearing for September 16-20, 2024.

On August 22, 2024, Respondent again moved to continue the proceedings, repeating the same arguments the Hearing Committee Chair previously rejected and claiming she would be prejudiced by her purported inability to disclose privileged information during the disciplinary proceedings. The Hearing Committee Chair denied that motion, pointing out that under D.C. Rule of Professional Conduct 1.6(e)(3), Respondent is entitled to reveal client confidences and secrets to the extent necessary to defend herself against disciplinary charges and that Respondent could file a motion for a protective order with the Board if she decided to reveal such information. Despite multiple reminders about the process for filing such a motion[2], Respondent waited until the middle of her testimony at the hearing to do so.

---

[2] *See* Hearing Committee Orders dated April 24, 2024, June 4, 2024, August 29, 2024, and September 13, 2024, and Transcripts of Pre-Hearing Conferences dated September 10, 2024, November 12, 2024, November 26, 2024, and February 10, 2025.

On September 9, 2024—one week before the hearing was scheduled to begin—Respondent's counsel, who had yet to file exhibit or witness lists, filed a *Motion to Continue Proceedings*, requesting a continuance of the hearing due to his "conflicting obligations." At the pre-hearing conference on September 10, 2024, when the Hearing Committee Chair offered alternatives to continuing the hearing, Respondent's counsel then informed the Hearing Committee that he was not prepared to go forward either with the pre-hearing conference or with the hearing on the dates scheduled. Although Disciplinary Counsel objected to the continuance, to ensure that Respondent had effective representation, the Hearing Committee Chair granted the motion, rescheduled the hearing for December 9-12, 2024, extended the deadlines for Respondent to file exhibit and witness lists, and scheduled a pre-hearing conference for November 26, 2024 (two weeks in advance of the hearing), to make sure the parties would be prepared to proceed on the scheduled hearing dates. Respondent again failed to file exhibit and witness lists by the extended deadline. As a result, the Hearing Committee Chair scheduled an additional pre-hearing conference for November 12, 2024.

At the November 12, 2024 pre-hearing conference, the Hearing Committee Chair attempted to ensure that the case would be ready for the scheduled hearing. Counsel for Respondent recognized that he had not filed documents, exhibits, an expert report, or motions by the deadlines set in September, blaming this on his obligations in other matters, but he stated that he would soon do so. He asserted that the fault was his, and not his client's, and Respondent confirmed that she did not

know that her counsel had failed to meet the deadlines because she was occupied by her own practice. The Hearing Committee Chair left the hearing dates unchanged and requested that Respondent inform the Hearing Committee if she wanted to change the course of her representation, either by adding other counsel, by proceeding pro se, or by suggesting any other change in direction. On November 22, 2024, Respondent submitted a document that assured the Hearing Committee that she was satisfied with her current representation and asked for additional time to allow her counsel time to prepare her defense.

At the November 26, 2024 pre-hearing conference—without prior notice—Respondent's counsel stated that he was again unprepared to go forward with the hearing scheduled on December 9, 2024, and made an oral motion for a continuance. Due in part to Disciplinary Counsel's acquiescence to Respondent's counsel's request, the Hearing Committee Chair reluctantly granted the motion, rescheduled the hearing for February 24-27, 2025, and extended the deadlines for filing Respondent's exhibit and witness lists, as well as an expert report.

A hearing was held on February 24-27 and March 18, 2025, before the Hearing Committee. Disciplinary Counsel was represented at the hearing by Assistant Disciplinary Counsel Cynthia Wright, Esquire. Respondent was present during the hearing and was represented by Johnny Howard, Esquire.

During the hearing, Disciplinary Counsel submitted DCX[3] 1-13, 15-65, 67-69, 71, 73-83, 85-87, 89, 92-96, 99-107. All of Disciplinary Counsel's exhibits were admitted into evidence except DCX 4, 6-7, 9, 82, 95-96, 99-101, and 107.[4] Disciplinary Counsel called as witnesses Michelle Berry, Jeffrey Markowicz, and an expert witness, Margaret McKinney. After Disciplinary Counsel concluded its presentation of evidence, Respondent's counsel orally moved to dismiss the case. Tr. 692. The Hearing Committee Chair clarified that the Committee lacked authority to grant a motion to dismiss. Tr. 696; *see* Board Rule 7.16(a).

At the hearing, Respondent submitted RX 1 through 62, and all of Respondent's exhibits were admitted in evidence. Respondent testified on her own behalf and called an expert witness, Brian Plitt. As noted above, during Respondent's testimony, her counsel moved for a protective order to permit Respondent to reveal client confidences and secrets. Tr. 727-28. The Hearing Committee closed the hearing for the portions of Respondent's and Mr. Plitt's testimony that related to client confidential information. At the direction of the Hearing Committee Chair (*e.g.*, Tr. 821-22), Respondent's counsel filed a motion for a protective order with the Board, which was granted on March 6, 2025.

---

[3] "DCX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on February 24-27 and March 18, 2025. "FF" refers to the enumerated Factual Findings in this Report.

[4] DCX 63-65, 71, 75, 77, 80, 87, 93-94, and 102-106 were admitted over Respondent's objection.

At the conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification of Charges. Tr. 1342; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel submitted DCX 105 and 106. Respondent called as witnesses Robert Bunn, Joyce Phillips, Leon Townsend, and Emmanuel Payton.

The parties agreed that Disciplinary Counsel's opening brief would be due on April 11, 2025; Respondent's response brief would be due on April 23, 2025; and Disciplinary Counsel's reply brief would be due on April 30, 2025.

Although Respondent was required by the Hearing Committee's Orders dated March 19 and April 1, 2025, and the Board's Protective Order dated March 6, 2025, to file redacted versions of the February 26 and 27, 2025 transcripts by 12:00 PM on April 7, 2025, she did not file them until June 3, 2025. Respondent also failed to file her exhibit list and admitted exhibits by March 25, 2025, as required by Board Rule 7.17 and the Hearing Committee's Order dated March 19, 2025. This failure required the Hearing Committee to hold a post-hearing conference on April 22, 2025. Asked about the failure to file exhibits, Respondent's counsel represented that he would seek to add two additional exhibits, RX 63 and 64. The Hearing Committee Chair set new deadlines for filing Respondent's exhibit list (April 25, 2025) and filing a motion to add additional exhibits (April 28, 2025). Respondent did not meet either deadline, and thus RX 63 and 64 are not admitted into the record. *See* Hearing Committee Order dated April 22, 2025. Instead, on May 13, 2025,

Respondent filed a motion for permission to file her exhibits and exhibit list without Disciplinary Counsel's signature because Disciplinary Counsel had refused to sign an exhibit list that inaccurately marked RX 63 and 64 as admitted. The Hearing Committee Chair denied Respondent's motion because those exhibits had been excluded and because any motion to add them would be denied on the merits. *See* Hearing Committee Order dated May 16, 2025. Even though there were no remaining disputes about which exhibits had been admitted, Respondent did not file an exhibit list signed by both parties until July 7, 2025—three and a half months after the original deadline—and without making required redactions to her exhibits. *See* Hearing Committee Order dated July 9, 2025.

On April 10, 2025, Disciplinary Counsel filed a consent motion for a five-day extension for filing its post-hearing brief, due to medical issues and the lack of availability for supervisory review. This motion was granted, and the deadline was extended to April 16, 2025. On the evening of April 16, 2025, Disciplinary Counsel filed a second motion, seeking an eight-day extension[5], which was also granted. Disciplinary Counsel filed its post-hearing brief on April 24, 2025 and a corrected version on May 5, 2025.[6]

---

[5] Respondent did not respond to Disciplinary Counsel's request for consent to its second motion for extension.

[6] On April 30, 2025, the Hearing Committee Chair ordered Disciplinary Counsel to correct its brief by removing typographical errors in certain cross-references. Because Disciplinary Counsel would not be making substantive changes, the order did not extend the deadline for Respondent to file her post-hearing brief. The corrected brief was filed on May 5, 2025, and Respondent did not assert that she

Under Board Rule 12.1(a), Respondent's post-hearing brief would have been due on May 5, 2025, but during the post-hearing conference on April 22, 2025, Respondent's counsel requested and received an eight-day extension beyond Disciplinary Counsel's deadline for filing its brief, so the due date was May 13, 2025. The Order memorializing the post-hearing conference made clear that any further motions to extend briefing deadlines "will be denied absent unusual emergency circumstances." Seven minutes before Respondent's brief was due, she filed a motion requesting an additional three-week extension to file her post-hearing brief, citing the amount of work required to complete it, as well as her counsel's "demands of other professional obligations and deadlines." In an Order dated May 16, 2025, the Hearing Committee Chair found that Respondent had not provided sufficient justification to warrant another extension, but reluctantly granted the motion, due to the lack of an opposition from Disciplinary Counsel. The Order reiterated that future motions for extension "will be denied absent unusual emergency circumstances," adding that "[n]o further extensions will be granted based on Respondent's counsel's need to balance the work required to complete Respondent's brief with other professional obligations or any reasons that are foreseeable as of the date of this Order."

Nevertheless, on June 2, 2025, Respondent filed a consent motion seeking a second, one-week extension due to her counsel's "[o]ther pressing deadlines and

---

needed additional time to file her brief because of Disciplinary Counsel's corrected filing.

obligations in other litigated matters." The Hearing Committee Chair denied the motion because the stated reason for the extension failed to comply with the May 16 Order, adding that, under Board Rule 12.2, the Hearing Committee Report should be completed on July 16, 2025 (i.e., in forty-three days), but only one brief had been filed to date. *See* Hearing Committee Order dated June 3, 2025. Respondent moved for reconsideration of the June 3 Order, citing specific emergency circumstances that arose in a separate matter handled by her counsel. Because Respondent provided specific reasons for her Request, the Hearing Committee Chair granted Respondent's motion, setting new deadlines of 4:00 PM on June 10, 2025, for Respondent's brief and June 17, 2025, for Disciplinary Counsel's brief. On June 10, 2025, Respondent filed a consent motion to extend the deadline to midnight, which the Hearing Committee Chair granted. Minutes before the midnight deadline, Respondent attempted to file her brief, but it was rejected for failure to include the certificate of compliance required under Board Rule 19.8(b).

On June 17, 2025, citing the need for supervisory review and family commitments Disciplinary Counsel filed a motion for an eight-day extension to file its reply brief, based on the brief Respondent attempted to file. The Hearing Committee Chair granted the motion, but noted that Respondent still had not filed a brief containing the required certification and ordered her to do so forthwith. *See* Hearing Committee Order dated June 18, 2025. On June 18, 2025, Respondent filed an amended brief with a certificate of compliance. On June 25, 2025, Disciplinary Counsel filed a motion for a five-day extension to file its reply brief, citing a personal

family matter and the need to make minor corrections. Disciplinary Counsel ultimately filed its reply brief on June 30, 2025.[7]

Respondent filed her signed exhibit list and exhibits 1 through 62 on July 7, 2025, along with a motion to late-file, which was granted on July 9, 2025. The Hearing Committee issued an Order on July 9, 2025, noting that some exhibits revealed personal identifiers that required redaction under Board Rule 19.8(f) but accepted them for filing and ordered the Office of the Executive Attorney to make all necessary redactions before making them available to the public.[8]

---

[7] The Hearing Committee regrets that it was unable to meet the July 16, 2025 deadline for filing this Report and Recommendation. The parties' repeated requests for extensions of time to file their post-hearing briefs, and Respondent's delay in filing her exhibits made it impossible for the Hearing Committee to file its Report within the 120-day structure. The Hearing Committee concluded that adopting a stricter approach to the numerous motions for extension outlined above would have precluded the parties from filing written submissions, to the detriment of this Hearing Committee, the Board, and the Court. Moreover, the parties' post-hearing briefs did not provide a thorough, detailed explanation of the relevant facts of this case, which required the Hearing Committee to spend substantial additional time carefully reviewing the full record.

[8] Respondent's Motion was granted despite the fact that her purported explanation—that Disciplinary Counsel had withheld consent—was inconsistent with the record. *See* Hearing Committee Order dated July 9, 2025, at 1 & n.1 (pointing out that Respondent had been reminded of her obligation to submit exhibits and signed exhibit lists nine times between the conclusion of the hearing and June 3, 2025, and that she could have filed a motion to submit the exhibit list without Disciplinary Counsel's signature, which she attempted to do on June 3, 2025 after Disciplinary Counsel withheld its signature from an inaccurate list (*see* pp. 7-8, *supra*)).

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and which we find are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("[C]lear 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").

A. Summary

The charges in this case arise from Respondent's representation of Rasheed Berry, a defendant in a contentious divorce proceeding in D.C. Superior Court. First, Disciplinary Counsel has proven by clear and convincing evidence that Respondent filed a joint pretrial statement that falsely indicated that it had been approved by opposing counsel. And, as explained in detail below, Disciplinary Counsel has proven by clear and convincing evidence that Respondent failed to make reasonable efforts to comply with discovery requests, failed to demonstrate to the court the discovery she had produced using required technology, and failed to timely appear for two scheduled hearings, resulting in sanctions and orders of default as to divorce, equitable distribution of property, equitable distribution of debt, and alimony (although another default with respect to custody and child support was subsequently vacated). As shown by Disciplinary Counsel's expert, Respondent's conduct fell below the standard of care in domestic relations cases in the District of Columbia.

B. Plaintiff's Motion for Default

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by examination on August 22, 1977, and assigned Bar number 932590. DCX 1. Her principal area of practice is civil litigation. DCX 92; RX 49; Tr. 701, 940 (Green).

2. On January 31, 2020, Michelle Berry filed a *pro se* complaint in D.C. Superior Court against her husband, Rasheed Berry, seeking an absolute divorce, alimony, custody, child support, and a division of marital property. *See Berry v. Berry*, 2020 DRB 000390; DCX 11; Tr. 57-61 (M. Berry); Tr. 705-07 (Green). After filing her complaint, Ms. Berry retained Jeffrey Markowicz to represent her. Tr. 59 (M. Berry).

3. In early March 2020, Mr. Berry retained Respondent to represent him. DCX 13. Respondent entered her appearance on March 9, 2020, and attended the hearing scheduled for March 10, 2020, before Judge Elizabeth Wingo. DCX 15; *see* DCX 13; DCX 10 at 30.

4. Pursuant to Rule 12(a)(1)(A) of the Rules Governing Domestic Relations Proceedings of the Superior Court, Mr. Berry's answer and counterclaims were due on March 10, 2020, but at the hearing that day, Judge Wingo granted Respondent's request for additional time to respond and set a due date of March 27, 2020. DCX 15; *see* Tr 378 (McKinney); RX 46 at 675.

5. Following the hearing on March 10, 2020, nationwide most businesses and government offices closed or went to full or partial remote operations because of the COVID-19 pandemic. Tr. 58 (M. Berry); Tr. 719-720 (Green).

6. On March 19, 2020, the D.C. Superior Court issued a Coronavirus Order ("COVID-19 Order")[9], which provided that:

> Unless otherwise ordered by the court, all deadlines and time limits in statutes, court rules, and standing and other orders issued by the court that would otherwise expire before May 15, 2020 including statutes of limitations, are suspended, tolled, and extended during the period of the current emergency. Such deadlines and time limits may be further suspended, tolled, and extended as circumstances change.

Order dated March 19, 2020, D.C. Super. Ct., at 2, *available at* https://www.dccourts.gov/sites/default/files/Order-Attachment-PDFs/Order-3-19-20.pdf.

7. Plaintiff filed a *Motion for Default* on April 15, 2020, asserting that Respondent had not timely filed a response to the complaint by March 23, 2020—an apparent mistake, as Judge Wingo gave Respondent until March 27, 2020, to file

---

[9] The March 19, 2020 COVID-19 Order amended an order issued the previous day, which included similar language:

> Unless otherwise ordered by the court, all deadlines and time limits in statutes, court rules, and standing orders that would otherwise expire before May 15, 2020 including statutes of limitations, are tolled during the period of the current emergency. Such deadlines and time limits may be further extended or modified as circumstances change.

Order dated March 18, 2020, D.C. Super. Ct., at 2, *available at* https://www.dccourts.gov/sites/default/files/matters-docs/General%20Order%20pdf/Order-3-18-20-Final.pdf.

the response, although she failed to meet that deadline.[10] DCX 16; DCX 15 at 1, 3-4. Respondent filed Mr. Berry's answer and counterclaim on April 21, 2020 (DCX 18), and filed an *Opposition to Plaintiff's Motion for Default* on April 22, 2020 (DCX 19), arguing that she had been ill for a substantial period following the March 10, 2020 hearing and was thus unable to file the answer, and also arguing that the COVID-19 Order extended her filing deadline. Plaintiff filed a *Reply* on April 23, 2020 (DCX 20), questioning the sincerity of Respondent's assertions that her illness prevented her from responding and interpreting the Superior Court's COVID-19 Order as not applying to this case because Judge Wingo had set a deadline different than the deadline set by the court rules.[11]

---

[10] At the March 10, 2020, hearing, Respondent requested "[a]bout ten days" of additional time to file the answer and counterclaim, the court offered "either the 20th or 27th of March" for the extended deadline, and Respondent chose the 27th. DCX 15 at 3-4; *see* RX 44 at 586-87 (*Findings of Fact, Conclusions of Law, and Judgment of Divorce*, *Berry v. Berry* 2020-DRB-000390 (Feb. 14, 2024)). Ms. Berry's *Motion for Default* asserted that the court ordered the answer by March 23, 2020. DCX 16 at 1. Thereafter, there are numerous other references in the record to the answer being due by March 23, 2020, but no court order providing this date. *See, e.g.*, RX 46 at 675; DCX 34 at 6; Tr. 713, 715 (Green); Tr. 377 (McKinney). Respondent filed the answer on April 21, 2020, so this discrepancy has no substantive effect on the record before us. DCX 18.

[11] Both counsel in this case demonstrated a woeful lack of civility to each other. As discussed above, Mr. Markowicz started the case by requesting the entry of a default and attorney's fees when Respondent did not file an answer—just as the COVID-19 pandemic was starting—and then contested Respondent's statements about her health. DCX 16; DCX 19; DCX 20. Continuing in this vein, Mr. Markowicz sought a default and attorney's fees numerous times throughout this case. *See, e.g.*, DCX 16; DCX 20; DCX 24; DCX 29; DCX 46. Indeed, at the August 11, 2021

8. Plaintiff filed a *Motion for* Pendente Lite *Relief* on April 20, 2020, asking the court to require Mr. Berry to begin paying child support, alimony or spousal support, and attorney's fees. DCX 17. Respondent filed an *Opposition* on May 22, 2020, more than two weeks after the deadline. DCX 21; *see* DCX 92 at 5-6; D.C. Super. Ct. Dom. Rel. R. 7(b)(2). Plaintiff later withdrew the motion before it could be resolved. DCX 10 at 24.

9. Plaintiff's April 15 motion for default was decided at a November 24, 2020 status hearing, and although there is no formal entry of this decision in the record, it is clear from the rest of the proceedings in the case that it was denied and Mr. Berry's answer and counterclaim were part of the pleadings in the case. *See*

---

hearing, the court admonished him for overreaching in his requests. DCX 59 at 8-10.

The lack of civility between them was particularly evident around the discussion and filing of the pretrial statement. To sum up her experience with the parties, at one point, Judge Wingo stated: "I wish I had a class I could send everybody to in terms of how you behave in a courtroom, but we're going to do the best we can here and how you behave to your opposing litigants. . . . I need everybody to take a step back and remember the rules of civility here." DCX 59 at 25-26, 28. But this uncivil behavior continued both in front of Judge Wingo and in front of Judge Higashi after the case was transferred to her. DCX 10 at 12. As Judge Higashi ordered in March 2022:

> Parties' behavior needs to be civil. . . . If parties' demeanor is not civil and appropriate, then I will do whatever is appropriate.
> . . .
> I know from looking at notes, from the history in this case, there has been a lot of tension and animosity between the parties, between counsel, and this is just so counterproductive.

DCX 81 at 48, 50.

DCX 26; Tr. 219 (Markowicz); DCX 10 at 26; RX 44 at 588 ("The Court agreed that Defendant's deadline to file an answer had been tolled by the Court's March 18, 2020 Amended Order and denied Plaintiff's *Motion for Default*.").

C. Discovery Responses

10. The parties' discovery requests and responses were major points of contention in *Berry v. Berry*, *see* DCX 76, and central to the allegations against Respondent in this matter.

11. Mr. Markowicz sent interrogatories and requests for production of documents directed to Mr. Berry through Respondent on April 16, 2020. DCX 24 at 1; RX 44 at 588.

12. Through Respondent, Mr. Berry provided responses to discovery on June 18, 2020, but Mr. Markowicz asserted that these responses were "woefully deficient." DCX 24 at 1; *see* FF 71-74, *infra* (discussing the sufficiency of Respondent's discovery responses). Thus, on July 31, 2020, Mr. Markowicz sent a letter to Respondent that outlined the alleged deficiencies, but Respondent did not respond. *Id.*; DCX 30; RX 44 at 588. Mr. Markowicz sent an email on August 14, 2020, asking Respondent to meet with him to resolve the issues, but Respondent also did not respond. DCX 24 at 1; RX 44 at 588.

13. As a result, Plaintiff filed *Plaintiff's Motion for Immediate Sanctions* on August 29, 2020. DCX 24. Respondent filed an opposition on September 11, 2020, asserting that Mr. Markowicz had not complied with Rule 37 of the Superior Court Rules of Civil Procedure, which required the moving party to send a specific

letter and attempt to hold a meeting with opposing counsel, before filing a motion to compel, let alone filing a motion for sanctions. DCX 25.

14. Judge Wingo held a status hearing on November 24, 2020, at which she denied Plaintiff's motion for sanctions and set a discovery schedule. DCX 26; DCX 10 at 26; DCX 76 at 1 (explaining that the motion for sanctions was denied because Mr. Markowicz had not complied with Rule 37 of the Rules Governing Domestic Relations Proceedings "regarding efforts to resolve the dispute before filing a motion").[12]

15. Turning to the discovery sought by the defense, on May 24, 2020—about one month after Mr. Markowicz sent his discovery request and prior to the hearing—Respondent served interrogatories and requests for production of documents on Ms. Berry through Mr. Markowicz. DCX 35 at 1. After Mr. Markowicz provided responses, Respondent sent him a letter on July 21, 2020, "requesting that Plaintiff respond to all of the Defendant's discovery requests." *Id.* Mr. Markowicz provided further information, but Respondent asserted that "some of the responses were not sufficient." *Id.* at 2.

16. Respondent submitted *Defendant Rasheed Berry's Supplemental Answers to Plaintiff's Interrogatories* to Plaintiff on January 4, 2021. DCX 28; RX 44 at 589.

[12] During the status hearing, the parties also discussed Plaintiff's motion for default (*see* FF 7, 9) and *Motion for* Pendente Lite *Relief* (*see* FF 8).

17. On February 19, 2021, Plaintiff filed another *Motion for Immediate Sanctions*, setting forth all the efforts Mr. Markowicz had made to attempt to resolve the discovery issues. DCX 29. Mr. Markowicz stated that he sent Respondent emails on July 31 and August 14, 2020, concerning alleged deficiencies in her discovery responses, which went unanswered. *Id.* at 1. On November 27, 2020, Respondent agreed to meet with him, but said she could not do so before December 14, 2020, because she was busy and needed time to review Mr. Berry's responses. *Id.* at 1; DCX 32 at 4; *see* RX 44 at 588-89. During the December 14, 2020 virtual meeting between counsel, Respondent agreed to provide some further responses, refused to supplement others, and deferred a response to others. DCX 29 at 2. Respondent did not agree to commit to a timetable for the supplements, however. *Id.*

18. At this meeting, in addition to discussing Defendant's responses, Respondent "attempted to discuss Plaintiff's deficient responses to Defendant's discovery," but Mr. Markowicz declined to do so because he said that Respondent had not sent an updated letter setting forth the deficiencies she alleged. DCX 35 at 2.

19. Following their meeting, Mr. Markowicz sent Respondent a letter on December 18, 2020, setting forth the substance of their discussions and the list of twenty-nine deficiencies he identified. DCX 29 at 2; *see also* DCX 40 at 1. On January 4, 2021, Respondent filed supplemental answers, but Mr. Markowicz would later maintain in the February 19, 2021 *Motion for Immediate Sanctions* that

"Defendant has wholly failed to comply with his obligations." DCX 29 at 2; *see* DCX 27; DCX 28; RX 44 at 589.

20. On January 18, 2021, Respondent attempted to set up a meeting with Mr. Markowicz to discuss his discovery responses, but it was delayed because Mr. Markowicz was ill. DCX 35 at 3. Plaintiff later sent additional responses, but Respondent asserted that they were still not sufficient. *Id.* Respondent sent two letters to Mr. Markowicz setting out her position on his responses to discovery, and again requested a meeting, which was held on March 17, 2021. *Id.*

21. The February 19, 2021 *Motion for Immediate Sanctions* itemized the deficiencies that Mr. Markowicz alleged remained in Mr. Berry's responses. DCX 29 at 2-13. Mr. Markowicz sought an order compelling Mr. Berry to produce proper answers to Plaintiff's interrogatories and document requests, an entry of default against Mr. Berry, and $4,427.50 in attorney's fees associated with his efforts to obtain discovery. *Id.* at 1, 13. On March 20, 2021, Respondent filed an opposition claiming that Mr. Markowicz again failed to comply with Rule 37 of the Superior Court Rules of Civil Procedure and that Mr. Berry had in fact provided all the information and documents sought. DCX 32.

22. Defendant's opposition had been due on March 19, 2021, so Respondent filed a motion requesting to file the opposition out of time[13] because

[13] In Respondent's motion for an extension of time, she represented that, before filing, she had sought Mr. Markowicz's consent, but he had not responded. DCX 32 at 1. Plaintiff filed an opposition to Respondent's motion, in part asserting that she had made a false statement to the court, since Mr. Markowicz had responded to Respondent thirty-two minutes after her inquiry, indicating that he wanted to know

"her printer malfunctioned which prevented her from printing out the draft for a final reading, before taking the opposition and allied documents to FedEx Kindo's [sic] to be uploaded to a jump drive so they could be uploaded to casefilexpress [sic] for filing with this Court." DCX 33 at 2. Judge Wingo granted Respondent's request for an extension and allowed her to file Defendant's *Opposition to Motion for Immmediate* [sic] *Sanctions and Order to Compel.* DCX 31; *see* DCX 32 at 1.

23. On March 31, 2021, Respondent filed *Defendant Rasheed Berry's Motion to Compel and for Sanctions*. DCX 35.

24. Judge Wingo held a hearing to address Plaintiff's February 19, 2021 *Motion for Immediate Sanctions* on March 31, 2021, and issued an order on May 24, 2021. DCX 40; *see* DCX 36. At the hearing and in her order, Judge Wingo found that Mr. Markowicz had substantially complied with Rule 37 of the Rules Governing Domestic Relations Proceedings. DCX 40 at 4.

25. At the hearing, turning to the allegations about Respondent's and Mr. Berry's discovery deficiencies, Judge Wingo said she was "troubled by the tone of [Respondent's] response, which called Mr. Mar[k]owicz mendacious, claimed [the motion] was harassing -- I didn't find any of that. I found that his [motion] was straightforward, factual, and -- and so it was an odd approach for someone who had -- in my view -- generally failed to comply." DCX 36 at 6.

---

the reason for her request before determining if he would consent—and Respondent did not reply or otherwise provide any reasons. DCX 34 at 2, 13.

26. In a number of Mr. Berry's responses, Respondent had asserted that Mr. Markowicz could find the answers to his questions in documents the defense provided. *See* DCX 29 at 3, 6-12. Judge Wingo made clear that this did not satisfy Respondent's obligations. DCX 36 at 5-9, 12-14; DCX 36 at 12 ("I actually think that this is your error, and not Mr. Berry's error, in terms of supplying the responsive documents.").

27. Judge Wingo also ordered that Mr. Markowicz was entitled to recover the attorney's fees he had requested because of these discovery issues. *Id.* at 9-10; DCX 40 at 9; DCX 10 at 23; RX 44 at 590.

28. At the end of the March 31, 2021 hearing, Judge Wingo scheduled a separate hearing to address Respondent's motion to compel. DCX 36 at 15, 17-20. The date and time—June 11 at 4:00 PM—was scheduled in court and, in part, to accommodate Respondent's schedule. *Id.* at 21-24.

29. Plaintiff filed *Plaintiff's Opposition to Defendant's Motion to Compel and for Sanctions* on April 28, 2021 and a *Second Motion for Immediate Sanctions* on May 4, 2021. *See* DCX 10 at 22; DCX 40 at 1 n.1; RX 44 at 591; RX 46 at 679.

30. The Superior Court Rules Governing Domestic Relations Proceedings do not provide for the filing of a reply to an opposition to a motion. *See* D.C. Super. Ct. Dom. Rel. R. 7. If the Rules of Civil Procedure were to apply, any reply to Plaintiff's *Opposition* would be due on May 5, 2021. *See* D.C. Super. Civ. R. 12-I(g). However, on May 3, 2021, Respondent filed a motion for a one-week extension of time to file her reply, claiming "cause" and citing Superior Court Rule

of Civil Procedure 6(b)(1)—rather than the Domestic Relations Rules.[14] DCX 37. She filed the reply on May 11, 2021, eight days later. DCX 38. These were the final pleadings relevant to the hearing that was scheduled for June 11, 2021. *See* DCX 43.

31. Following the March 31, 2021 hearing, but delayed because of her heavy caseload caused by COVID-19, on May 24, 2021, Judge Wingo issued a written order setting forth her findings and conclusions relating to the issues discussed at the hearing. DCX 40. In addition to memorializing the rulings she had made in the hearing, Judge Wingo wrote:

> [Respondent] proceeds to set forth numerous reasons to excuse her failure to respond promptly to the attempts Plaintiff's counsel made to reach her and secure the requested discovery as Plaintiff set forth in her Certificate of Compliance. [Respondent] states she was unable to respond to all of Plaintiff's counsel's attempts to obtain complete discovery because she was, and continues to work remotely, causing her responses to telephone calls to her work telephone to be delayed. She further seeks to justify her failure to respond promptly to Plaintiff's counsel's emails, as being due to her work on other matters and/or pleadings in this matter, and not seeing an email at the time it was sent,

[14] As grounds for this motion, Respondent stated that she was working on an "extensive responsive pleading" in another case with a deadline and thus "was unable to immediately read and immediately prepare a comprehensive reply," and there had been "an explosion in the litigation previously tolled due to COVID-19 orders" that had immediate deadlines. DCX 37 at 2-3. Consistent with his incivility toward Respondent, Mr. Markowicz did not consent, despite the fact that Respondent had agreed to an extension of time for him to file an opposition. *Id.* at 2; *see* DCX 10 at 22; RX 44 at 591 n.4. The court did not address Respondent's motion during the June 11, 2021 hearing but granted it in its written order dated June 21, 2021. DCX 43 at 1 & n.1.

> and at times, accuses opposing counsel of exaggerating the attempts he made to meet with her per Rule 37.

Id. at 2-3.

32. Judge Wingo found that Respondent had responded to one email that Mr. Markowicz failed to mention, but also noted that Respondent did not "make any effort to explain her failure to respond to two previous attempts to elicit a response, both in writing (one by letter and one by email) beginning almost 4 months before." *Id.* at 3.

33. Judge Wingo ruled that Respondent's arguments were not persuasive, much less compelling. *Id.* Instead, Judge Wingo found that Defendant "failed to answer the interrogatories completely and directly" and that he relied on Rule 33(d) improperly because the tax returns he submitted were not "business records," and, even if they were, it would be more difficult for Plaintiff to find the answers than Defendant. *Id.* at 5-7. Thus, Judge Wingo granted Plaintiff's February 19, 2021 motion for sanctions and directed Defendant to provide complete and clear responses to the interrogatories and to provide the specific documents Plaintiff sought. *Id.* at 7, 9.

34. Because there was a dispute over whether the defense had turned over responsive documents, Judge Wingo also ordered:

> [Respondent] shall be required to identify the date she turned over the following [list of] documents to Plaintiff's counsel and the method of transmission. . . . If upon review of her records, [Respondent] finds that such documents that she has alleged to have been turned over, both in her Opposition and under oath during the March 31, 2021 hearing, have

> not in fact been provided to Plaintiff, she shall provide such documentation immediately.

Id. at 8.

35. At the March hearing, Judge Wingo had ordered Mr. Berry to produce documents by April 30, 2021 (*see id.* at 1 n.1; DCX 36 at 9-10), but because her written order was issued a month and a half after the end of the hearing, she extended the deadline an additional thirty days (i.e., to June 23, 2021). DCX 40 at 9.

36. Because of the length of time and the effort Ms. Berry and her counsel had spent "seeking discoverable documents and for the late production of discoverable documents well-past the discovery deadline," Judge Wingo confirmed her previous oral order that Respondent and Mr. Berry jointly pay $4,427.50 in attorney's fees to Plaintiff. *Id.*

37. Judge Wingo's order reiterated that the parties were to appear for the scheduled status hearing on June 11, 2021, at 4:00 PM. *Id.* at 9-10.

D. The June 11, 2021 Status Hearing

38. On June 11, 2021, neither Respondent nor Mr. Berry appeared at the hearing when it began. DCX 41 at 2; *see* DCX 42 (video of hearing beginning at 7:35). Judge Wingo considered denying Defendant's motion for sanctions, entering a default, and scheduling the matter for an ex parte proof hearing. DCX 41 at 3-7. However, after further consideration, Judge Wingo asked the clerk to call Respondent and her client. *Id.* at 8. After placing the call and reaching Respondent, the deputy clerk reported that Respondent said she "did not know about the hearing."

Id. at 9. Respondent and Mr. Berry joined the call approximately thirty minutes after its scheduled start time. *See id.*

39. When she joined, Respondent apologized and said she had "mislaid notification of today's hearing, and so did my client." *Id.* Judge Wingo said that she could not simply accept Respondent's apology and ordered that Respondent and Mr. Berry were to pay Mr. Markowicz $288.75, for his fees before they joined the call to "pay for the waste of time that this hearing was," noting that both Respondent and Mr. Berry "were here [at the March 31, 2021 hearing], so you both were on notice of the hearing when we set the hearing, and you should have been here." *Id.* at 11, 29.

40. Respondent stated that she planned to file a motion for reconsideration of the sanctions imposed in Judge Wingo's May 24, 2021 order, thus making clear that she had read that order in which the hearing date was also included. *Id.* at 10.

41. Judge Wingo then turned to the substantive issues and stated:

> So let me tell you where I stand. This hearing is now a complete waste of time. I cannot accomplish anything in 15 minutes, and I was debating whether to just enter a default, and set for default ex parte proof from the two of you failed to appear because I am -- the record is replete with my printer broke, I didn't see this email, I didn't see that email, and now you have wasted a half an hour of my time, and time when my time -- well, 45 minutes because now we can't discuss anything substantive.
>
> My time is extremely precious right now. We are emerging out of a pandemic. We are trying to address the old cases. We are trying to address the new cases. And two professional adults could not manage to figure out that they needed to be here when you both [were] here at the time for the hearing.

> If this were the first time something like this had happened, but while it's the first time you all haven't shown, it is not the first time that things were missed, or not responded to. I am highly troubled . . . by this approach of defense, and defense counsel to be clear, to their obligations to this case. . . . I need you all to do better.

Id. at 10-11; *see* DCX 42 (video of hearing beginning at 28:28).

42. Judge Wingo nonetheless attempted to address Respondent's motion for sanctions but noted that "it's very hard for me to figure out what actually is still outstanding from your point of view on everything." DCX 41 at 12.

43. Respondent criticized and attempted to argue about Judge Wingo's conduct of the March 31, 2021 hearing and the May 24, 2021 order. *See id.* at 12-13. Judge Wingo made clear that she was not going to revisit her prior rulings, but that Respondent was free to file a motion for reconsideration. *Id.* at 13-17.

44. Judge Wingo tried to address some of Respondent's arguments that Plaintiff's discovery responses were deficient, but Respondent informed the judge that she did not have the pleading in front of her so she was not able to fully respond. *Id.* at 18-21. Judge Wingo was frustrated that the status hearing had been scheduled to address Respondent's motion, but that Respondent was "unable to defend [her] motion." *Id.* at 23.

45. During the hearing, Respondent and her client often interrupted Judge Wingo and each other to interject their responses to what was being said or to make

their points.[15] *See, e.g., id.* at 11-15; DCX 42 (video of hearing beginning at 29:40). Several times Respondent argued that she believed that Judge Wingo was being unfair to her and her client. DCX 41 at 13-15, 23-25, 32; *see* DCX 42 (video of hearing beginning at 32:05). Judge Wingo said she was familiar with parties trying to talk over the court, but "[t]he two of you," i.e., Respondent and Mr. Berry, "yelling over each other to try to yell at me is . . . a little unusual."[16] DCX 41 at 28.

---

[15] This repeated interruption continued throughout the following hearings discussing discovery. During the September 13, 2021 hearing, Respondent spoke over the court and Mr. Markowicz so much that Judge Wingo stopped the hearing to inquire:

> Ms. Green, are you able to participate appropriately? Let's take a minute. Let's take a minute and reflect here, okay? Every time I say something you don't agree with, you don't let me finish the sentence, and you start talking over me and then you complain that you're not being allowed to talk. I need you to wait your turn. Are you able to do that, yes or no?

DCX 68 at 44; DCX 69 (video of hearing beginning at 1:01:10); *see also* DCX 68 at 22, 38, 43, 45, 57, 60, 67, 70, 71, and 75. Indeed, Judge Wingo left the bench for several minutes to take a break because of Respondent's interruptions. DCX 68 at 69-70; *see* DCX 69 (video of hearing beginning at 1:34:32).

[16] Respondent has repeatedly denied that she was "yelling." *See, e.g.*, DCX 92 at 16; Respondent's Amended Brief ("R. Br.") at 29. We do not find it significant what the decibel level of her voice was; what we find significant is that she repeatedly talked over Judge Wingo—trying to make the point she wanted to make—rather than listening to the judge. *See, e.g.*, DCX 41 at 31-32 (transcript of August 11, 2021 hearing); DCX 42 (video of hearing beginning at 54:22); DCX 68 at 38, 57, 165-68, 205 (transcript of September 13, 2021 hearing); DCX 69 (video of hearing beginning at 53:35); DCX 73 at 28, 83 (transcript of October 13, 2021 hearing); DCX 74 (video of hearing beginning at 57:01). This wasted the court's time and meant that Judge Wingo was unable to efficiently address the issues in each hearing. *See* DCX 76 at 4-5.

46. Judge Wingo denied Defendant's motion for sanctions, but gave Respondent leave to refile it with specificity as to what discovery was missing. *See id.* at 28-29. She held Plaintiff's May 4, 2021 *Second Motion for Sanctions* in abeyance. *See id.* at 29. Finally, Judge Wingo said she would use the pretrial hearing scheduled for August 11, 2021, to address the remaining discovery issues. *See id.* Before concluding the hearing, Judge Wingo instructed the parties: "I do expect counsel to read the things when they come in, and to actually open them, and look at the[m], and download them if they need them." *Id.* at 30.

47. On June 21, 2021, Judge Wingo issued a written order memorializing her findings and conclusions from the June 11 hearing. DCX 43. She held:

> [I]t [is] appropriate to deny *Defendant's Motion to Compel and for Sanctions,* as the motion on its face was unpersuasive, and counsel failed to offer any substantive defense [of] the motion during the June 11, 2021 hearing due to unpreparedness. In general, Defendant, in the Motion, fails to indicate how or why Plaintiff's responses are deficient, asserting only that they are deficient, and thus leaving the Court unable to determine whether deficiencies in fact exist. . . . Additionally, Defendant, in discussing the interrogatory responses, also repeatedly identifies the failure to provide documents as though that were a deficiency with respect to an interrogatory response . . . . The Court noted, however, that the motion will be denied without prejudice as to refiling, in order to allow counsel to file a more focused motion that points out exactly what information is missing in Plaintiff's discovery responses.

DCX 43 at 2-3. Judge Wingo further noted that she "expects the parties to review the materials provided thoroughly before submitting any further motions to compel, and to request specific information from opposing counsel regarding when and how

the production occurred if necessary in order to locate the documents and resolve such disputes." *Id.* at 3 n.3.

48. Respondent filed her *Motion for Reconsideration of Order Dated May 24, 2021* on June 22, 2021. DCX 44. Plaintiff filed *Plaintiff's Opposition to Defendant's Motion for Reconsideration of Order Dated May 24, 2021* on July 3, 2021. DCX 45.

49. Respondent filed *Defendant Rasheed Berry's Amended Motion to Compel and for Sanctions* on July 12, 2021. DCX 48. This motion was substantially similar to the *Motion to Compel and for Sanctions* that Respondent had previously filed and that Judge Wingo had denied on June 11, 2021. *Compare* DCX 35, *with* DCX 48. *See generally* DCX 59 at 42-49.

E. The Joint Pretrial Statement

50. Before the pretrial hearing, Judge Wingo had issued a Pretrial Scheduling Order, requiring that "[t]he parties shall file a Joint Pretrial Statement on or before August 4, 2021." RX 23; *see* DCX 63 at 2.

51. On July 26, 2021, at 8:45 PM, Mr. Markowicz sent an email to Respondent, suggesting that they meet virtually on July 28, at 5:00 PM, to discuss the pretrial statement. DCX 57 at 15. Respondent did not see this email, but sent an email to Mr. Markowicz on July 27, 2021, at 11:09 PM, suggesting a virtual or in-person meeting on July 29, at 1:00 PM or 2:00 PM. *Id.* at 16.

52. Following further email exchanges attempting to schedule a meeting, Mr. Markowicz telephoned Respondent on August 2, 2021, at 5:02 PM, and asked

if they could talk then, to which Respondent agreed. *Id.* at 5-6, 15-19. They spoke by telephone for approximately thirty minutes. *Id.* at 6.

53. During that conversation, Mr. Markowicz asked if Respondent was interested in preparing a Joint Pretrial Statement. *Id*. Respondent responded that "she was planning to prepare Defendant's portion of the pretrial statement and send it to him to see if he wanted to submit the required joint Pretrial Statement, otherwise, she would just submit Defendant's statement." *Id.*

54. Respondent and Mr. Markowicz agreed that he would send his section to Respondent, who would incorporate it in the document she was preparing. *Id.*; Tr. 144 (Markowicz). Mr. Markowicz prepared his section of the report and sent it to Respondent at 9:26 AM on August 3, 2021, with an email: "As discussed yesterday, here is a *draft* of the statement. I will need to see it once you put in your information since I may have further amendments. Accordingly, *please send it back to me once you have completed your portion*." DCX 55 at 5 (emphasis in original); *see also* DCX 63 at 2, 5-10; Tr. 876 (Green); Tr. 144 (Markowicz). At 7:31 PM, Respondent sent an email to Mr. Markowicz, attaching the report including her section, with an email that said, "Once you have made whatever changes you want to make to the document, please forward it to me for my review before it is filed. I will add my signature (/s/) at that time. In addition, I will be submitting an additional document as an addenda to the joint pretrial statement." DCX 55 at 6; DCX 57 at 20 (same); *see* DCX 63 at 2-3; RX 13; Tr. 877-880, 989 (Green); Tr. 151-53 (Markowicz). Ten minutes later, Mr. Markowicz responded: "You will not be

submitting any additional documents to our 'joint' pretrial statement without clearing it with me first." DCX 55 at 7; DCX 57 at 20 (same). Respondent did not reply further that evening. *See* DCX 57 at 20.

55. The next morning at 8:55 AM, Respondent sent an email to Mr. Markowicz:

> I don't know what your problem is, but you seem to have one. Unlike you, I am neither deceitful nor dishonest. If a document is submitted as joint as the Pretrial is required, of course I will submit any document to be added for your review. That, of course, does not give you veto power. When you have completed whatever additions you plan to make to the Pretrial statement, please return for my review as I plan to add some more witnesses to the statement and review ensure [sic] that I don't need to add anything more to Defendant's portion.

DCX 55 at 8; DCX 57 at 20 (same).

56. At 9:32 AM, Mr. Markowicz sent another email to Respondent, including his request that Respondent complete her portion of the document "and then send it to me so that I can add my portion and we can get it filed. What I will not do is send you my portion so that you can continue to keep me in a holding pattern all day long." DCX 55 at 9.

57. Respondent and Mr. Markowicz exchanged several more emails, and then at 11:44 AM, Respondent sent back the Joint Pretrial Statement, with the message: "Please return the document to me for final review and signature once you have completed your editing. I will submit an addenda to be included." *Id.* at 14. At 11:58 AM, Mr. Markowicz responded: "Once again, I will not allow you to submit anything to the Court as a joint pretrial statement without me looking at it.

Once again, please send me everything that you wish to submit to the Court." *Id.* at 15. The final email of their exchange came from Respondent at 12:28 PM:

> Obviously you forgot who you are talking to. Obviously, you did not intend to use the term "I will not allow" as you have no control over me. I am a[n] adult, not your child. I never said I was going to submit anything to the court with respect to the joint pretrial statement without sharing it with you. All documents will be attached to the pretrial statement. I frankly don't understand your behavior. It is clear that you did not read my email which states below, in pertinent part " . . . I will submit an addenda to be included." I thought you understood the phrase "to be included" means to be included with the joint pretrial statement. I mentioned it yesterday so you know full well that I did not intend to submit a separate pretrial statement; that is not what the rule allows or requires. Have a Good Day.

Id. at 16. Respondent did not send Mr. Markowicz any other documents nor inform him that she did not intend to add any addenda.[17]

58. Having received no response from Respondent, shortly after 4:00 PM, Mr. Markowicz filed a statement solely on behalf of Ms. Berry.[18] DCX 53; DCX 57 at 7; Tr. 152-53 (Markowicz); *see* DCX 94. Following this submission,

---

[17] The court admonished both lawyers for their conduct, particularly their inability to work together. DCX 59 at 40 (noting the "complete breakdown" between Respondent and Mr. Markowicz); *see* DCX 60 (audio of hearing beginning at 5:59).

[18] This interaction further reflected a lack of civility between counsel. In *Berry v. Berry*, Mr. Markowicz ultimately filed two documents for his client alone (*see* note 24, *infra*), although the court had ordered that they be joint filings, because Respondent did not reply to him timely. In neither case did he inform Respondent that he was going to do so. As Ms. McKinney noted, this was not consistent with civility and that a better practice would have been to notify Respondent first. Tr. 583-85 (Markowicz); *see* DCX 87 at 6. However, Respondent also filed her documents—including the document that she falsely labelled as a joint filing—without notifying Mr. Markowicz.

CaseFileXpress, the case filing system, sent a notification to Respondent. DCX 57 at 7.

59. Upon receiving notice of Plaintiff's filing, Respondent assumed that Mr. Markowicz had filed a *joint* pretrial statement without her consent to the final documents. *Id.* However, because Respondent did not open or download the document, she did not verify her assumption. *Id.*; Tr. 883, 1000-01 (Green). Instead, acting on her assumption, Respondent sent Mr. Markowicz an email, asserting that any signature on that document purporting to be hers was not valid and complaining that his behavior was "unethical." RX 34; Tr. 155 (Markowicz); Tr. 883-84 (Green). Mr. Markowicz did not respond. *See* DCX 94.

60. Close to midnight on August 4, 2021, Respondent finally downloaded the document and realized that Mr. Markowicz had filed a pretrial statement solely on behalf of Ms. Berry and that nothing had been filed on Mr. Berry's behalf. Tr. 885-86 (Green). Respondent characterized her feelings as "panicked," leading her to file a "joint statement" in the first hour of August 5, 2021.[19] DCX 54; Tr. 884-86, 1010-12 (Green).

61. In preparing the document for filing, Respondent took the document that Mr. Markowicz had sent to her on August 4, 2021, added her section, and then retyped the bottom of the document, indicating that counsel for both parties was

[19] We credit Respondent's testimony that she panicked, but she nonetheless took the time to retype Mr. Markowicz's initials in the signature block and his name in the certificate of service. *See* FF 61.

jointly filing the pretrial statement. Tr. 1005-09 (Green). In doing so, Respondent typed Mr. Markowicz's initials ("/JNM/") in the signature line and typed Mr. Markowicz's full name as a sender in the certificate of service. Tr. 891-92; 1008-1012 (Green); Tr. 162-63 (Markowicz); Tr. 591 (McKinney); DCX 54 at 9-10.

62. Respondent did not send the document to Mr. Markowicz or seek his consent before filing it. Tr. 886-88 (Green); Tr. 162-63 (Markowicz). Mr. Markowicz had not given Respondent permission to add his signature or to file the document as a joint submission. DCX 62 at 2; Tr. 154, 162-63 (Markowicz); Tr. 892 (Green).

63. When Mr. Markowicz saw that Respondent had filed what purported to be a joint statement without his authorization, he moved to strike the pleading. DCX 55. Respondent asserted that because she used the document Mr. Markowicz had sent to her, there was no harm in labeling the document as a "joint" pretrial statement. Tr. 891-92 (Green); DCX 59 at 14-15. At the August 11, 2021 hearing on the motion, Judge Wingo admonished Respondent for filing the statement without Mr. Markowicz's approval, noting that the submission "falsely suggests to the Court that [Mr. Markowicz] has approved the document, which he has not," since he had told Respondent he needed to review her proposed addendum first. DCX 59 at 16. Judge Wingo granted the motion to strike this pleading.[20] *Id.* at 23; DCX 62 at 2 (Order); RX 44 at 592-93.

[20] At the August 11, 2021 hearing, Judge Wingo also denied Respondent's June 22, 2021 *Motion for Reconsideration*, noting that, if filed, such motions are "not a chance to argue things you could have argued the first time," which is what

64. Following the hearing, Mr. Markowicz filed a disciplinary complaint against Respondent on August 30, 2021, focusing on her filing of the joint pretrial statement and attaching the court's order granting his motion to strike. DCX 63 at 2-4, 24-25. Respondent filed a response on September 13, 2021. DCX 67.

F. Further Discovery Disputes

65. Respondent did not understand or was unable to effectively use electronic file delivery and storage systems. *See* Tr. 603-06; (McKinney); DCX 59 at 31-32. She did not use a system (like Bates stamps or indexes) to track her production of documents so she could demonstrate whether documents had been produced. *See* Tr. 541 (McKinney); DCX 87 at 1-2; *see also* DCX 59 at 43; DCX 73 at 65. While she drafted documents on her computer, she edited them by reviewing printed copies, apparently leading her to miss a deadline when her printer malfunctioned. *See* Tr. 966-67 (Green); RX 46 at 678; FF 22. And she not infrequently was unable to use basic technology during remote hearings, including,

---

Respondent has done. DCX 59 at 11. Even after Judge Wingo denied Respondent's motion for reconsideration, Respondent attempted to argue it again. *See id.* at 12-13.

We also note that Judge Wingo, again facing incivility by the parties, admonished Mr. Markowicz for rudely "ordering [Respondent] around" when he sent her an email saying "You will not be submitting any additional documents to our joint pretrial statement without clearing it with me first," instead of simply stating that he would need to review the addenda before he would approve the joint statement. *Id.* at 17; *see id.* at 16-18. And she cited Respondent's statements that Mr. Markowicz was deceitful and dishonest, Respondent's failure to communicate what she intended to file with the pretrial statements, and Respondent's failure to inform Mr. Markowicz when she decided not to file any additional documents or information. *Id.* at 20-22.

for example, an inability to show her face on video and an inability to view documents during the hearings. Tr. 468-471, 531 (McKinney); DCX 87 at 2; *see, e.g.*, DCX 73 at 2-3 (transcript of October 13, 2021 hearing) (proceeding with a remote hearing even though Respondent was unable to make herself appear on video), 64-65 ("Ms. Green: [The documents] are there, Your Honor. They're in box.com. . . . Ms. Green: I haven't even been able to get into box.com."); DCX 74 (video of hearing beginning at 13:17).

66. The parties' ongoing discovery disputes made it impossible to hold a productive pretrial hearing, so Judge Wingo vacated the trial dates and set an evidentiary hearing on the discovery issues for the entire day of September 13, 2021.[21] DCX 59 at 39, 45-49, 51; DCX 60 (audio of hearing beginning at 3:33); RX 46 at 682. Judge Wingo specifically noted that she had previously directed Respondent to update her responses, and that if she had not done so, Respondent needed to provide updated responses by August 30, 2021. DCX 59 at 36-37, 49; DCX 76 at 4; RX 46 at 682.

67. At the September 13, 2021, hearing, Judge Wingo meticulously examined the parties' contentions and found that while Ms. Berry's production was generally "thorough[]" with the exception of only a few documents that "appeared to be 'inadvertent omissions'" that should be disclosed, she could not evaluate Mr.

[21] Even during the September 13, 2021 hearing, civility issues continued to affect the proceeding. Judge Wingo noted that they were not making progress "because the parties are failing [to] be appropriately civil. I certainly expect more from attorneys." DCX 68 at 14; *see* DCX 69 (video of hearing beginning at 21:59).

Berry's production because of Respondent's "failure to have the information organized and easily accessible to demonstrate what had actually been provided." DCX 76 at 4; *see, e.g.*, DCX 68 at 183 ("The Court: . . . [W]hat I need is for [Respondent] to do what [Mr. Markowicz] did, which is get organized for this hearing, which I . . . don't have any sense that that happened.").

68. Respondent disagreed strongly with Judge Wingo's rulings that Plaintiff was not required to produce all the documents the defense sought, specifically asserting numerous times that Judge Wingo was not being "fair." *See, e.g.*, DCX 68 at 32, 38-40, 63-67; DCX 69 (video of hearing beginning at 45:11). Specifically, for example, Respondent and Mr. Berry repeatedly argued that Ms. Berry should be required to produce detailed E-ZPass records for five years to show the travel Ms. Berry had taken. *See* DCX 41 at 23-25, 32-33; DCX 68 at 113-15; DCX 73 at 5; RX 36. Judge Wingo ruled that it was obvious that Ms. Berry had travelled extensively and had provided detailed records for two years, but the details for five years were not required. DCX 68 at 114-15; DCX 73 at 5; *see* RX 37 at 496-97. Respondent argued that this ruling was unfair because Mr. Berry was required to produce other extensive documents. DCX 68 at 63-64. We find that Respondent failed to recognize the reasoning behind Judge Wingo's rulings involving the discovery sought by each party.

69. As part of discovery, Mr. Berry was required to produce financial documents including credit card statements, mortgage statements and retirement records. *See* DCX 76 at 5. In September 2021, Judge Wingo gave the defense one

more opportunity to demonstrate that they had produced the documents and discovery responses that Plaintiff asserted had not been produced, by scheduling an additional hearing for October 13, 2021, to consider the discovery issues, and by providing explicit directions regarding the preparation needed in advance of that hearing. DCX 68 at 195-96; *see also* RX 44 at 594; RX 46 at 684. Judge Wingo created a Box.com account for Respondent to upload all of Defendant's interrogatory answers and documents, and to organize them as Plaintiff had done—i.e., to show what had been produced, when it was produced, and how it was produced. DCX 68 at 195. Judge Wingo informed Respondent that if she did not provide this information in a clear way, she would have "forfeited [her] chance" and Judge Wingo would "take a reasonable inference against [her] that this stuff has not been provided, and . . . probably enter a default." *Id.* at 197. Judge Wingo also noted that Respondent's and her client's conduct at the hearing was highly inappropriate and that Respondent's organization of her discovery was defective, lacking even an index that would make it possible to find specific documents. DCX 76 at 4-5; *see* DCX 68 at 183, 198-99; Tr. 400-01 (McKinney).

70. At the October 13, 2021 hearing, although Respondent continued to claim she had provided certain documents to Mr. Markowicz, she was unable to locate the documents in the Box.com folder, which Judge Wingo found to be disorganized and not labeled appropriately. DCX 73 at 65-66 ("Do not say another word unless it is to point to me where the closing documents are, because they -- you

should be able to find them easily if they were labeled appropriately."); DCX 74 (video of hearing beginning at 1:54:21).

71. Judge Wingo found that, by the conclusion of the October 13, 2021 hearing, Respondent still had not provided sufficient responses, including basic information requested by Plaintiff eighteen months earlier, and despite multiple court orders. DCX 76 at 5. Judge Wingo noted that, among other required discovery, Respondent had failed to provide information about her client's credit card balance, his retirement accounts, his mortgage statements, his condominium dues, and the assessments for the condominium. *Id.* Judge Wingo concluded that the missing information was so significant that there was no need to consider additional discovery failures identified by Mr. Markowicz. *Id.* at 6-7.

72. Judge Wingo orally ruled that she would enter a default at least on the divorce, but that she would need to consider the issue of child custody, and she stated that she would file a written order later. *See* DCX 73 at 85-89; DCX 76 at 6-7.

73. Respondent's position throughout these disciplinary proceedings was that it was Mr. Berry's responsibility to provide documents and discovery responses—not hers. She said she was responsible only for passing on the information that Mr. Berry gave to her. *See, e.g.*, Tr. 741-44, 776-77, 787, 799-800, 1014-19, 1031-33, 1069-1071 (Green). However, over the course of the discovery hearings, Respondent repeatedly assured the court that her client had produced all the documents requested, when she knew that was not correct. *See* DCX 59 at 31-32, 36-38. Mr. Berry also addressed the court directly during the hearings—stating

without any objection or correction from Respondent—that he had produced the required documents. DCX 59 at 23-24. However, Respondent had advised Mr. Berry that this production was not adequate but nonetheless agreed to submit it. *See* Tr. 1018-19, 1039-1042, 1071-74 (Green). Further, Respondent did not receive her client's credit card statements until after Judge Wingo issued the default. *See* Tr. 1041 (Green). Thus, when Respondent represented to Judge Wingo that she had produced all the requested documents, she knew she had not done so.

74. During the hearing on October 13, 2021, Judge Wingo specifically asked Respondent whether there were mortgage statements for the condominium. *See* DCX 73 at 39, 60, 83. Respondent responded that she did not have any such documents. *Id.* at 83. During the disciplinary proceeding, Respondent explained that she had misspoken and that she had actually produced these documents. Tr. 1071, 1073-74 (Green). However, she did not correct the record with Judge Wingo or Judge Higashi by informing them that such documents existed. Tr. 1074 (Green).

G. The December 20, 2021 Status Hearing and Order of Default

75. A status hearing was scheduled for December 9, 2021. RX 39 at 565. However, on December 7, 2021, Judge Wingo informed the parties that she had a family emergency and needed to continue the hearing. *Id.*; DCX 75 at 6. In an exchange of emails among Respondent, Mr. Markowicz, and the court's clerk, based on the options offered to the parties, Mr. Markowicz said that he was available on December 20, 2021, at 2:00 PM. DCX 75 at 3. Respondent replied that she and her

client were not available then, but were available at noon that day. *Id.* The court's clerk replied stating the status hearing would likely be rescheduled to a date in 2022, and therefore, in order to avoid a substantial delay, Mr. Markowicz agreed to change his schedule to also be available at noon on December 20, 2021. *Id.* at 2.

76. Thus, on December 8, 2021, Judge Wingo entered an order setting the status hearing for noon on December 20, 2021 and distributed the order to both counsel via email and CaseFileXpress. DCX 75 at 1-2, 36; RX 46 at 685.

77. On Sunday, December 19, 2021, Judge Wingo issued a written order pertaining to her October 13, 2021 oral ruling granting a default as a result of Defendant's discovery violations. DCX 76. She found that there had been an "egregious failure to provide basic financial information and documents," that "the missing information is critical to a fair determination" of the issues, and that the failure persisted in the face of the court's earlier order compelling production. *Id.* at 6. Judge Wingo noted that she had previously ordered the payment of attorney's fees as a sanction, and the fees had not been paid immediately. *Id.* at 2-3. Judge Wingo also noted "the length of time the discovery requests have been pending and the number of extensions that have been given to comply." *Id.* at 7. Under these circumstances, Judge Wingo found "that no lesser sanction" than a default "would suffice." *Id.* Judge Wingo thus issued a default with respect to the divorce, but did not extend it to the issue of custody or child support because the discovery failure did not bear on the determination of an appropriate custodial relationship. *See id.* n. 7. That order reiterated that the status hearing was to be held the next day—

December 20, 2021 at noon. *Id.*; RX 46 at 685. That order was sent to Respondent through CaseFileXpress and by email, with a cover note also advising: "This matter is before the court **tomorrow, December 20th at 12:00 p.m.**" DCX 75 at 38 (emphasis in original); *see* RX 46 at 685.

78. Neither Respondent nor her client appeared at the December 20 hearing. DCX 78 at 1. As a result, Judge Wingo entered a default against Defendant "as to all remaining issues." *Id.* at 2. Judge Wingo stated that the default "will not be vacated unless Defendant files a written motion setting forth good cause for the failure to appear." *Id.*

79. On December 31, 2021, the case was reassigned from Judge Wingo to Judge Kelly Higashi, DCX 10 at 12. On January 3, 2022, Respondent moved to set aside the second order entering default. DCX 79. In this motion, Respondent claimed that she "simply did not see" the December 8, 2021, CaseFileXpress notice transmitting the court's order setting the date of the hearing or the December 19, 2021 order that contained a reminder of the hearing date the next day. *Id.* at 2-3; DCX 10 at 13; DCX 76 at 7. She claimed that she did not see either of these notices until 4:00 PM on December 20, 2021, "when reviewing her emails."[22] DCX 79 at

---

[22] In her brief in this disciplinary matter, Respondent's counsel asserts that Respondent

> testified that, due to a demanding schedule and high volume of email, she did not see any additional correspondence from chambers until the day of the hearing, December 20, when she discovered, well after noon,

2-3. In the motion, Respondent side-stepped any acknowledgement that she was also included on the email exchange that lead to Judge Wingo scheduling the status hearing for December 20, 2021, on the courtesy copy of the December 8 order emailed by the court's clerk, and/or on the copy of the December 19, 2021 order emailed to her by the court's clerk with a cover note specifically referencing the hearing on December 20, 2021. She also did not provide any information about whether or when she saw these communications and notifications. *See id.*; DCX 75 at 2-3, 38; RX 46 at 685.

80. We credit Respondent's testimony that she did not see the emails sent to her on December 8, which stated that the hearing would be scheduled for December 20, or the December 19 email from Judge Wingo's chambers or the CaseFileXpress notices of this date.

81. Respondent attributes her failure to appear for the December 20, 2021 hearing as "inadvertence." DCX 79 at 3-4, 8-9. She also claimed that her failure to attend "is most appropriately charactered as excusable neglect." *Id.* at 8. We find by clear and convincing evidence that Respondent did not read her emails as often as she should have done so, and in this instance for almost two weeks she did not

---

> that an order and hearing notice had been sent the previous morning, Sunday, December 19, at approximately 7:46 A.M.

R. Br. at 31. The brief provides no citation to any such testimony. *See id.* We find that Respondent did not provide this testimony at the disciplinary hearing, although she made essentially the same argument in some of her pleadings in *Berry v. Berry*. *See, e.g.*, DCX 79 at 2-3; RX 46 at 686.

read the emailed order setting the December 20, 2021 hearing; thus, her neglect created the problem.

82. The Hearing Committee credits Respondent's explanation that she did not actually become aware of the December 20, 2021 hearing until after the hearing was over and that she informed Mr. Berry when she discovered her error. DCX 79 at 2-3. Mr. Berry had previously asked Respondent whether the December 9, 2021 hearing had been rescheduled, and she told him that it had not been. *Id.* at 3. Respondent termed Mr. Berry's actions as doing "the only thing he could to inform himself of the hearing date" since none of the notices were sent to him—and she has argued that her inadvertence should not be imputed to him. *Id.* at 8. She made this same admission and the basis for the requested relief in her motion because Mr. Berry's failure to appear was not his fault. It would be inexplicable for Respondent to deliberately harm her client by intentionally not telling him of the hearing date.

83. On January 18, 2022, Respondent filed a *Motion for Reconsideration* of Judge Wingo's first order of default entered on December 19, 2021, arguing that the entry of default was an abuse of discretion, too strict under the circumstances, and based on an inaccurate picture of discovery production in the case. DCX 10 at 11; RX 46 at 686.

84. Considering Respondent's motion to set aside the default issued for her and Mr. Berry's failure to appear on December 20, 2021, on March 11, 2022, Judge Higashi vacated the second default as to the issues of custody and child support,

RX 44 at 596, presumably because Mr. Berry did not know about the hearing.[23] Judge Higashi denied Respondent's motion challenging Judge Wingo's December 19, 2021 order of default on the issues of alimony and distribution of marital property and debt, finding that it was supported by the evidence and that the sanction was not too severe. DCX 81 at 8; *see* DCX 10 at 11; *see also* RX 46 at 686; DCX 10 at 10-11. She confirmed that, because of this default, Mr. Berry was permitted to attend a default/ex parte hearing and cross-examine Plaintiff's witnesses, but not to present evidence. DCX 81 at 8, 12-16; *see* RX 46 at 687; DCX 76 at 7.

85. Judge Higashi heard testimony on the substantive issues in the case (except for custody and child support) on March 11, April 14, and May 9, 2022.[24]

---

[23] The March 11, 2022 written order issued by Judge Higashi is not in the record, so the basis for her order is not fully explained in the record before the Hearing Committee. However, because no evidence was presented that contradicted Respondent's and Mr. Berry's assertions that he had not received notice of the hearing, we conclude that this was likely the basis of Judge Higashi's March 11, 2022 order.

[24] On January 18, 2024, Judge Higashi ordered that brief closing arguments be submitted in writing by February 1, 2024. RX 43 at 583. Respondent requested an extension of the due date, citing a scheduled medical procedure at the end of January. *Id.* Mr. Markowicz opposed this request. *See id.* On January 26, 2024, Judge Higashi converted the closing arguments to oral presentations and ordered counsel to submit a joint praecipe by close of business on January 29, 2024, with their availability on one of two listed dates. *Id.* at 584. Counsel agreed on a date, but counsel had difficulties filing a *joint* document. *See* DCX 85; RX 41. Mr. Markowicz filed a praecipe explaining that Respondent had not timely responded to him so the document he filed was not "joint." RX 41. And Respondent filed a praecipe agreeing to the date, but spending an additional three pages accusing Mr. Markowicz of "misrepresent[ing] the facts" and "dirty trick[s]," rehashing the problems with the joint pretrial statement, and calling him "unethical." DCX 85. In this document, Respondent also informed the court that Mr. Markowicz had filed a

RX 44 at 596. Based on the evidence presented at the ex parte proof hearing, Judge Higashi found that Mr. Berry's behavior primarily contributed to the estrangement of the parties (*id.* at 602); found that the parties were entitled to a divorce, *id.*; divided the marital property roughly equally, with Mr. Berry receiving a 45% interest in the marital home (*id.* at 628-29); and ordered Mr. Berry to pay $1,000 per month in alimony for two years (*id.* at 630).

86. Judge Higashi held a trial on the issues of custody and child support on May 6 and 7, 2024, and issued an order with her findings and conclusions on December 11, 2024. RX 46. Ms. Berry requested sole legal and physical custody, or alternatively joint legal custody with tiebreaking authority, and with visitation restricted to when Mr. Berry is sober. *Id.* at 694. Mr. Berry requested primary physical custody and joint legal custody. *Id.* Both parties requested an award of child support based on the D.C. Child Support Guidelines Calculation. *Id.* at 709. Ultimately, Judge Higashi awarded the parties joint legal and physical custody of their child, required Mr. Berry to pay $120 per month in child support, and ordered Mr. Berry to pay Mr. Markowicz's fees for his failure to appear at the December 20, 2021 hearing. *Id.* at 722-23.

87. Throughout this litigation, Plaintiff sought to require Mr. Berry (and/or Respondent) to pay Ms. Berry's attorney's fees and costs "due to Defendant's repeated transgressions that has unjustifiably raised the costs of litigation." RX 46

---

bar compliant against her. DCX 85 at 3. Closing statements were ultimately made to the court on February 12, 2024. DCX 86.

at 720. Reviewing "the procedural history of the case," Judge Higashi concluded that "Defendant's conduct undoubtedly increased the costs of litigation," but that Ms. Berry had recouped the expenses of the hearings in which that Respondent and Mr. Berry were "absent or excessively late" and the court had imposed the "'ultimate' sanction of default" for their failures to provide full and complete discovery. *Id.* at 720-21. Judge Higashi concluded that the circumstances were not so extraordinary or that there were dominating reasons of fairness which would require further monetary sanctions against Mr. Berry. *Id.* Plaintiff has nonetheless continued to seek attorney's fees from Respondent and Mr. Berry. DCX 93 at 62-68.

H. Analysis of Expert Witnesses

88. Disciplinary Counsel offered Margaret McKinney as an expert in family law and the standard of care for family cases, and she was qualified over Respondent's objection.[25] Tr. 337, 353-58, 365-66. Ms. McKinney's practice is focused on domestic relations cases, and she has represented over 2,000 clients in divorce matters. Tr. 335 (McKinney). She has participated in domestic relations

[25] Respondent's primary objection to Ms. McKinney's acceptance as an expert and to her opinions is that they were not based on "actual case authority or statutory law" or other standards that were codified. R. Br. at 40-44; *see also* Tr. 352-360. We do not find Respondent's position well-founded. Rather, we find that experts' opinions about the standard of care can be based on their experience, and that such standards need not be set forth in codes or regulations.

Respondent also argues that Ms. McKinney's opinions about division of property were wrong, that she advanced a "rigid and impractical interpretation of the standard," and that she was excessively partisan and did not maintain impartiality. (R. Br. at 40-44.) The Hearing Committee does not find a factual basis for any of these arguments.

CLEs, served on the training sub-committee for the D.C. Superior Court Family Court Implementation Committee, and has twice previously been qualified as an expert in D.C. domestic relations law. DCX 87 at 8-11; Tr. 334-37 (McKinney). Ms. McKinney explained that she is providing her expert services because she felt an "obligation to help the Office of Disciplinary Counsel" and is charging a reduced rate. Tr. 643 (McKinney).

89. Ms. McKinney provided a written report about the standard of care in domestic relations cases. DCX 87. She stated that, based on her experience, "a core competency in divorce litigation is the ability to conduct discovery." *Id.* at 1. Based on her review of the evidence, Ms. McKinney found that Respondent did not meet the deadlines for responding to discovery, did not sufficiently respond to interrogatories (despite the court's instructions on what was required), and was not able to track the documents she produced in discovery so she could prove to the court that she had in fact produced the documents she claimed to have produced, despite being provided the opportunity in multiple discovery hearings. *Id.* When asked by Respondent's counsel to address Rule 6 of the Rules Governing Domestic Relations Proceedings, allowing attorneys to request extensions of time, Ms. McKinney stated that it is "not within the standard of care . . . to continually file documents late, whether you cite to the rule or not, because you're putting your client at risk every time you file something late." Tr. 626-27.

90. Ms. McKinney also found that Respondent lacked "sufficient skills with respect to technology." DCX 87 at 1. Specifically, she cited Respondent's

difficulty in navigating Box.com during the discovery hearings, which manifested both in difficulties following the discussions among herself, Judge Wingo, and Mr. Markowicz—and in her efforts to prove what documents she and Mr. Berry had produced. *Id.* 1-2, 4, 5; *see also* DCX 81 at 22. Ms. McKinney also cited Respondent's admitted failures including her claimed inability to receive telephone calls and mail because she was working from home and had not made technological (or other) arrangements to receive communications, and Respondent's failure to see emails sent to her, which both caused her to miss a court hearing and to misrepresent to the court that Mr. Markowicz had not responded to her, when she had simply not seen his email. DCX 87 at 3-6.

91. Ms. McKinney also cited Respondent's failure to timely open emails and to timely respond to them as a factor contributing to the controversy involving the pretrial statement. *Id.* at 6-7. Based on her review of the evidence in *Berry v. Berry*, Ms. McKinney found that Respondent failed to conform to the standard of care on the day the pretrial statement was due, particularly in filing a document purporting to be a *joint* pretrial statement after she learned that Mr. Markowicz had filed one only for his client. *Id.* at 7.

92. Ms. McKinney's ultimate conclusion was that Respondent failed to satisfy the standard of care in her conduct and that Respondent's actions had harmed her client and harmed the administration of justice. *Id.*

93. Respondent offered Brian Plitt as an expert in civil litigation, and he was qualified over Disciplinary Counsel's objection. Tr. 1098, 1108. Mr. Plitt has

extensive experience in civil litigation in the Superior Court, but he has represented only a few clients in domestic relations cases, and the most recent D.C. divorce case he handled took place fifteen years before the hearing and did not involve electronic filing. Tr. 1088-1092, 1101-02 (Plitt). He has participated in civil litigation CLE programs, but he could not remember whether he had ever attended a domestic relations program. Tr. 1095-1103 (Plitt). He was involved in a civil case with Respondent, and they were professional colleagues. Tr. 1093-94 (Plitt). Mr. Plitt provided testimony about the standard of care in civil cases, Tr. 1153, and said that it requires "those actions which are reasonably necessary to zealously represent the client in the District of Columbia, taking into consideration whether there is harm to the client, actual harm caused by the attorney's actions in the case," Tr. 1122, but he did not provide any testimony about the standard of care in domestic relations cases. *See* Tr. 1153-54 (Plitt).

94. Mr. Plitt provided a report as an expert about the standard of care in civil litigation. RX 48. In this report, Mr. Plitt noted his 40 years of experience in civil litigation and his experience working with Respondent in the past four years. *Id.* at 733. He stated that the procedural rules and practice of both civil litigation and domestic relations are substantially similar, but given his relatively little experience in domestic relations, we find that the value of his opinions is limited. For example, when he stated that "little discovery was being conducted" during the COVID-19 period, this observation is based on his experience in civil cases and does not necessarily apply to this case or other domestic relations cases. *See id.* at 749.

95. At the beginning of his report, Mr. Plitt included a summary of his personal opinions about Respondent based on his "experience and impressions of [Respondent] professionally."[26] *Id.* at 733-34. Mr. Plitt's report also provided "overall impressions" about the disciplinary proceedings against Respondent. *Id.* at 734-35. He first disagreed with Ms. McKinney's report about whether Mr. Berry was harmed by Respondent's conduct, noting that Mr. Berry had never complained about Respondent and continues to retain her as his counsel. *Id.* at 734.

96. Mr. Plitt then made assertions about the validity of Disciplinary Counsel's investigation and pursuit of its case against Respondent. *Id.* at 735. The Hearing Committee finds that this is not a proper subject of his expert testimony, which is limited to the standard of care for lawyers engaged in civil litigation, so we will disregard it.

97. Much of Mr. Plitt's report consisted of an attack on Ms. McKinney's report. He urged that her report be rejected because it was undated and did not contain facts specific to "time and place" and specific pleadings or documents. *Id.* at 737. However, in most circumstances where Ms. McKinney had offered an opinion on the standard of care, Mr. Plitt did not offer his own definition of the standard of care, except as set forth in FF 94-95.

---

[26] Unfortunately, Mr. Plitt generally expressed his personal views, such as asserting that Respondent was a "hard-working, zealous, ethical attorney" (RX 48 at 740), rather than applying an objective standard of judging her conduct against the standard of care. Since these opinions were based on Mr. Plitt's personal experience with Respondent, the Hearing Committee did not consider these as expert opinions.

98. In the section of his report relating to the filing of the pretrial statement, Mr. Plitt disagreed with Ms. McKinney that Respondent should have filed a defendant's pretrial statement instead of filing one that purported to be joint. *Id.* at 738. He conceded that Respondent's actions were not "optimal," but argued that there was no "tangible harm" to her client—which failed to acknowledge any duty of truthfulness to the tribunal (whether or not Respondent's client was harmed). *Id.* Mr. Plitt testified that Respondent acted within the standard of care in her submission of the document purporting to be a joint pretrial statement. Tr. 1225. He admitted that Respondent "did incorporate portions of Attorney Mar[k]owicz's statement, and she did include a signature line," but he asserted that it was "always the case" that one party will "have to incorporate the signature line of the other." *Id.*

99. Similarly, Mr. Plitt wrote that it was "regrettable to miss the beginning of the hearing" on June 11, 2021. RX 48 at 739. In examining Respondent's conduct, Mr. Plitt focused only on whether her absence harmed Mr. Berry—rather than also focusing on the effect on the court system. *See, e.g.*, Tr. 1131 (Plitt). Further, rather than addressing Respondent's failure to timely appear, Mr. Plitt asserted that the court discussed the merits of Respondent's motion to compel and "it is doubtful and speculative" that the outcome of the hearing would have been different. RX 48 at 739. He did not address the fact that Judge Wingo found that Respondent was both late and unprepared to make arguments on her motion. *See* FF 44, 47; DCX 43. It was on the basis of this finding that Judge Wingo dismissed Respondent's motion seeking to compel discovery from Plaintiff. DCX 43 at 2.

100. As to Respondent's failure to appear at the December 20, 2021 hearing, Mr. Plitt relied on Respondent's explanation "that she had not received or had overlooked notices." Tr. 1220 (Plitt). He was reluctant to agree that Respondent had received any notice until December 19, 2020, and thus found Respondent's behavior to be within the standard of care. Tr. 1252-56; *see also* RX 48 at 739. Ultimately Mr. Plitt failed to find any fault with Respondent's absence, because Judge Higashi later reversed the December 20, 2021 default caused by Respondent's and her client's absence. RX 48 at 739.

101. Turning to an evaluation of Respondent's conduct in discovery, Mr. Plitt testified that she "acted within the standard of care for representing her client during the discovery process in this case." Tr. 1120. Mr. Plitt stated that it was Mr. Berry's responsibility to produce documents and Respondent "was obliged to follow her client's instructions." Tr. 1123-26 (Plitt). When asked about the basis for his understanding of what discovery was provided by Respondent, Mr. Plitt identified only the testimony provided by Respondent. Tr. 1219 (Plitt). Unfortunately, several of his important conclusions are contradicted by a review of the record. For example, in his report, Mr. Plitt asserted that "it does appear that Atty Green did upload all relevant discovery document into the Box.com system." RX 48 at 738. This is in stark contrast to the numerous times during the September 13, 2021, and October 13, 2021 hearings, when Respondent could not show Judge

Wingo where the documents were located and thus could not demonstrate that she had produced them to Mr. Markowicz.[27] *See* FF 67, 70.

102. The Hearing Committee finds that Ms. McKinney's extensive experience in domestic relations cases, her expertise evidenced from her training of other practitioners and judges, as well as prior recognition as an expert witness, provide a solid foundation for her expert opinions. The Hearing Committee also finds by clear and convincing evidence that although Mr. Plitt has extensive experience in civil litigation, this expertise is not particularly helpful in this case. When weighed against his lack of experience in domestic relations cases, the fact that his opinion is based at least in part on his personal opinion of Respondent, and his lack of accuracy about the record available in this case, the Hearing Committee has determined that it will give less weight to his opinions and testimony than to Ms. McKinney's as to the applicable standard of care and how Respondent's conduct should be assessed against this standard.

[27] Mr. Plitt asserted that "at least one" of the documents that Judge Wingo found had not been produced "was in fact" produced, but Respondent did not show that she made this clear to Judge Wingo. RX 48 at 739. She was on notice in the fall of 2021, that if she could not demonstrate to Judge Wingo when and how a document had been produced, Judge Wingo would find that it had not been produced. DCX 68 at 197. For any document that was in fact produced but Respondent could not make the requisite demonstration, Respondent lost the opportunity to demonstrate that she was in compliance with her discovery obligations.

I. Prior Discipline

103. Respondent received two Informal Admonitions: one in 1998 (DCX 105) for violating Rules 3.4(c), 4.2(a), and 8.4(d), and a second one in 2018 (DCX 106) for violating Rule 1.4(a).

J. Character Witnesses

104. Robert Bunn is a retired attorney who had been in several cases with Respondent since the 1990s and had given presentations in probate seminars with her in the 1990s. Tr. 1276-1284 (Bunn). Mr. Bunn testified that he had not heard any complaints about Respondent but had only heard good things about her. Tr. 1281 (Bunn). He had not worked with Respondent on any domestic relations cases. Tr. 1284 (Bunn).

105. Joyce Phillips is a former client of Respondent in a property case in 2010 and a will contest case. Tr. 1366-1374 (Phillips). Ms. Phillips testified that Respondent was very professional and helped her a great deal. Tr. 1368-1372. She described Respondent as "the best." Tr. 1372 (Phillips). She has never heard anything negative about Respondent's representation of clients. Tr. 1371 (Phillips). On the other hand, she was not aware of *Berry v. Berry* and was unaware that Judge Wingo had found that Respondent did not properly provide discovery, had fined her, and had issued a default against Respondent's client. Tr. 1373-74 (Phillips).

106. Leon Townsend is a former client in a divorce case beginning in 2002 and in a probate case in the past three years. Tr. 1375-1382 (Townsend). Mr. Townsend testified that he was very satisfied with Respondent's services and

would recommend her to others. Tr. 1376-79, 1382 (Townsend). He also was unaware of *Berry v. Berry* and was unaware of Judge Wingo's findings involving Respondent in the *Berry* case. Tr. 1380-81 (Townsend).

107. Emmanuel Payton was on the board of directors of a nonprofit client of Respondent in a case involving the organization's efforts to recover money improperly taken by the founder for five years, ending before 2020. Tr. 1393-1402 (Payton). He characterized Respondent as demonstrating "very astute legal leadership" and like "a bulldog" in her efforts. Tr. 1394-97 (Payton). He had asked others in the community about Respondent, and she was highly recommended. Tr. 1396-97 (Payton). Mr. Payton was unaware of *Berry v. Berry*, of Judge Wingo's findings about Respondent's failure to provide adequate discovery, or that the judge sanctioned Respondent, but he said that if he had this information it would not affect his high opinion of Respondent. Tr. 1399-1400 (Payton).

III. CONCLUSIONS OF LAW

Disciplinary Counsel contends that, between February 2020 and February 2025[28], Respondent failed to provide competent representation to her client,

[28] The Specification of Charges was filed on February 16, 2024, but refers only to conduct that occurred between February 2020 to on or about March 11, 2022. Nonetheless Disciplinary Counsel states that the evidence of Respondent's conduct spanned the five years between February 2020 and February 2025. Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Sanction Recommendation ("ODC Br.") at 15. For the events that are alleged to have taken place in February 2025—the same month as the hearing in this matter—Disciplinary Counsel appears to be referring to Respondent's appellate brief in *Berry v. Berry*, filed on February 26, 2025, in which she allegedly "repeated her unbelievable claim that she was unaware of the December 20, 2021 hearing." *Id.* (citing DCX 104 at 4).

repeatedly violated court orders, failed to appear for hearings, and made misrepresentations to the court, in violation of Rules 1.1(a) and (b), 1.3(c), 3.4(c) and (d), and 8.4(c) and (d). *See* ODC Br. at 15. Respondent contends that her conduct met the standard of care for family law practitioners involved in contentious cases and that her actions were those of a "zealous advocate within the boundaries of professional conduct." R. Br. at 4.

As explained below, the Hearing Committee finds by clear and convincing evidence that Respondent violated Rules 1.1(a) and (b), 1.3(c), 3.4(c) and (d), and 8.4(c) and (d). Because we find that Respondent violated the aforementioned Rules, we recommend that the Board deny Respondent's motion to dismiss. *See* p. 6, *infra*; Board Rule 7.16(a).

A. Disciplinary Counsel Proved that Respondent Violated Rules 1.1(a) and (b) by Failing to Provide Competent Representation and to Represent Her Client with Skill and Care.

Rule 1.1(a) requires a lawyer to "provide competent representation to a client," which requires utilizing the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (appended Board Report) (lawyer who has requisite skill and knowledge, but who does not apply it for particular client, violates obligations under Rule 1.1(a)).

Because the Hearing Committee found that Respondent's statement was not false, it does not make any difference that Respondent repeated this statement in February 2025, and the Hearing Committee does not find that this statement in her appellate brief is relevant to our analysis.

Rule 1.1(b) requires a lawyer to "serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." A lack of skill might be reflected in a lawyer's inability to follow court procedures to the detriment of her client. *See, e.g.*, *In re Johnson*, 298 A.3d 294, 311 (D.C. 2023) (finding violations of Rules 1.1(a) and (b) where the respondent "arranged to participate in the hearing by telephone but then could not be reached, and she failed to file her motion to withdraw, which revealed client confidences, *in camera* or *ex parte* because she did not know she could").

In addition, a lawyer violates Rule 1.1 only if there is a "serious deficiency" in the representation of a client, whereby the attorney commits "an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence." *In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014) (quoting *In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board Report)); *see also In re Askew*, 225 A.3d 388, 395 (D.C. 2020) (per curiam) ("Because actual prejudice is not required, a fortuitous lack of injury to the client does not shield a respondent from discipline in response to her neglect of her professional obligations." (citing *In re Speights*, 173 A.3d 96, 101 (D.C. 2017) (per curiam))).

We must evaluate the competency, skill, and care of an attorney under Rules 1.1(a) and (b) in terms of the representation required and provided in the particular matter at issue:

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation and continuing

> attention to the needs of the representation to assure that there is no neglect of such needs. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Rule 1.1, cmt. [5].[29]

The same conduct may violate both Rule 1.1(a) and (b), but they are separate rules, and thus we evaluate and consider them separately. *See Evans*, 902 A.2d at 72 (appended Board Report). Disciplinary Counsel contends that Respondent violated both subsections of Rule 1.1 when she "missed court and discovery deadlines, violated court rules and orders, filed improper motions, failed to seek extensions, failed to appear for hearings, produced documents without any system by which she could show what was produced, and failed to use basic technology to access documents produced to her." ODC Br. at 16; *see also Evans*, 902 A.2d at 72 (appended Board Report). Disciplinary Counsel further contends that Respondent showed a "lack of understanding of the court's rules and refused to correct her conduct even after receiving specific directions from the court." ODC Br. at 16. Disciplinary Counsel also contends that these actions violated the standard of care that requires an attorney to conduct discovery in compliance with a court's rules and orders, to have technical skills to produce discovery in the required form, and to seek

[29] Comment [5] was amended on April 7, 2025, to clarify that competent handling of a matter includes the use of "technology" meeting the standards of competent practitioners. The Hearing Committee views this amendment as a clarification of what Rule 1.1 requires, not an indication that during the time of the alleged misconduct here Respondent was not required to keep abreast of changes in technology.

an extension of time when the attorney cannot meet a deadline. *Id.* at 5-8. Disciplinary Counsel asserts that these failures by Respondent prejudiced Mr. Berry because he was sanctioned by being required twice to pay attorney's fees, was subject to two orders of default, and was ultimately prohibited from offering certain evidence at trial. *Id.* at 8, 13, 16-17.

Respondent argues that she demonstrated her competence by uploading discovery documents, by attending virtual hearings, and by achieving a successful result for her client. R. Br. at 37-46. Respondent characterized issues with her conduct as limited to "missed deadlines, challenges in discovery production, and disagreements over filings." *Id.* at 45. She also contested Disciplinary Counsel's charge that she had a "palpable lack of understanding" of court rules, citing her "extensive experience and zealous advocacy." *Id.* at 46. Respondent also contends that Rule 1.1(b) is inapplicable because it is intended to address cases where a lawyer "abandons or neglects a matter despite being capable of handling it," and that was not charged and did not happen here. *Id.* at 37.

The "standard of care" is a factor the Hearing Committee may consider in determining whether Respondent's conduct was deficient. *See, e.g.*, *In re Bailey*, 283 A.3d 1199, 1206 (D.C. 2022). We can assess the standard of care based on expert opinions—but if it is obvious, we can also assess it without an expert opinion. *See In re Nwadike*, Bar Docket No. 371-00, at 28 (BPR July 30, 2004) (providing that a Hearing Committee may find a violation of the standard of care without expert testimony when an attorney's "conduct is so obviously lacking that expert testimony

showing what other lawyers generally would do is unnecessary"), *findings and recommendation adopted*, 905 A.2d 221, 227, 232 (D.C. 2006); *see also, e.g.*, *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00, at 12-13 (BPR Dec. 27, 2002) (noting, in a case where the respondent attorney failed to file an immigration appeal after the client paid the initial fee for the appeal, that Disciplinary Counsel need not "necessarily produce evidence of practices of other attorneys in order to establish a Rule 1.1(b) violation"), *recommendation adopted in relevant part*, 840 A.2d 657 (D.C. 2004) (remanding to the Board for further consideration of the appropriate sanction).

In her opposition to Disciplinary Counsel's expert witness, Respondent argued, without any citation to any authority[30], that any standard of care must be specifically explained in a treatise, statute, or a court opinion, rather than assessed by an expert's extensive personal experience. *See* Objections to Disciplinary Counsel's Expert Witness and Exhibits (Feb. 14, 2025). Respondent is incorrect.

[30] Although Respondent does not cite them in her post-hearing brief, during the hearing, Respondent's counsel cited two medical malpractice cases and one municipal negligence case for the proposition that experience and background in the relevant area of law is not sufficient to be qualified as an expert witness: *Nwaneri v. Sandidge*, 931 A.2d 466 (D.C. 2007); *Strickland v. Pinder*, 899 A.2d 770 (D.C. 2006); and *District of Columbia v. Arnold & Porter*, 756 A.2d 427 (D.C. 2000). Tr. 353-363. As those opinions made clear, however, the plaintiffs had been required to prove violation of a *national* standard, rather than local practices. *See Nwaneri*, 931 A.2d at 470; *Arnold & Porter*, 756 A.2d at 433-34. Here, by contrast, Disciplinary Counsel is not attempting to prove a "national standard." Instead, the question is whether Respondent's conduct fell below the standard of care in domestic relations cases in the District of Columbia.

Expert testimony pertaining to the standard of care is often based on experienced practitioners' understanding of what is expected or required in a field. *See, e.g.*, *In re Outlaw*, 917 A.2d 684, 686 (D.C. 2007) (per curiam) (expert testimony admitted relating to the field of personal injury practice in D.C. and Virginia); *In re Fair*, 780 A.2d 1106, 1111-12 (D.C. 2001) (expert testimony admitted relating to the field of probate law). Although Respondent observed that the Court sometimes issues opinions that make clear when there is a change in the law, *see* R. Br. at 39, we reject Respondent's suggestion that there is no standard of care on a particular issue unless and until it is announced in a treatise, statute, or court decision. The Court's opinions in disciplinary cases can be referenced for guidance regarding the standard of care—and circumstances when failures to meet the standard of care have resulted in discipline—but again, existing caselaw may not cover every aspect of every case.

As discussed above, the Hearing Committee credits Ms. McKinney's expert opinion about the standard of care for domestic relations cases over that of Mr. Plitt, whose expertise is limited to civil practice.[31] FF 103. We also consider Mr. Plitt's opinions, but we give them little weight.

[31] Respondent wrote that Ms. McKinney's "testimony at times demonstrated a lack of familiarity with District of Columbia-specific procedural norms and failed to articulate how her conclusions were rooted in local practice rules" (R. Br. at 44), but she did not cite to any examples in the record nor any authority in support of this point. As noted above, the Hearing Committee finds by clear and convincing evidence that Ms. McKinney is familiar with the norms of practice in family law in the District of Columbia and that her opinions were based in part on her experience with local rules of practice. FF 88-89, 103.

Respondent disputes Ms. McKinney's opinions that she failed to meet the standard of care, contending that Ms. McKinney's opinions lacked any objective foundation, that her opinions were too rigid and based on speculation, and that she was biased. R. Br. at 40-42. Respondent also specifically contends that Ms. McKinney misrepresented the law relating to the distribution of marital property and lacked a foundation for her opinion about technical proficiency. *Id.* at 41-42. In contrast, Respondent argues, Mr. Plitt "provided a balanced, realistic assessment of the applicable standard of care, firmly rooted in the specific facts of this case and established legal principles." *Id.* at 40. We do not agree. Although Mr. Plitt testified that he took the entire record into account in forming his opinion, Mr. Plitt's testimony about his opinion was not based on any evidence other than Respondent's testimony. FF 100-102. Indeed, while his written opinion included references to the record, Mr. Plitt's written opinion also relied heavily on his personal views of Respondent based on his interaction with her in a civil case. FF 98. Further, Mr. Plitt purported to provide an expert opinion about the ultimate issues in the case—i.e., that Respondent was "an ethical attorney," which the Hearing Committee explicitly excluded from evidence. *See* RX 48 at 740; February 10, 2025 Pre-Hearing Tr. at 177-78. On the issue of bias, Respondent's allegations against Ms. McKinney are unsubstantiated, whereas Mr. Plitt's bias in favor of his former co-counsel is readily apparent.[32]

[32] In support of her assertions that Ms. McKinney is biased, Respondent claimed that she "shares a business and social relationship with Assistant Disciplinary Counsel." R. Br. at 40. But Respondent did not cite any evidence to support that proposition,

Mr. Plitt criticized Ms. McKinney's references to specific aspects and events in these proceedings as not being specific enough. *See* RX 48 at 737-742. Nonetheless, the Hearing Committee was able to identify the events Ms. McKinney referenced, so we do not find this to be a reason to limit our consideration of her opinions. In contrast, Mr. Plitt's explanation of the bases for his opinions was often contradicted by our reading of the record, including—for example—his erroneous finding that Respondent stopped talking whenever Judge Wingo asked her to do so. Tr. 1134 (Plitt); *see* FF 45 & n.15. Further, Mr. Plitt's analysis on several points rests only on his assessment that Mr. Berry was not harmed, rather than on whether Respondent's conduct was such that a client *could* have been harmed. *See, e.g.*, RX 48 at 734-35; Tr. 1145 (Plitt).

It is undisputed that Respondent missed court and discovery deadlines. *See, e.g.*, FF 36, 71. Respondent argues that Rule 6 of the Rules Governing Domestic Relations Proceedings is intended to allow parties to seek extensions and—since none of her requests were denied—she did not violate the standard of care for family

---

and thus the Hearing Committee does not take it into account. Ms. McKinney explained that her reason for participating as an expert in this proceeding was to assist the Office of Disciplinary Counsel. But on at least one point she provided an opinion that favored Respondent—not a sign of a witness biased for Disciplinary Counsel. *See, e.g.*, Tr. 622-23 (McKinney).

On the other hand, Mr. Plitt admitted he had a professional relationship with Respondent as co-defendant's counsel between 2020-2024. RX 48 at 733. Most importantly, however, the fact that his opinion of Respondent's conduct was largely informed by Mr. Plitt's personal interactions with her in a single unrelated case weakens the objectivity of his analysis and thus undermines the credibility of the opinions he put forward as *expert* opinions.

law practitioners. *See* R. Br. at 11-12. We agree that Rule 6 provides the process through which a practitioner can obtain extensions of time, *see* RX 51, but it is not intended to be a tool used continuously in a case. Indeed, Respondent's arguments that it is an acceptable practice to miss a deadline and then rely on Rule 6 are refuted by Ms. McKinney, whose testimony established that such conduct puts a client at risk that the motion might not be granted and the pleading could be excluded. FF 90.

It is also undisputed that Respondent failed to appear both at a status hearing on June 11, 2021 (although she did appear halfway through the hearing because Judge Wingo's clerk called her) and at a status hearing on December 20, 2021. FF 38, 78. Ms. McKinney also found that Respondent's failures to appear at these hearings (albeit arriving late to one) was not consistent with the standard of care.[33] FF 91. She noted that Respondent attributed her failures to misplacing a court notice and failing to see at least four emails from the court. *Id.* In her report, Ms. McKinney noted that keeping track of emails is a "key part of an attorney's competency in a modern law practice," but Respondent failed to do so regularly and reliably.[34] DCX 87 at 3. Ms. McKinney found that Respondent's inability to regularly monitor emails, while performing legal work, contributed to other misconduct, including the dispute about the pretrial statement. *See* FF 92; DCX 87 at 6.

---

[33] Mr. Plitt's contrary opinion was not credible. *See* FF 100-101.

[34] Failing to keep track of emails also caused Respondent twice to mischaracterize Mr. Markowicz's conduct. DCX 87 at 5.

Ms. McKinney also found that "Respondent failed to competently conduct discovery . . . [and] failed to follow the directions of the Court as to how to correct the discovery deficiencies," providing several examples to support her opinion. DCX 87 at 1, 3-4. Mr. Plitt did not address this point, but Respondent disputes Ms. McKinney's assertion. *See* R. Br. at 42. Respondent relies on her bald assertions that she produced documents and argues that the court should have allowed her to provide any missing documents at a later date. *See id.* at 42, 46. She is unapologetic about her conduct during the hearings Judge Wingo scheduled to address the parties' discovery complaints, and she often asserted that Judge Wingo—rather than Respondent—was wrong. FF 43-45, 45 n.15. We find by clear and convincing evidence that Respondent made a critical error in not following the court's instructions as to what she needed to demonstrate in advance of or at the October 13, 2021 hearing, which the court had informed her was to be the last chance she had to show her compliance with the defense's discovery obligations. FF 69.

Disciplinary Counsel also asserts that Respondent's lack of sufficient skill in the use of technology contributed to her violations of Rules 1.1(a) and (b). ODC Br. at 16; Disciplinary Counsel's Reply Brief ("ODC Reply Br.") at 18-21. Ms. McKinney found that "an attorney must possess knowledge of the law and basic technological skills, or have the assistance of someone who has such skills," and that Respondent lacked "sufficient skills with respect to technology, particularly in the production of discovery materials." DCX 87 at 1; *see* FF 91. Respondent also disputes these conclusions. R. Br. at 37-39. As evidence of her technological ability,

Respondent contends that she was able to file pleadings and other documents through CaseFileXpress, was able to participate in virtual hearings in cases, and was able to upload documents to Box.com in this case.[35] *Id.*

We recognize that Disciplinary Counsel does not dispute that Respondent was able to upload some documents to Box.com. *See* ODC Reply Br. at 19-20. However, one of Ms. McKinney's primary critiques of Respondent's conduct was that Respondent did not use or access Box.com to personally review and organize the documents Mr. Berry produced in discovery, in order to prove to Judge Wingo that she had satisfied Mr. Berry's discovery obligations. FF 91; DCX 87 at 1-2. Judge Wingo had issued specific orders directing Respondent as to what she was required to do before the hearings. FF 31-33, 69. Judge Wingo made clear that she was not going to search in the documents Mr. Berry produced to determine whether all responsive documents had been provided, and instead required Respondent to show her where they were and when they had been produced. FF 69. And Respondent was on notice that Judge Wingo would assume that the documents had not been produced if Respondent could not make this showing. *Id.*

[35] As evidence that technical glitches happen to everyone, apparently as justification for errors she made, Respondent cited to several circumstances during the disciplinary hearing when there was a connection glitch or a brief inability to call up a document onto the screens. R. Br. at 38-39. However, these issues in the disciplinary hearing were immediately corrected and involved connection issues and issues with the technology platforms, not an unfamiliarity or inability to work with the technology, which is what Disciplinary Counsel alleged about Respondent's conduct. ODC Br. at 16. Thus, Respondent's argument is unpersuasive.

In Judge Wingo's August 11, September 13, and October 13, 2021 hearings, Respondent repeatedly argued that documents had been produced to Plaintiff, but when Judge Wingo required her to identify them and show them to her at the hearing, Respondent was unable to do so. FF 65, 67, 70; DCX 59 at 31-32. Indeed, on several occasions, although the court had—in advance—required Respondent to be ready to point out responsive documents that the defense had produced, Judge Wingo nonetheless allowed her time during the hearing to attempt to locate the documents. FF 66, 69. Despite this extra time, Respondent was still unable to do so.[36] FF 67, 70.

Judge Wingo found that the defense's failure to provide—among other things—sworn interrogatory answers and documents relating to Mr. Berry's credit card balance, his retirement accounts, his mortgage statements, his condominium dues, and the assessments for the condominium was "egregious" and that it was "critical to a fair determination" of the issues. DCX 75 at 45. Because the court had already compelled their production, when Respondent could not prove that she or her client had provided the documents, the court informed the parties that she would enter a default. *Id.* at 46.

---

[36] Respondent has asserted that Ms. McKinney and the Hearing Committee should have reviewed the documents she produced in Box.com. However, since Ms. McKinney's opinion about Respondent's conduct in the discovery process was based on the record that showed that Respondent could not identify documents produced in response to specific discovery requests, a review of the documents in Box.com was not necessary or relevant for the expert witnesses or for the Hearing Committee. Notably, Mr. Plitt also did not review these documents, but he nonetheless asserted that Respondent had provided all relevant documents. RX 48 at 738; Tr. 1218-19 (Plitt). Other than Respondent's assertions, there is no basis in the record for this statement.

Although Respondent's principal challenge involving technology was her inability to identify, organize, and easily access the documents she and her client had produced and uploaded to Box.com, in order to demonstrate the defense's compliance with its discovery obligations, Ms. McKinney also expressed other concerns. Specifically, Ms. McKiney opined that Respondent had failed to make basic technological adjustments so that she would receive her mail and telephone calls at her home during COVID-19, that she could work on her computer without missing emails, that she could consistently participate in online court hearings, or have a backup plan for reviewing pleadings before filing if her printer was unavailable. DCX 87 at 4-6. As Judge Wingo also noted,

> [Respondent] proceeds to set forth numerous reasons to excuse her failure to respond promptly to the attempts Plaintiff's counsel made to reach her and secure the requested discovery as Plaintiff set forth in her Certificate of Compliance. [Respondent] states she was unable to respond to all of Plaintiff's counsel's attempts to obtain complete discovery because she was, and continues to work remotely, causing her responses to telephone calls to her work telephone to be delayed. She further seeks to justify her failure to respond promptly to Plaintiff's counsel's emails, as being due to her work on other matters and/or pleadings in this matter, and not seeing an email at the time it was sent . . . .

DCX 40 at 2-3. These failures contributed to Respondent missing hearings, to her difficulties in dealing with Mr. Markowicz, to her representations to the court about some of Mr. Markowicz's conduct, and to the issues surrounding the filing of the pretrial statement.

Respondent asserts that the alleged "'failure' to adopt technology overlooks testimony regarding [Respondent's] working conditions during the COVID[-19]

pandemic, caseload, and the actual availability and format of opposing counsel's productions."[37] R. Br. at 46. The Hearing Committee does not find her explanations persuasive. Every attorney must have procedures in place to receive phone and mail messages when they are out of the office. DCX 87 at 6. And Respondent's caseload was completely within her control, since she could choose not to take on new cases if she was too busy to handle the ones she had. Respondent thus failed to serve her client with skill and care under Rule 1.1(b).

We find it to be a closer call that Respondent's conduct violated Rule 1.1(a) by failing to utilize the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. There are few cases in which a respondent has been found to have violated Rule 1.1(b) but not Rule 1.1(a).[38]

---

[37] Respondent complained that Mr. Markowicz produced documents to her in a format that made them available for only a limited time and that thus she was unable to access them. Tr. 784 (Green). However, on one occasion, Respondent waited a month after receiving a link to documents before she tried to review them. DCX 38 at 5; DCX 87 at 4; Tr. 411-12 (McKinney). On the second occasion, Respondent attempted to review documents produced by Mr. Markowicz much more quickly, but was unable to access them. DCX 87 at 4; Tr. 412 (McKinney); Tr. 784-85 (Green). Both times, when she informed Mr. Markowicz that she could not access documents, he sent her another link to them. DCX 68 at 19-20; DCX 87 at 4; Tr. 412 (McKinney). The second time this happened, Respondent was still unable to open the link, but—without informing Mr. Markowicz of this problem or trying again to get a workable link—she simply gave up and did not retrieve the documents. DCX 68 at 21; DCX 87 at 4.

[38] Cases in which the Court found the respondent to have violated Rule 1.1(b), but not Rule 1.1(a), presented very different circumstances. In *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report) and *In re Wyatt*, Board Docket No. 10-BD-123, at 14 (BPR Jul. 7, 2014), *recommendation adopted after no exceptions filed*, 111 A.3d 635 (D.C. 2015) (mem.), the respondents possessed

In a number of cases, the Board and the Court have considered whether the lawyer's misconduct resulted from inexperience in her area of practice. *See, e.g.*, *In re Boykins*, 748 A.2d 413, 413-14 & n.1 (D.C. 2000) (per curiam) (finding a violation of Rule 1.1(a) based on the respondent's failure to educate himself and comply with his duties as counsel to a conservator); *In re Sumner*, 665 A.2d 986, 988-89 (D.C. 1995) (per curiam) (appended Board Report) (citing the respondent's "lack of experience on criminal appeals and the absence of efforts to compensate for his lack of experience"). We find by clear and convincing evidence that Respondent was experienced in domestic relations cases like Mr. Berry's.

Where, as here, there is no doubt that Respondent possesses adequate substantive knowledge in the area of domestic relations law, *see* FF 107, the next questions we must address are whether she "fail[ed] to engage in the thoroughness and preparation reasonably necessary for the representation, while [s]he is actively continuing the representation," which would place her within the scope of Rule 1.1(a), or whether she "fail[ed] to utilize or exhibit it because [s]he has utterly abandoned the client or case," in which case she would be "more appropriately subject to discipline under another rule." *Nwadike*, Bar Docket No. 371-00, at 17-26 (collecting cases); *see, e.g.*, *Drew*, 693 A.2d at 1132 (appended Board Report) (finding a violation of Rule 1.1(a) where the respondent held the requisite skill and

---

requisite skill but abandoned their clients. And in *Nwadike*, Bar Docket No. 371-00 at 27, the respondent's conduct was not seriously deficient. Here, Respondent was very involved in the representation of Mr. Berry, but her conduct was deficient.

knowledge but failed to apply it in the matter at issue). Respondent clearly did not abandon her client. Indeed, as of the close of evidence in this case, she was still representing him. *See* FF 96. However, as discussed above, we find that Respondent failed to engage in the thoroughness and preparation reasonably necessary to respond to discovery requests and to correct her mistakes. Thus, we find by clear and convincing evidence that Respondent failed to provide competent representation to Mr. Berry as required by Rule 1.1(a).

Notwithstanding our finding that Respondent violated the standard of care required by Rules 1.1(a) and (b), we can only find that her conduct actually violated these Rules if we find that it was "seriously deficient"— i.e., that it prejudiced Mr. Berry, or that it could have prejudiced him. This factor constituted a substantial part of both Ms. McKinney's and Mr. Plitt's reports and testimony.

The primary point of contention is whether, because of the first default, Mr. Berry was harmed by his inability to present evidence relating to alimony and the division of property. There was extensive testimony as to whether the property division (particularly the allocation of the value of the marital home) was the same as or worse—or significantly worse—than he would have received if he had been able to fully participate in the trial. *See, e.g.*, Tr. 473-74, 522-26, 682-85 (McKinney); Tr. 914-19 (Green); Tr. 1145 (Plitt).

In her written report, Ms. McKinney opined that Respondent's failure to meet the standard of care "resulted in significant negative consequences" for Mr. Berry. DCX 87 at 2. Specifically, Ms. McKinney asserted that Respondent's actions

resulted in the default that prevented Mr. Berry from introducing evidence, which in turn meant that he "miss[ed] the opportunity to receive any value for his premarital claims, he received less than half of certain marital assets, even though he had what appeared to be valid premarital claims to those assets." DCX 87 at 2. Ms. McKinney opined that the "property division ordered by the Court heavily favored Mrs. Berry and Mr. Berry received less than would have been expected if he had been able to submit evidence." *Id.* Respondent contends that Mr. Berry was not harmed by what the court awarded the parties, and—notes as crucial—that Mr. Berry has never expressed any dissatisfaction with the quality of her representation. R. Br. at 43, 53. Notwithstanding Ms. McKinney's view of what result Mr. Berry could have obtained, we agree with Respondent that Disciplinary Counsel did not establish by clear and convincing evidence that Mr. Berry actually would have obtained a more advantageous result had Respondent's met the standard of care.[39]

Ms. McKinney also contended that Mr. Berry was harmed by the monetary sanctions issued against him for discovery violations and for failing to appear on time for the June 11, 2021 hearing. *See* DCX 87 at 2-3. We do find that Mr. Berry was harmed by the sanctions imposed by the court, including $4,427.50 for

[39] Our finding is based on other evidence (or lack of evidence) but we note that Mr. Plitt supported Respondent's argument, noting that Mr. Berry had "never complained against [Respondent] to Disciplinary Counsel," and that "no one knows better whether her client has been harmed than her client would, and he has not complained and in fact still wishes [Respondent] to represent him." RX 48 at 734. He also noted that Mr. Berry was granted joint custody (which was not subject to the default finding) "and other terms which are a favorable outcome." *Id.* at 4.

discovery violations and $288.75 for tardiness at the June 11, 2021 hearing—but these sanctions were imposed on Respondent and Mr. Berry equally, indicating that Judge Wingo found both of them at fault. Thus, we cannot find that Respondent's conduct brought on this harm to Mr. Berry.

As noted above, Rule 1.1 dictates that actual harm to a client is not the sole factor and that we must also consider whether Respondent's conduct *could* have prejudiced a client. Here, we find by clear and convincing evidence that Respondent's conduct could have prejudiced Mr. Berry since there was a default granted because Respondent's inability to demonstrate that documents had been produced resulted in discovery violations—which could have resulted in a worse resolution of the property settlement and alimony. There was also no guarantee that the second default would be lifted when Respondent failed to pay attention to the scheduling of the December 20, 2021 hearing. *See Evans*, 902 A.2d at 71 (appended Board Report) ("The fact that there was no actual prejudice to Ms. Robinson, because Clifton did not intend to renounce his share of the estate, does not remove the potential for prejudice."); *In re Speights*, Board Docket No. 12-BD-017 (BPR Oct. 11, 2016), appended Hearing Committee Report at 11-12, 23 ("[T]he district court specifically warned that the client might be sanctioned if [r]espondent did not comply with the deadlines set forth in the case management plan, which he failed to do, thus exposing the client to potential harm," even though the court's dismissal of the case was later overturned), *recommendation adopted*, 173 A.3d at 103.

Accordingly, we find by clear and convincing evidence that Respondent's conduct was "seriously deficient" and thus violated Rules 1.1(a) and (b).

B. Disciplinary Counsel Proved that Respondent Violated Rule 1.3(c) by Failing to Act with Reasonable Promptness.

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." The Court has held that failure to take action for a significant time to further a client's cause, regardless of whether prejudice to the client results, violates Rule 1.3(c). *See, e.g.*, *In re Speights*, 173 A.3d at 101; *see also In re Banks*, 461 A.2d 1038, 1041 (D.C. 1983) ("When viewed from the perspective of the disciplinary system's responsibility to protect the public from unworthy attorneys, to maintain the integrity of the profession, and to deter shoddy practice, it is clear that whether the client happens to be prejudiced or not should not determine the outcome of disciplinary cases involving neglect."). Comment [8] to Rule 1.3 provides that "[e]ven when the client's interests are not affected in substance . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness," making such delay a "serious violation."[40]

[40] Disciplinary Counsel contends that the standard for proving a violation of Rule 1.3(c) is "indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client" and a "pattern of negligent behavior." ODC Br. at 17 (quoting *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *vacated by* 492 A.2d 267 (D.C. 1985), and *aff'd in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc)) (citing *In re Wright,* 702 A.2d 1251, 1255 (D.C. 1997)). However, as made clear by *Wright* and subsequent cases, the standard set forth in *Reback*—which predated the adoption of the Rules of Professional Conduct—now applies to Rule 1.3(a) (diligence and zeal), which was not charged in this case, and not to Rule 1.3(c). *See also, e.g.*, *Johnson*, 298 A.3d at 312. On the other hand, Respondent contends that Disciplinary Counsel must prove

Disciplinary Counsel argues that Respondent violated Rule 1.3(c) because she "severely neglected her obligations" by late filing and missing deadlines without seeking extensions, not following directions about the production of discovery, and then failing to appear at two hearings (albeit appearing late at one of them). ODC Br. at 17-18. Respondent asserts that "the record contains isolated instances of late filings or missed deadlines" but that these occurrences do not justify a violation of Rule 1.3(c). R. Br. at 47. She argues that she "attended the vast majority of hearings." *Id.* at 48. As noted in footnote 40, no pattern of conduct is required, and individual "isolated" instances of late filings and missing deadlines can be sufficient for a finding that Rule 1.3(c) was violated. Respondent also notes that she has been engaged with her client throughout the representation and that late discovery responses were "matters of form, not substance." *Id.*

Disciplinary Counsel alleges that Respondent late-filed the answer because she did not file it by the due date set by the court at a status hearing on March 10, 2020. *See* ODC Br. at 6-7, 17; DCX 15 at 1, 4. It is clear, however, that thereafter, when the District of Columbia courts recognized that the COVID-19 pandemic would alter court proceedings, across-the-board changes were made to existing due deadlines and due dates. *See, e.g.*, RX 2. This included the answer due in *Berry v. Berry*. *Id.* Thus, we find that Disciplinary Counsel did not establish by clear and

---

"sustained, indifferent, or willfully negligent conduct," without citing any authority, before also referencing the inapplicable standard set forth in *Reback*. R. Br. at 47. We find both analyses are flawed.

convincing evidence that Respondent's response was late when she filed it. Indeed, Ms. McKinney acknowledged this during her testimony (although she also stated that a more prudent course would have been to file it on the date set at the status hearing).[41] Tr. 558-59 (McKinney); DCX 87 at 5 n.2.

We find that Respondent did, however, fail to timely file other pleadings and discovery responses. *See* DCX 87 at 5; FF 7, 8, 22. Specifically, Respondent filed the defense's *Response and Opposition to Plaintiff's Motion for* Pendente Lite *Relief* more than two weeks late, with no reason for the delay cited. *See* FF 8; DCX 21. At a hearing on February 22, 2021, Respondent requested and received additional time to file an opposition to *Plaintiff's Motion for Immediate Sanctions and Order to Compel*, but filed it a day later than this extended time because she said a printer malfunction prevented her from being able to review her draft pleading. *See* FF 22; DCX 33. *See generally* DCX 87 at 5 (listing late filings).

Respondent concedes that she failed to timely file discovery responses, but argues that it was only "occasionally." R. Br. at 48. We disagree. Respondent provided the initial discovery responses more than thirty days late, without requesting an extension from opposing counsel. *See* DCX 24; DCX 87 at 5. Following the court's hearing on discovery issues on March 31, 2021, Judge Wingo found that Defendant's responses to Plaintiff's discovery requests made in April

[41] This may not have been possible, since Respondent informed the court in April 2020 that she had become seriously ill after the status hearing (DCX 19) and thus was unable to file the answer by the original deadline.

2020 "remain incomplete after over a dozen attempts to obtain complete responses." DCX 40 at 2. Reviewing Respondent's failures to respond to Plaintiff's discovery requests, Judge Wingo rejected her "justifications," particularly in view of the length of time in which discovery had been outstanding. *Id.* at 3. For example, even though Judge Wingo orally imposed a deadline for Respondent to supplement her discovery responses of April 30, 2021, Respondent did not provide any additional responses. DCX 40 at 1.

Respondent has repeatedly justified issues with her handling of the defense in *Berry v. Berry* as the result of her "case load." *See* DCX 32 at 3; DCX 37; DCX 40 at 3; R. Br. at 46. Taking her at her word, this amounts to an admission that she was not able to handle all the cases and matters she had undertaken. She also justified any errors as the result of "managing a contentious case with an adversarial opposing counsel and navigating evolving court schedules." R. Br. at 48. We do not find these arguments to excuse Respondent's conduct, and Respondent cited no authority to suggest that they are defenses to a violation of Rule 1.3(c).

Although Respondent was clearly engaged in her representation of Mr. Berry, she failed to be consistent about her attention to and judgment regarding this engagement, and her multiple failures to meet deadlines were not reasonable under the circumstances. Thus, we find by clear and convincing evidence that Respondent violated Rule 1.3(c).

C. Disciplinary Counsel Proved that Respondent Violated Rule 3.4(c) by Knowingly Disobeying an Obligation Under the Rules of a Tribunal.

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." The "knowledge" element requires proof of "actual knowledge of the fact in question," which "may be inferred from circumstances." Rule 1.0(f); *see In re Bland*, Bar Docket No. 245-95, at 16 (BPR Jan. 13, 1998) (respondent's knowing and willful noncompliance with trial court's order to file a pretrial statement and attend the pretrial hearing when his motion to withdraw was denied, established clear and convincing evidence of a Rule 3.4(c) violation), *recommendation adopted*, 714 A.2d 787, 787-88 & n.2 (D.C. 1998) (per curiam). Failure to comply with a court order falls within the scope of the Rule. *See, e.g.*, *In re Blackwell*, 299 A.3d 561, 570 (D.C. 2023) (failing to comply with court order regarding child support payments violated Rule 3.4(c)); *In re Samad*, Bar Docket Nos. 120-04 et al., at 10-12 (BPR June 24, 2011) (attorney who knowingly failed to appear at a certain time as orally instructed by the court violated Rule 3.4(c)), *recommendation adopted*, 51 A.3d 486, 489-490 (D.C. 2012) (per curiam); *In re Wemhoff*, Board Docket No. 14-BD-056 (BPR Nov. 20, 2015), appended Hearing Committee Report at 13 (attorney who failed to appear at status hearing as directed in written order violated Rule 3.4(c)), *recommendation adopted after no exceptions filed*, 142 A.3d 573, 574 (D.C. 2016) (per curiam).

Disciplinary Counsel contends that Respondent violated Rule 3.4(c) by failing to comply with discovery requests, missing several deadlines for pleadings, and

failing to appear for hearings. ODC Br. at 18-19. Respondent asserts that such failures were not "knowing," but rather the product of misunderstandings, confusion, or technical and administrative challenges. R. Br. at 50-51.

We have discussed in detail Respondent's failure to comply with Plaintiff's discovery requests, the missed deadlines for pleadings, and missed hearings. *See* Subsections A and B, *supra*. A party's discovery obligations are set forth clearly in Rules 33 and 34 of the Superior Court Rules Governing Domestic Relations Proceedings, and Respondent has acknowledged that she is aware of her obligations to respond to interrogatories and document requests. *See* Tr. 935-37 (Green). Respondent failed to comply with these Rules, including by her delay in responding originally, in supplementing the defense responses, and in her failure to fully answer the interrogatories and to provide documents in discovery responses to Plaintiff. *See, e.g.*, FF 12, 15, 26, 31-33. Respondent has claimed that it was Mr. Berry's obligation to provide responses to the interrogatories and to provide documents—and asserts that this relieves her of any obligation. FF 73. However, Comment [2] to Rule 3.4 clearly provides that if clients are involved in the effort to comply with discovery requests, the lawyer must "pursue reasonable efforts to assure that documents and other information subject to proper discovery requests are produced." Judge Wingo found that both Respondent's and her client's actions were deficient when she imposed financial sanctions and the default. *See* FF 26, 36, 39, 77.

As in *Wemhoff*, Respondent received notice of Judge Wingo's orders, yet still failed to comply on more than a few occasions. Unlike the respondent in *Bland*,

who advised opposing parties of his difficulties securing the records needed to respond to discovery requests and received leeway by opposing counsel, and thus did not act "defiantly" (Bar Docket No. 245-95 at 16), Respondent did not make any efforts to work with opposing counsel to attempt to fully comply with her discovery obligations. *See, e.g.*, FF 7 & n.11, 17, 25, 31. Accordingly, the Hearing Committee finds by clear and convincing evidence that Respondent violated Rule 3.4(c).[42]

D. Disciplinary Counsel Proved that Respondent Violated Rule 3.4(d) by Failing to Make Reasonably Diligent Efforts to Comply with Legally Proper Discovery Requests.

Comment [2] to Rule 3.4 recognizes that opposing parties' right to obtain discovery is "an important procedural right." Rule 3.4(d) provides, in relevant part, that a lawyer shall not, "[i]n pretrial procedure, . . . fail to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party." The Rule is designed to promote "[f]air competition in the adversary system." Rule 3.4, cmt. [1]. As stated above, when a client is assisting a lawyer in responding to discovery requests, "the lawyer's obligations are to pursue reasonable efforts to

[42] In addition to Respondent's failures to timely respond to discovery requests, Disciplinary Counsel also faults Respondent for failing to comply with the court's orders to appear for hearings on June 11 and December 20, 2021, though it does not argue in its brief that those failures violated Rule 3.4(c). We find that Respondent did not *knowingly* violate the court's orders; rather, she knew about the June 11, 2021 hearing, and either failed to calendar it or failed to notice it on her calendar, causing her to fail to appear. FF 39. As set forth above, we have found that Respondent failed to read emails informing her that the December 9, 2021 status hearing had been rescheduled to December 20, 2021. FF 79-82. We find by clear and convincing evidence that Respondent's failures to appear for hearings violated Rules 1.1(a) and (b), and 8.4(d), but do not find that they violated Rule 3.4(c).

assure that documents and other information subject to proper discovery requests are produced." *Id.*, cmt. [2].

Disciplinary Counsel alleges that Respondent failed to make diligent efforts to comply with discovery requests, despite court orders instructing her to do so, as described in the court's sanctions orders. ODC Br. at 7-10, 19. Respondent acknowledges that her responses were not "perfect," but contends that she made reasonably diligent efforts to comply within the context of the entire case, based on the documents provided by her client. R. Br. at 51-52.

Respondent asserts that "attorneys are not personally responsible for the factual content of discovery responses submitted by their clients" and that she "acted in good faith to present the information that she was given by Mr. Berry." *Id.* at 21. She states that she could only produce discovery that was produced by her client to her. *Id.* at 51. Still, Respondent asserts that she "responded to nearly every discovery request, though occasionally untimely." *Id.* As to Plaintiff's interrogatory responses, Respondent says that she "bears no responsibility for her client's characterization of what he believed to be truthful based on his active participation in the case." *Id.* at 26. These positions are simply not correct and sidestep the obligations that attorneys do have: to make diligent efforts to assure that the client is producing what is required. *See* Rule 3.4, cmt. [1]. Respondent relied heavily on Mr. Berry to produce documents, but she did not insist that additional information be provided in order to respond fully to the document requests. FF 73. She was also required to provide direct responses to interrogatories, rather than simply submitting

documents. FF 33. Respondent admitted that she knew that the initial response was inadequate when she made it, but she nonetheless submitted it. FF 73.

At the March 31, 2021 hearing, Judge Wingo found the defense responses so deficient that she ordered Respondent and her client to pay Mr. Markowicz $4,427.50 in attorney's fees. FF 27, 36; *see supra* discussion in Subsection III.A. Judge Wingo directed Respondent to provide responsive documents and, in responses to the interrogatories, to provide "information requested directly and succinctly, as well as identify clearly where in any document provided such responsive information can be found." DCX 40 at 7; *see* FF 33. As of August 11, 2021, six weeks after the deadline, Respondent had not complied with this court order. DCX 59 at 27; FF 66. We thus find by clear and convincing evidence that Respondent violated Rule 3.4(d).[43]

---

[43] Respondent contends that she complied with the Rule by "gather[ing] all records produced by Mr. Berry and provid[ing] to plaintiff what was given to her." R. Br. at 52. As explained above, that did not constitute a reasonably diligent effort to comply with her obligations. Respondent also contends that the discovery issues were not "egregious" and that she and Mr. Berry provided some information orally at the hearings. R. Br. at 19-20. She faults Judge Wingo's requirement that it be presented "in precise form" (R. Br. at 20), but as Judge Wingo's orders before and at the October hearing made clear: Sworn interrogatory responses and actual documents were required, not general oral information provided at the last minute. *See, e.g.*, FF 67-69. Respondent further contends that Judge Wingo should have allowed her and her client to present evidence "at or before trial," rather than sanctioning them for not producing it in discovery. R. Br. at 20. Respondent cites Judge Higashi's ruling allowing Plaintiff to *update* her discovery, as a criticism that Judge Wingo should have allowed the defense to provide this information later. *See id.* However, there is a significant difference between not providing information in the first instance and updating information later. Judge Wingo had compelled

E. Disciplinary Counsel Proved that Respondent Violated Rule 8.4(c) by Engaging in Dishonesty Through Misrepresentation.

Rule 8.4(c) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Here, the Specification of Charges only refers to "dishonesty," which is the most general of these categories. DCX 2 at 12. It includes "not only fraudulent, deceitful or misrepresentative conduct, but also 'conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.'" *Samad*, 51 A.3d at 496 (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam)).[44] The Court holds lawyers to a "high standard of honesty, no matter what role the lawyer is filling," *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994) (per curiam) (appended Board Report), because "[l]awyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law." *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc) (quoting *Reback*, 513 A.2d at 231).

---

production of the information sought by Plaintiff, and that was the requirement facing Respondent and her client.

[44] We note Respondent purports to quote *In re Shorter*, 570 A.2d at 767, for the proposition that Rule 8.4(c) "contemplates conduct involving moral turpitude or a clear breach of honesty." R. Br. at 3. However, *Shorter* does not include this language. Further, we note that it discussed "moral turpitude" because the case involved a determination of whether the respondent's conviction for tax crime was a conviction of a crime of moral turpitude and thus constituted a violation of Rule 8.4(c). That analysis is not applicable here.

If 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." *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). 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.*; *see also In re Uchendu*, 812 A.2d 933, 939 (D.C. 2002) ("[S]ome evidence of a dishonest state of mind is necessary to prove an 8.4(c) violation."). Dishonest intent can be established by proof of recklessness. *See Romansky*, 825 A.2d at 315, 317. To prove recklessness, Disciplinary Counsel must establish by clear and convincing evidence that the respondent "consciously disregarded the risk" created by her actions. *Id.*; *see, e.g.*, *In re Boykins*, 999 A.2d 166, 171-72 (D.C. 2010) (finding reckless dishonesty where the respondent falsely represented to Disciplinary Counsel that medical provider bills had been paid, without attempting to verify his memory of events from more than four years prior, and despite the fact that he had recently received notice of non-payment from one of the providers). The entire context of a respondent's actions, including their credibility at the hearing, is relevant to a determination of intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-97 (D.C. 2019) (per curiam).

Disciplinary Counsel contends that Respondent violated Rule 8.4(c) on three occasions: (1) by filing the joint pretrial statement without opposing counsel's permission; (2) by falsely telling the court that all discovery had been produced; and (3) by claiming in a motion to vacate the default judgment and a pleading with the

Court of Appeals that she did not learn about the scheduling of the December 20, 2021 hearing in time to attend. ODC Br. at 20-21.

Respondent contends that the submission of the pretrial statement with opposing counsel's signature was an effort to meet a deadline, and not to deceive the court, and that the second two bases were not alleged in the Specification of Charges, thus violating her due process rights. R. Br. at 54-57. In its Reply Brief, Disciplinary Counsel focuses its Rule 8.4(c) analysis on the joint pretrial statement, while contending that other acts of dishonesty were relevant to Respondent's "overall credibility and substantively as to whether she actually complied with the court's orders." ODC Reply Br. at 7, 10-12. Accordingly, the Hearing Committee will address the allegations of dishonesty unrelated to the joint pretrial statement as possible aggravating factors only. *See, e.g.*, *In re Vohra*, 68 A.3d 766, 782 n.11 (D.C. 2013) (appended Board Report) (noting that misrepresentations that were "not sufficiently alleged in the Specification of Charges to support conclusions of Rules violations . . . may be used in determining an appropriate sanction") (citing *In re Kanu*, 5 A.3d 1, 8 (D.C. 2010)).[45]

[45] In its brief, Disciplinary Counsel characterizes Respondent's actions as "forgery." ODC Br. at 3, 20. Respondent's response focuses on whether her actions met the elements of the crime of forgery and specifically disputes that the information she inserted on the signature lines constituted "signatures" under Domestic Relations Rule 5(d)(4)(B)(ii) and Superior Court Rule of Civil Procedure 11. R. Br. at 5-9. We do not find this hyper-technical argument persuasive, as the Hearing Committee's focus is on whether Respondent engaged in dishonesty, that was at least reckless, by misrepresenting that Mr. Markowicz had signed the document and joined in its filing.

In *In re Clair*, the respondent was found to have violated Rule 8.4(c) by forging opposing counsel's electronic signature on a joint pretrial statement:

> By intentionally filing a document with the court as a "Joint Pretrial Statement" when, as the record establishes, [r]espondent knew that defendant's attorney did not subscribe to or assent to the filing of this document, [r]espondent clearly manifested a lack of honesty in his dealings both with defendant's attorney and with the court. Further, the dishonest and deceitful nature of this document, and of [r]espondent's actions in filing this document with the court, was elicited by the court in its colloquy with the [r]espondent regarding this document at a February 26, 2009 pre-trial hearing . . . . The court's questions, and [r]espondent's dissembling responses, show the ways in which [r]espondent's false document was likely to—and did in fact—mislead by, for example, indicating defendant's attorney's agreement with the document (and his "signing on" to the document) through affixing an "/s/" above counsel's name on the signature page. Quite clearly, [r]espondent's filing of his falsely-styled "Joint Pretrial Statement" with the court also constituted a misrepresentation in violation of Rule 8.4(c) in that this document was not in any way "joint"; as [r]espondent well knew, or as he at the least recklessly disregarded, defendant's attorney objected to this document and did not authorize or approve the contents of the document or its filing.

In re Clair, Board Docket No. 14-BD-025, at 42-43 (HC Rpt. Jan. 9, 2015).[46]

As set forth in detail in the Findings of Facts, it is undisputed that in the instant case, Respondent and Mr. Markowicz disagreed over how to finalize the joint pretrial statement (since Respondent had informed Mr. Markowicz that she planned to attach an addendum to the joint pretrial statement, with which he strongly

[46] Mr. Clair did not participate in the disciplinary proceedings or take exception to the Hearing Committee Report, and the Board and the Court adopted the Hearing Committee's finding and disbarred the respondent for unrelated intentional misappropriation. *In re Clair*, 148 A.3d 705 (D.C. 2016) (per curiam).

contested) and they could not reach agreement before the deadline. After Respondent discovered that Mr. Markowicz had filed a pretrial statement containing information only about Plaintiff's position, Respondent panicked and quickly prepared a document to file to ensure that her client's position was on record. FF 60. Although she used the last draft of the statement on which she and Mr. Markowicz had been working, she made changes to it by retyping Mr. Markowicz's initials on the signature line and retyping the certificate of service, including Mr. Markowicz's full name before filing it.[47] FF 61. As noted above, Respondent asserts that she filed this document "to meet a filing deadline in a contentious, fast-moving domestic case" and it "was not intended to deceive the court." R. Br. at 54.

At the hearing on the motion, Judge Wingo found that Respondent's submission "falsely suggests to the Court that [Mr. Markowicz] ha[d] approved the document which he ha[d] not," admonished Respondent for filing the statement without Mr. Markowicz's approval, and granted Plaintiff's motion to strike this pleading. FF 63.

[47] At the disciplinary hearing, Respondent testified that she "inadvertently did not remove" /JNM/ from the certificate of service. Tr. 1011-12. But this is inconsistent with her admissions that she "re-created" the signature block (DCX 57 at 9-10) and her other testimony at the hearing that she had retyped the signature block and the signature line on the certificate of service. Tr. 1009. We credit Respondent's admissions in DCX 57 and do not find that Respondent's internally inconsistent testimony amounted to an intentional misrepresentation to the Hearing Committee, and Disciplinary Counsel does not allege otherwise. *See* ODC Br. at 4-5.

When asked for her position on whether an acceptable alternative would have been to file a *Defendant's* pretrial statement, Respondent rejected this and argued that Judge Wingo's order required her to file a document as a joint document.[48] Tr. 875 (Green). However, Respondent later conceded that, during a phone call with Mr. Markowicz, she had asked if he wanted to cooperate in a joint statement, or "*otherwise, she would just submit Defendant's statement*." DCX 65 at 18 (emphasis added). Thus, despite her insistence both to Judge Wingo and at the disciplinary hearing, Respondent's words make clear that *she* did consider filing a statement alone.

Respondent's actions belie her explanation that she was only intending to fulfill a procedural requirement without intending to deceive the court. Respondent could have fulfilled that requirement in a number of other ways: She could have discussed her filing with Mr. Markowicz before—or even after it was filed; she could have included a notation in the filing; she could have filed a praecipe explaining her filing to the court; or she could have simply filed a defense pretrial statement. Instead, she inserted into the document a false representation by misrepresenting to Judge Wingo that it was approved of and submitted by both parties, while she knew that Mr. Markowicz had not authorized it. *See Romansky*, 825 A.2d at 315 (intent

[48] Ms. McKinney explained that filing a single pretrial statement, after Mr. Markowicz had done so, was the acceptable action to take—rather than filing what purported to be a joint statement. DCX 87 at 6-7; Tr. 434 (McKinney). Citing only the language of the court's order setting the date for the submission of a joint pretrial statement, Mr. Plitt disagreed based on his experience in civil cases only. RX 48 at 737-38.

element of dishonesty met where a respondent's actions were "obviously wrongful and intentionally done"). Respondent thus intentionally misrepresented the document as jointly authorized and filed. At the very least, even if she did not intend to mislead the court, Respondent still violated Rule 8.4(c) because she consciously disregarded the risks inherent in her filing the document that purported to be a joint pretrial statement. *See Boykins*, 999 A.2d at 171-72 (recklessly made false statements violated Rule 8.4(c)).

Since the definition of "dishonesty" includes misrepresentation, *Samad*, 51 A.3d at 496, the Hearing Committee finds by clear and convincing evidence that Respondent violated Rule 8.4(c) by intentionally mispresenting that Mr. Markowicz had agreed to the filing of a document that he had in fact not approved. *See Clair*, Board Docket No. 14-BD-025, at 42-43.

F. Disciplinary Counsel Proved that Respondent Violated Rule 8.4(d) by Engaging in Conduct that Seriously Interfered with the Administration of Justice.

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." 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 Respondent either acted or failed to act when she should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case

or tribunal[49]; and (iii) Respondent's conduct tainted the judicial process in more than a de minimis way, i.e., it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996).

Improper conduct can be found if it is prohibited by a statute or rule or if, under the circumstances, "the attorney should know that he or she would reasonably be expected to act in such a way as to avert any serious interference with the administration of justice." *Id.* Rule 8.4(d) can be violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). Failure to appear in court for a scheduled hearing and failure to respond to court orders can also constitute violations of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *Wemhoff*, Board Docket No. 14-BD-056, appended Hearing Committee Report at 14-15 & n.21 (finding a violation of Rule 8.4(d) for failure to appear at a status hearing due to the potential impact on the court's schedule, regardless of whether it actually delayed the trial), *recommendation adopted after no exceptions filed*, 142 A.3d 573; *In re Askew*, Board Docket No. 12-BD-037 (BPR July 31, 2013), appended Hearing Committee Report at 22-23 (finding a violation of Rule 8.4(d) for failure to comply with court

[49] This second element is not in dispute since all of the conduct at issue in this case bore upon the judicial process with respect to a single case—*Berry v. Berry.* Thus, the Hearing Committee focuses its analysis on the other two required elements.

orders requiring her to file a brief and to turn over client files), *recommendation adopted in relevant part*, 96 A.3d 52 (D.C. 2014) (per curiam).[50]

Disciplinary Counsel contends that Respondent violated Rule 8.4(d) by failing to attend two court hearings, leading to a default judgment on the second occasion, and through her overall handling of discovery. ODC Br. at 22-23. Respondent contends that her failure to appear at hearings were mistakes and that these and the "document production issues fall into the category of isolated procedural missteps." R. Br. at 58. She further argues that her actions did not show a "deliberate disregard for the court's authority" or cause "systemic or prolonged disruption to the administration of justice" or "result in any prejudice." R. Br. at 58-59. Respondent cites no authority to support a requirement that Disciplinary Counsel prove the "elements" or "standards" she cites.

Respondent concedes that she failed to appear at the start of a hearing on June 11, 2021 (and would not have appeared at all but for a call from the court in the middle of the hearing) and did not appear at all for a hearing on December 20, 2021. R. Br. at 27, 30-31, 58. Respondent asserts that she either did not know about the June hearing or forgot about it and that she did not know about the December hearing. *See id.*; FF 38-39. None of these assertions excuse Respondent's conduct because she should have known about the hearings and made efforts to ensure she

[50] Respondent states that the Court in *In re Uchendu* explained that "[n]ot every misstep or procedural delay rises to the level of professional misconduct under Rule 8.4(d)." R. Br. at 58. The quoted language does not appear in the Court's opinion. *See* 812 A.2d 933 (D.C. 2002).

did not forget it—and failing to appear violated court orders. It is undisputed that Respondent was present when the June 11, 2021 hearing was set, and she received a reminder of this hearing in Judge Wingo's May 24, 2021 order. FF 28, 37, 40. Yet Respondent joined the hearing approximately 30 minutes late, explaining that she had mislaid the notification of the hearing. FF 38-39.

Judge Wingo noted that because of Respondent's absence at the beginning of the hearing, the hearing was "now a complete waste of time." FF 41 (quoting DCX 41 at 10-11). Judge Wingo's remarks made clear that the pandemic had placed extra pressure on the courts and that this wasting of time was particularly taxing on the court system at that time. *Id.* She informed Respondent that she and her client needed to "do better." *Id.*

Judge Wingo attempted to address Respondent's motion for sanctions, but Respondent said she did not have the pleading in front of her and thus was not able to respond. FF 42, 44. Instead, Respondent attempted to argue with Judge Wingo about her prior rulings on other discovery issues.[51] FF 43. Judge Wingo denied Respondent's motion because Respondent was not able to argue it (but allowed Respondent the opportunity to refile it) and ordered Respondent and her client to pay

[51] Respondent asserts that she "was prepared to defend her motion and did so." R. Br. at 28. This is not supported by the transcript of the June 11, 2021 hearing in which she asserted her inability to argue her motion because she did not have the pleadings in front of her. DCX 41 at 18-23. The record also shows that Respondent primarily discussed other issues, and that Respondent and her client talked over Judge Wingo on a number of occasions—and often talked over each other. *See id.* at 11-15; FF 45 & n.16.

$288.75 in attorney's fees to compensate Ms. Berry for the time wasted by their delayed appearance. FF 39, 44.

The Hearing Committee finds by clear and convincing evidence that it was improper for Respondent to fail to appear at the June 11, 2021 hearing for which she had actual notice, that the failure to appear bore directly upon the judicial process, and that it tainted the judicial process in more than a de minimis way.

Turning to the second hearing, during Judge Wingo's chambers' attempts to reschedule the hearing, Judge Wingo's chambers initially indicated that no hearing could likely occur until January. But after Mr. Markowicz immediately rearranged his schedule, on December 8, 2021, Judge Wingo's chambers sent an email to Respondent and Mr. Markowicz informing them that the hearing was being rescheduled for December 20, 2021. FF 76. An official notice was also sent to both Respondent and Mr. Markowicz that day by CaseFileXpress. *Id.*

On December 19, 2021, Judge Wingo issued a written order memorializing her October 2021 order that issued a default to Mr. Berry on the issues of divorce, alimony, and the division of property, and included a reference to the December 20 hearing date. FF 77; DCX 76. This written order was emailed both to Respondent and Mr. Markowicz that day. FF 77; DCX 75 at 38. Again, a CaseFileXpress notice was also sent to both counsel. FF 79. Neither Respondent nor her client appeared for the December 20, 2021 hearing. FF 78. Because they were not present, Judge Wingo entered a default on the child custody issues in *Berry v. Berry*. *Id.*

Respondent contends that because of "a demanding schedule and high volume of email," she did not see any of the notifications from chambers or from CaseFileXpress. R. Br. at 30-31. She has consistently asserted that "the events leading up to that hearing reflect a breakdown in communication largely attributable to the Court's own procedures, not [Respondent's] alleged misconduct or neglect." R. Br. at 30. We disagree.

Although briefly conceding that notifications were sent on December 8, 2021[52], Respondent primarily focuses her arguments on the December 19, 2021, notices—criticizing the court and excusing herself for not seeing a notice on a Sunday morning. R. Br. at 31. She also faults Judge Wingo for not arranging a courtesy call on December 20, 2021, an act that is not required of the court. *Id.* Respondent argues that to characterize her "failure to respond to late-night or weekend emails as negligence is both unfair and disconnected from the realities of law practice." R. Br. at 30-31.

As explained above, while we credit Respondent's testimony that she did not see the notifications scheduling the December 20, 2021 hearing, her failure to check her email during this period constituted neglect. FF 80-82. The Hearing Committee finds by clear and convincing evidence that Respondent should have known that a status hearing was scheduled for December 20, 2021, for which she failed to appear.

---

[52] Respondent concedes that she did not see the December 8 notifications, but even now does not concede that she would have had notice of the hearing if she had read it, admitting only that they "may have contained further relevant scheduling information." R. Br. at 31.

Her failure to appear was therefore "improper" under Rule 8.4(d). *See In re Ukwu*, 926 A.2d 1106, 1143 (D.C. 2007) (appended Board Report).

Because Respondent and her client failed to appear for the December 20, 2021 hearing, the court granted default as to child custody, which it had not included in its default ruling on December 19, 2021. FF 77-78. Respondent filed a motion for reconsideration, admitting that her client had asked her if the hearing had been rescheduled and because she had not read any of the notifications sent to her, she did not inform him about the December 20 hearing. FF 83-84. Because *Mr. Berry* had not known about the hearing, the court reversed the default order[53]—actions by the court that would not have been required if Respondent had timely read the notifications sent to her. Thus, we find by clear and convincing evidence that Respondent's failure to appear at the hearing again bore directly upon the judicial process; and it tainted the judicial process in more than a de minimis way.

In addition to these failures to appear, Disciplinary Counsel argues that Respondent's "handling of the discovery in the *Berry* divorce case also substantially interfered with the administration of justice." ODC Br. at 22-23. Respondent contends that a Rule 8.4(d) violation should not be found because the effect of her conduct on the court did not cause "systemic or prolonged disruption to the

[53] Respondent implies that the default imposed by Judge Wingo on December 20 was flawed, as evidenced by Judge Higashi's reversal in March 2022. R. Br. at 31-32; *see* FF 85. However, that reversal was based on Respondent's admission that she failed to notify Mr. Berry of the hearing, information that Judge Wingo did not have on December 20. FF 85.

administration of justice," that it did not "compromise the integrity of the tribunal," and "did not cause any interruption in the orderly flow of court affairs." R. Br. at 58-59. However, these are not the standards against which the Hearing Committee must measure the effect of Respondent's conduct.

Respondent argues that her conduct amounted only to "procedural missteps" or "case-specific mismanagement," and did not sufficiently disrupt the judicial process to constitute a Rule 8.4(d) violation. R. Br. at 59-61. Respondent asserts that the discovery disputes in *Berry v. Berry* were "ordinary discovery disputes," that there is no "intentional pattern of obstruction or abuse," and that she did not act "with intent or recklessness that impaired the functioning of the Court." *Id.* at 60. She argues that Rule 8.4(d) violations "typically involve systematic or calculated conduct that threatens the integrity of the judicial process," and that while her conduct "may have caused inconvenience, . . . it was not egregious, habitual, or undertaken with contempt for judicial authority." *Id.* at 60-61. Respondent does not provide any authority for these statements.[54]

[54] Respondent cites the single case, *In re Owusu*, 886 A.2d 536, 541-42 (D.C. 2005), for her proposition that "[c]ourts have repeatedly cautioned against using Rule 8.4(d) to discipline lawyers for discovery errors absent an intentional pattern of obstruction or abuse." R. Br. at 60. However, *Owusu* dealt with the question of whether the respondent's failure to cooperate with and respond to Disciplinary Counsel was a Rule 8.4(d) violation. It did not address facts comparable to this case in any way. The Hearing Committee does not find that *Owusu* supports Respondent's proposition.

The Hearing Committee finds by clear and convincing evidence that it was improper for Respondent to fail to follow numerous court orders requiring her to provide information about the discovery her client had produced. Whether it was her intent to disregard or disobey these orders, Judge Wingo made her orders clear, both orally and in writing, several times. Respondent knew or should have known what Judge Wingo ordered her to do.

We also find by clear and convincing evidence that Respondent's conduct bore directly on the case and that the effect on the administration of justice was more than de minimis. Respondent's failure to provide the court with information about what had and what had not been produced caused the court to issue multiple orders and to schedule several hearings—including one that took an entire day—primarily to deal with the defense's productions and responses.[55] This is far more than found in an "ordinary" case—as evident from the court's highly unusual default order.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a lengthy suspension with a fitness requirement. ODC Br. at 30-31.[56] Respondent has requested that the Hearing Committee recommend

[55] In addition to the court's review of the discovery information sought from the defense by Mr. Markowicz and his client, part of the proceedings involved the court's review of the discovery information sought from Plaintiff by Respondent and her client. FF 67.

[56] Disciplinary Counsel raises the concept of disbarment for flagrant dishonesty, citing *In re Mazingo-Mayronne*, 276 A.3d 19, 22 (D.C. 2022) (per curiam), but does not actually urge the Hearing Committee to recommend that sanction. ODC Br.

no sanction. R. Br. at 61. For the reasons described below, we recommend the sanction of a six-month suspension, with three months stayed, in favor of one year of probation with the conditions set forth in subsection E, *infra*.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d at 924; *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 at 231 (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

---

at 29-30 ("If hearing committee opts not to find that [Respondent] committed 'flagrant dishonesty,' then it should impose a lengthy suspension coupled with a fitness requirement.").

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

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

As a whole, Respondent's misconduct was serious. It had the potential to harm her client, and it involved dishonesty. It also seriously interfered with the administration of justice. Respondent's failure to appear for hearings prepared to discuss pending motions and discovery responses led to "a complete waste of [the court's] time." FF 41; *see also* FF 45 & n.15 (Respondent's practice of talking over others further delayed the proceedings and in one instance was extreme enough that Judge Wingo took a several-minute break during the hearing). Further Respondent's failure to provide discovery timely or at all caused the court to allot several days completely devoted to resolving these issues, and even then Respondent did not comply with the court's orders. FF 66-76.

2. Prejudice to the Client

Disciplinary Counsel asserts that Mr. Berry was seriously harmed by Respondent's conduct. ODC Br. at 25. Ms. McKinney provided her expert opinion

in support, based primarily on her assessment of the court's property division, which she said was less than Mr. Berry could have been awarded if he was fully able to put on evidence. DCX 87 at 2. Respondent disputed these contentions, arguing that Mr. Berry was not harmed by her representation—even with the default in place. R. Br. at 43. The financial sanctions harmed Mr. Berry—but the court made clear that these sanctions were caused by his own conduct, as well as Respondent's, and thus imposed the sanctions on both. FF 39. As discussed in more detail above in the context of Rule 1.1, we cannot find that these sanctions were the result of Respondent's conduct, and not Mr. Berry's. Most importantly, as Respondent has noted, to this day, Mr. Berry has chosen to continue to retain her.[57] FF 96. We found that Respondent's conduct could have harmed her client, even if it did not actually do so. But we do not consider potential harm in our sanction analysis.

3. Dishonesty

As noted above, we find by clear and convincing evidence that Respondent violated Rule 8.4(c) by misrepresenting that the pretrial statement she filed had been authorized by Mr. Markowicz. Disciplinary Counsel contends that, in addition to

[57] Mr. Berry did not testify and thus did not explain whether he believed he had been prejudiced. Disciplinary Counsel sought Respondent's consent to speak with Mr. Berry, but Respondent declined to provide her consent. Tr. 324-29. Apparently, Disciplinary Counsel did not attempt any other means of contact with Mr. Berry. The Hearing Committee does not consider these circumstances in its analysis of this matter. We note, however, that Disciplinary Counsel could have sought to subpoena Mr. Berry and could have limited its questioning to topics that would not disclose client confidences or secrets, which may or may not have provided evidence that Mr. Berry was prejudiced by Respondent's actions.

the allegations relating to the pretrial statement, Respondent lied to the court twice. First, when she represented that discovery had been produced, and then when she claimed in a motion to vacate the default judgment and a pleading with the Court of Appeals that she did not learn about the scheduling of the December 20, 2021 hearing in time to attend. ODC Br. at 25-26; ODC Reply Br. at 25. Disciplinary Counsel bears the burden of proving those allegations in aggravation of sanction by clear and convincing evidence, which 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 24-25 (citation and quotation marks omitted).

Respondent claims that allegations of dishonesty to the court were not included in the Specification of Charges and thus violate her due process rights. R. Br. at 24-25, 54-55 (citing *In re Francis*, 137 A.3d 187 (D.C. 2016) (per curiam)). Respondent is correct in that "an attorney can be sanctioned only for those disciplinary violations enumerated in formal charges." *In re Smith*, 403 A.2d 296, 300 (D.C. 1979); *see also* Board Rule 7.21 (providing that when evidence of additional charges is presented at a hearing, Disciplinary Counsel may seek a continuance of the hearing to give the respondent notice and an opportunity to respond). However, a more flexible standard applies when Disciplinary Counsel contends that other misconduct proven by clear and convincing evidence should be considered in aggravation of sanction. *See, e.g.*, *Vohra*, 68 A.3d at 782 n.11. Respondent claims that she was denied "fair notice . . . and a meaningful opportunity to prepare a defense" against additional allegations of dishonesty, but does not

specify how she was prejudiced. R. Br. at 24. She defended both allegations on the merits and does not claim that she would have presented any specific additional evidence to rebut them. *See id.* at 55-56. A due process violation requires a finding of "substantial prejudice." *In re Fay*, 111 A.3d 1025, 1031 (D.C. 2015) (per curiam) (quoting *In re Thyden*, 877 A.2d 129, 140 (D.C. 2005)). Respondent has not made such a showing here.

Respondent knew that she and her client had not provided complete discovery to Plaintiff in response to Mr. Markowicz's interrogatories and document requests. FF 73. Respondent objected to some of the discovery requests, but she did not contend that she was withholding discovery pending a decision on her objection. Instead, she made the representation that it had been provided. *Id.*; *see, e.g.*, DCX 59 at 31-32, 36-38. Although advocacy in support of a client's position is appropriate, representations of fact or facts that a lawyer knows to be false are not.

Disciplinary Counsel similarly accuses Respondent of lying when she said she was not aware of the December 20, 2021 hearing before it was held. ODC Br. at 15, 26; ODC Reply Br. at 8-9. We disagree. It is clear that Mr. Berry asked Respondent whether the December 9, 2021 hearing had been rescheduled, and she told him that it had not been. FF 82. To find that Disciplinary Counsel's allegations are correct, we would need to find that Respondent knew that the hearing was scheduled for December 20, 2021, and lied to her client—or that Respondent and Mr. Berry both knew about the hearing and chose not to appear. We conclude that Disciplinary Counsel has proven neither of these options by clear and convincing evidence.

Rather, we find that Respondent failed to read the messages sent to her—both several weeks in advance of the hearing and the day before—and thus was not aware of the hearing date. As discussed above, we have already considered this conduct and find that it violated Rules 1.1 and 8.4(d).

4. Violations of Other Disciplinary Rules

The Hearing Committee has found by clear and convincing evidence that Respondent violated seven Rules of Professional Conduct, but these all relate to a single case and some of the Rule violations are for the same conduct.

5. Previous Disciplinary History

Respondent has received two informal admonitions: first, in 1998, for violating Rules 3.4(c), 4.2(a), and 8.4(d), and second, in 2018, for violating Rule 1.4(a). *See* FF 104. The first informal admonition is somewhat distant in time, but was for conduct similar to that we find here. In that case, Respondent filed a complaint seeking to compel a bank to honor two cashier's checks without disclosing that the court had already issued a temporary restraining order regarding the checks. DCX 105. Respondent was held in contempt and ordered to reimburse the opposing party for legal fees. *Id.* The second admonition is much more recent, coming only two years before the conduct involved here, but did not involve comparable misconduct. In that case, Respondent failed to promptly comply with a client's requests for an invoice. DCX 106. As a whole, Respondent's disciplinary history is an aggravating factor.

6. Acknowledgement of Wrongful Conduct

Respondent has not acknowledged the seriousness of her misconduct. She has admitted only to procedural missteps and mismanagement and denied that her misconduct was serious, even though it interfered with the administration of justice and led to sanctions against her and her client and to a default against her client.

Respondent continuously objects to any "aspersions" about her failure to appear at the beginning of the June 11, 2021 hearing. *See, e.g.*, R. Br. at 27. Respondent appears to believe that the fact that the court reached her and she joined thereafter rendered her conduct acceptable. *Id.* Respondent initially provided a summary apology to Judge Wingo when she appeared late on June 11, 2021, but Judge Wingo found that this apology was insufficient to excuse her failure to appear. FF 39. Instead of acknowledging her errors, Respondent instead now accuses the court of violating Rule 2.9 of the Code of Judicial Conduct for engaging in an "ex parte" conversation with Mr. Markowicz during the time she and her client were absent and contends that Mr. Markowicz was "poison[ing]" Judge Wingo. R. Br. at 27-28. The court was not required to sit actionless until Respondent and her client appeared; Judge Wingo was determining what to do in the absence of the party for which the hearing had been scheduled. We find Respondent's allegations about Judge Wingo and Mr. Markowicz especially troubling since Respondent not only fails to recognize her responsibility but instead attempts to pass blame to others.

Similarly, Respondent fails to accept responsibility for not appearing at the December 20, 2021 hearing, and blames her failure to appear on the court. She states

that "the events leading up to [the December 20, 2021] hearing reflect a breakdown in communication largely attributable to the Court's own procedures, not the alleged misconduct or neglect by [Respondent]." R. Br. at 30. Respondent asserts that she should not have been required to monitor her emails on a Sunday (R. Br. at 31), but she accepts no responsibility for failing to review emails sent twelve days earlier and failing to check emails on Monday morning, before the noon hearing. *See* FF 79-81; R. Br. at 30-31. Indeed, in providing explanations for her failure to appear, Respondent often only mentions the December 19 notice (R. Br. at 31), implying that this was the only notice sent to her and failing to acknowledge that the court sent out two notices on December 8. She also faults the court for not making a "courtesy call" to her. *Id.* Respondent's argument that the court needed to do more to make sure her conduct matched what was expected of her is misplaced.

Finally, Respondent accuses Judge Wingo, Disciplinary Counsel, and Mr. Markowicz of unethical behavior. Those allegations further demonstrate Respondent's failure to acknowledge her own wrongdoing.

As discussed above, Respondent accused Judge Wingo of violating the Code of Judicial Conduct for her discussion with Mr. Markowicz during the June 11, 2021 hearing before Respondent appeared. *Id.* at 28. She also accused Judge Wingo of general personal misconduct, including "being influenced by the theatrics and manipulations of plaintiff's counsel." *Id.* at 33. Throughout the proceedings, Respondent repeatedly interrupted Judge Wingo and accused the judge of being "unfair." FF 45.

Respondent has also made serious allegations of ethical misconduct against Disciplinary Counsel, which went beyond her expert's opinion that she was unfairly targeted and that the charges went outside the scope of the complaint.[58] *See* RX 48. Specifically, Respondent has asserted:

- Disciplinary Counsel "egregiously interfered with the attorney-client relationship and the contractual obligations between [Respondent] and her client . . . [by] working in concert to destabilize [Respondent]'s representation of Mr. Berry and to provoke missteps in her professional conduct." R. Br. at 32.
- "Perhaps most disturbing was the behind-the-scenes, seemingly improper communications between Judge Wingo and Disciplinary Counsel—contact that appeared aimed at further undermining [Respondent]'s efforts to provide balanced, effective representation." *Id.* at 33.

Respondent provided no factual support for any of these allegations.

Finally, Respondent blames Mr. Markowicz for most of her actions that are at issue here. *See, e.g.*, R. Br. at 18. While some of Mr. Markowicz's conduct was not

[58] Investigations by the Office of Disciplinary Counsel are not limited to the four corners of a complaint. *See* Board Rule 2.1. And since the Hearing Committee has found that most of the allegations made by Disciplinary Counsel have been proven by clear and convincing evidence, arguments that the allegations should not have been investigated or resulted in disciplinary proceedings have a hollow ring. In essence, Mr. Plitt argued that Disciplinary Counsel should have been limited to the initial complaint, even though Respondent's misconduct was more widespread.

consistent with expected standards of civility, that does not excuse Respondent's own conduct. *See In re Sibanda*, Board Docket No. 23-BD-024, at 30-31 (BPR July 30, 2024) ("The fact that [r]espondent continues to view [the complainant]'s alleged fraud as justifying his behavior indicates that he does not fully understand his obligation . . . ."), *recommendation adopted in part*, 341 A.3d 598, 608 (D.C. 2025) (imposing a fitness requirement not recommended by the Board).

Respondent has asked the Hearing Committee to consider her actions in the context of a "complex and highly adversarial family law proceeding" (R. Br. at 45), but the Rules do not provide exceptions for such cases. Indeed, if a lawyer's conduct is adversely affected by the difficulty of her client or her adversary, this is a factor that should be considered because any improper conduct or behavior could be repeated if those circumstances arose in the future. *See Sibanda*, 341 A.3d at 603 (noting the hearing committee's and Board's concern that the respondent would be unable to avoid similar misconduct when dealing with "difficult" prospective clients in the future).

7. Other Circumstances in Aggravation and Mitigation

Disciplinary Counsel did not offer any additional evidence in aggravation, aside from prior discipline.[59]

[59] Though Respondent's counsel's failure to comply with deadlines, to timely move for extensions and continuances, and to support his requests with showings of good cause, as summarized in Part I, *supra*, disrupted these proceedings by causing significant delays, there is no clear and convincing evidence that Respondent was responsible for his failings. While we do not consider it in aggravation of sanction, we are troubled by Respondent's statement during the November 12, 2024

Respondent offered four witnesses in mitigation. *See* FF 105-108. Their testimony demonstrates that Respondent provided good representation to clients in the past, and that she has a number of satisfied clients, but none of the witnesses were aware of Respondent's representation in *Berry v. Berry*.

C. Sanctions Imposed for Comparable Misconduct

Of the seven Rule violations we have found, dishonesty is the most serious.[60] *See Howes*, 52 A.3d at 16 ("[T]here is nothing more antithetical to the practice of law than dishonesty . . . ." (internal quotation marks and citation omitted)). In cases involving single instances of dishonesty, including misrepresentations to courts or other tribunals, the Court has imposed sanctions ranging from public censure to a sixty-day suspension. *See* Order, *In re Molovinsky*, No. M-31-79 (D.C. Aug. 27, 1979) (per curiam) (public censure for "lying" to Superior Court judge about reason for being late to court); *In re Hawn*, 917 A.2d 693, 693-94 (D.C. 2007) (per curiam) (thirty-day suspension for falsifying resume and altering law school transcripts in an attempt to obtain legal employment); *In re Owens*, 806 A.2d 1230, 1231 (D.C. 2002)

---

pre-hearing conference that she was not "paying as close attention as perhaps [she] should have with respect to [her] own matter" and was "not aware at the time" that her counsel had "emergencies" that prevented him from meeting deadlines, despite being the subject of a proceeding arising, in part, from missed deadlines and failure to comply with court orders. *See* November 12, 2024 Pre-Hearing Tr. at 85-86.

[60] Absent aggravating factors, violations of the other Rules have resulted in non-suspensory sanctions. *See, e.g.*, *In re Woodyear*, Bar Docket No. 2015-D291 (Letter of Informal Admonition Jan. 11, 2018) (informal admonition for violations of Rules 1.1(a) and (b), 1.15(a) (record-keeping), and 8.4(d)); *In re Mizrahi*, Bar Docket No. 232-97 (Letter of Informal Admonition July 2, 2004) (informal admonition for violations of Rules 1.1(b), 1.3(a), 1.3(b)(2), 3.4(c) and (e), 3.5(c), and 8.4(d)).

(per curiam) (thirty-day suspension for false statements, including one made under oath, to Administrative Law Judge to cover up eavesdropping in violation of judge's sequestration order); *In re Phillips*, 705 A.2d 690, 691 (D.C. 1998) (per curiam) (sixty-day suspension for filing a false and misleading petition in federal court in Virginia).

Relatively brief periods of suspension have been imposed where the dishonesty is not pervasive or the additional misconduct is not egregious. *See, e.g.*, *In re Carter*, 333 A.3d 558, 560-61, 567-68 (D.C. 2025) (sixty-day suspension for falsely telling a court under oath in a case she brought against a former client that a disciplinary complaint had been dismissed, aggravated by prior discipline and lack of remorse); *In re Chapman*, 962 A.2d 922, 923-27 (D.C. 2009) (per curiam) (sixty-day suspension, with thirty days stayed in favor of a one-year period of probation, with conditions, where respondent neglected a client matter and lied to Disciplinary Counsel and Hearing Committee to cover up the misconduct); *see also Owens*, 806 A.2d at 1231; *Sumner*, 665 A.2d at 986, 990-91 (appended Board Report) (thirty-day suspension for single instance of neglect, where respondent also failed to turn over file and misrepresented to client that he had received transcripts of her case); *Outlaw*, 917 A.2d at 685-86, 689 (sixty-day suspension where attorney lied to client about claim after allowing statute of limitations to lapse and did not accept responsibility).

When the additional misconduct is more serious or the dishonesty is pervasive, however, greater sanctions have been imposed. *See, e.g.*, *Martin*, 67 A.3d

at 1054, 1056 (eighteen-month suspension plus disgorgement where dishonesty was intended to cover up prior dishonesty and other rule violations); *Boykins*, 999 A.2d at 167-174 (two-year suspension plus fitness for negligent misappropriation and misleading and inconsistent explanations to Disciplinary Counsel); *In re Pennington*, 921 A.2d 135, 136-39, 145 (D.C. 2007) (two-year suspension with fitness for missing a statute of limitations, falsifying a settlement with an insurer, intentionally misrepresenting matters in negotiating with third-party health care providers, and providing a false settlement check to the client out of her own funds); *In re Arneja*, 790 A.2d 552, 556-58 (D.C. 2002) (one-year suspension for commingling, failure to turn over a client file, and misrepresentation to Disciplinary Counsel that he had turned over the entire file, where conduct "would be misappropriation 'but for' the operation of an ethical rule" that provided a "'technical' defense" to intentional misappropriation).

Disciplinary Counsel suggests that Respondent could be disbarred for flagrant dishonesty, without urging the Hearing Committee to impose that sanction. Flagrant dishonesty is dishonesty that "reflect[s] a continuing and pervasive indifference to the obligations of honesty in the judicial system." *Pennington*, 921 A.2d at 141 (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)). Although actual harm to a client is not a requirement for finding flagrant dishonesty (*see In re LeFande*, 328 A.3d 775, 780-82 (D.C. 2025) (finding flagrant dishonesty, in addition to making frivolous arguments, serious interference with the administration of justice, and knowingly disobeying rules of a tribunal, even though some of the misconduct was

intended to benefit the client, because it "was serious, protracted across multiple client matters, and accompanied by the aggravating circumstance of his unrepentant attitude towards the disciplinary process")), we find that Respondent's misconduct in this single case does not otherwise approach the protracted or quasi-criminal conduct that typically leads to disbarment. *See, e.g.*, *In re Baber*, 106 A.3d 1072, 1077-78 (D.C. 2015) (per curiam) (dishonesty in one case was "repeated and protracted," came "at the expense of his client's interests," was "driven by a desire for personal gain," where the dishonesty continued into the disciplinary proceedings); *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) (per curiam) (respondent submitted "patently fraudulent" CJA voucher, lied about it under oath, and testified falsely before the Hearing Committee); *In re Pelkey*, 962 A.2d 268, 280-82 (D.C. 2008) (respondent engaged in "criminal conduct which amount[ed] to theft" and "persistent, protracted, and extremely serious and flagrant acts of dishonesty" before arbitrator, hearing committee and California court); *Goffe*, 641 A.2d at 465 (dishonesty "was part of a plan to commit fraud intended to benefit himself"); *see also Pennington*, 921 A.2d at 141-42 (describing flagrant dishonesty as conduct that involves "patterns of morally reprehensible behavior").

We find that the seriousness of the misconduct in this case, as well as Respondent's prior discipline and failure to accept responsibility, call for a greater suspension than the baseline short suspension for relatively minor dishonesty without extensive additional misconduct. Without a pattern of dishonesty or more serious Rule violations, we also find that a lengthy suspension is not warranted. On

balance, a six-month suspension, with three months stayed in favor of one-year probation as discussed below, is appropriate.

D. Fitness

The purpose of conditioning reinstatement on proof of fitness is "conceptually different" from the basis for imposing a suspension. *Cater*, 887 A.2d at 22. The Court has observed that while a suspension represents "a 'commensurate response to the attorney's past ethical misconduct,' the fitness requirement addresses the concern 'that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive to the public interest.'" *In re Brown*, 310 A.3d 1036, 1050 (D.C. 2024) (quoting *In re Lattimer*, 223 A.3d 437, 452-53 (D.C. 2020) (per curiam)).

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." 887 A.2d at 6. Proof of a "serious doubt" involves "more than 'no confidence that a [r]espondent 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).

As the Court explained:

> The fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct. In contrast, the open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the attorney

> will act ethically and competently in the future, after the period of suspension has run. . . . [P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement . . . .

Cater, 887 A.2d at 22.

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

(a) the nature and circumstances of the misconduct for which the attorney was disciplined;

(b) whether the attorney recognizes the seriousness of the misconduct;

(c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;

(d) the attorney's present character; and

(e) the attorney's present qualifications and competence to practice law.

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

Although it is a close question, based on *Cater* and the *Roundtree* factors, we do not have a "serious doubt" about Respondent's continuing ability to practice law. As explained above, we find that Disciplinary Counsel failed to prove that Respondent's misconduct arose from her lack of competence in her area of practice, domestic relations law. *See* FF 107. While we have serious concerns about Respondent's ability to adhere to deadlines and utilize technology, we believe that those failings can be addressed by adding probationary conditions. Thus, we recommend a six-month suspension, with three months stayed in favor of one year

of supervised probation with specific requirements the Board and the Court deem appropriate pursuant to D.C. Bar Rule XI, § 3(a)(7) and Board Rule 18.2(a).

E. Proposed Conditions of Probation

The Hearing Committee proposes including the following requirements in any probation order:

(1) During the probationary period, Respondent shall not be the subject of a disciplinary complaint that results in a finding that she violated the disciplinary rules of any jurisdiction or tribunal in which she is licensed to practice;

(2) Respondent shall consult with the D.C. Bar's Practice Management Advisory Service concerning her case management system, including her use of technology, and provide Disciplinary Counsel with written confirmation of such consultation;

(3) Respondent shall consult with a practice monitor appointed by the Board as frequently as the practice monitor deems appropriate and implement his or her recommendations;

(4) Respondent shall waive confidentiality and ensure that the practice monitor certifies to Disciplinary Counsel, at least one month before the probationary term expires, that she has implemented his or her recommendations; and

(5) Respondent shall complete six hours of CLE in practice management and/or technology, pre-approved by the practice monitor.

We do not propose that Respondent be required to notify her clients of her probation.

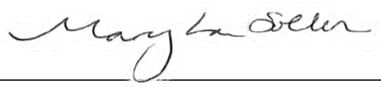
If Respondent fails to comply with those conditions, that would lead us to have a serious doubt about her continuing fitness to practice law, as it would reflect an inability to remedy the practice management deficiencies that caused much of the misconduct in this case—aggravated by her acrimonious relationship with opposing counsel—and may cause additional misconduct in the future. *See, e.g.*, *In re Fox*, 66 A.3d 548, 555-56 (D.C. 2013) (imposing a conditional fitness requirement); *In re Bettis*, 855 A.2d 282, 290 (D.C. 2004) (same). Thus, if Disciplinary Counsel has probable cause to believe Respondent has violated the terms of probation, it may seek to revoke the terms of her probation and request that she be required to serve the remaining three-month suspension with a requirement that her reinstatement to the practice of law be conditioned upon a showing of fitness in accordance with D.C. Bar R. XI, § 16 and Board Rules Chapter 9. *See* D.C. Bar R. XI, § 3(a)(7).

V. CONCLUSION

For the foregoing reasons, the Hearing Committee finds that Respondent violated Rules 1.1(a) and (b), 1.3(c), 3.4(c) and (d), and 8.4(c) and (d), and should receive the sanction of a six-month suspension, with three months stayed in favor of one year of probation with the conditions set forth above. 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



Mary Lou Soller, Esquire, Chair

Sally Winthrop, Public Member

Charles Eisen, Esquire, Attorney Member