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

In the Matter of:	:	
	:	
JEJOMAR UNTALAN,	:	
	:	
Respondent.	:	Board Docket No. 15-BD-024
	:	Bar Docket No. 2013-D081
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 978229)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Jejomar Untalan, is charged with violating District of Columbia Rules of Professional Conduct (the "Rules") 1.1(a) (competent representation), 1.1(b) (skill and care), 1.3(a) (diligence and zeal), 1.3(b)(1) (intentionally fail to seek lawful objectives of client), 1.3(c) (reasonable promptness), 3.4(c) (knowingly disobey an obligation under the rules of a tribunal), and 8.4(d) (serious interference with administration of justice), arising from his intentional neglect of seven separate appellate matters. Respondent was appointed by the District of Columbia Court of Appeals (the "Court") to represent clients in seven criminal and/or juvenile appellate matters under the Criminal Justice Act (the "CJA"), but he failed to timely file briefs in those matters and failed to respond to the Court's orders to file a brief. As a result, the Court vacated his appointments, directed him to turn over his files to successor counsel, and removed him from the CJA list.

Disciplinary Counsel[1] contends that Respondent committed all of the charged violations, and that as a sanction for his misconduct, Respondent should be suspended for thirty (30) days,

[1] This case was filed by the Office of Bar Counsel. The District of Columbia Court of Appeals changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We use the current title herein.

stayed in favor of a one-year period of probation with conditions. Respondent agrees with Disciplinary Counsel's proposed sanction.

As set forth below, the Ad Hoc Hearing Committee (the "Hearing Committee") finds clear and convincing evidence that Respondent violated Rules 1.1(a) and (b), 1.3(a), (b)(1), and (c), 3.4(c), and 8.4(d), and recommends that Respondent be suspended for six months, with all but sixty (60) days stayed in favor of one year of probation subject to the following conditions, Respondent (1) notify Disciplinary Counsel and the Board ninety (90) days before resuming the practice of law; (2) consult with the D.C. Bar's Lawyer Assistance Program at least once and agree to waive confidentiality in order to allow Disciplinary Counsel to confirm his participation; (3) undergo an assessment by the D.C. Bar's Director for the Practice Management Advisory Service, or his designee, implement any recommendations he or she might make, and sign a limited waiver permitting that program to confirm compliance with this condition and cooperation with the assessment process; (4) not commit any additional Rule violations during the period of probation; and (5) if he resumes the practice of law during the period of probation, report to a probation monitor and waive confidentiality to allow Disciplinary Counsel to confirm his compliance with monitoring.

I. PROCEDURAL HISTORY

On February 23, 2015, Disciplinary Counsel filed a Petition and Specification of Charges. Respondent accepted service by email on February 24, 2015, rather than by personal service. *See* Pre-hearing Transcript at 5-6 (Apr. 14, 2105).

A telephonic pre-hearing conference was held on April 14, 2015 before Caroline E. Reynolds, Esquire, Chair of the Ad Hoc Hearing Committee. Deputy Disciplinary Counsel Elizabeth A. Herman, Esquire, and Respondent participated. The Chair stated on the record that Respondent (1) had the right to proceed *pro se* or to be represented by counsel; and (2) the Board

on Professional Responsibility would pay for counsel if he met the Board's indigency standard. Pre-hearing Tr. 4-5. The Chair also informed Respondent that the Office of the Executive Attorney maintains a list of counsel who may be willing to represent respondents pro bono. *Id.* 5. The Respondent chose to proceed *pro se*. As directed by the Chair, Disciplinary Counsel filed an Amended Specification of Charges containing more specific allegations on April 20, 2015, and served Respondent by email. *Id.* 11. The Amended Specification of Charges alleged that Respondent violated Rules 1.1(a) and (b) and Rules 1.3(a), (b)(1), and (c), Rule 3.4(c), and Rule 8.4(d). Respondent failed to file his Answer to the Amended Specification of Charges on or before May 14, 2015, as directed by the Chair. Pre-hearing Order, *In re Untalan*, Bar Docket No. 2013-D081 (H.C. Apr. 30, 2015). The parties filed Stipulations of the Parties ("Stipulations") on June 8, 2015.

A hearing was held on July 15, 2015, before the Ad Hoc Hearing Committee (Caroline E. Reynolds, Esquire, Chair; Gary W. Kloepfer, Public Member, and Esther Yong, Esquire, Attorney Member). Respondent appeared *pro se*. Disciplinary Counsel requested the hearing be a unitary hearing rather than a bifurcated hearing. Respondent did not object, and Disciplinary Counsel's request was granted. Hearing Transcript ("Tr.")[2] 34. Prior to the hearing, Disciplinary Counsel submitted Exhibits ("DX") A[3] through D, and each the CJA client's files as DX 1 through 7. Respondent did not object to any of Disciplinary Counsel's Exhibits, and all eleven exhibits were admitted. Tr. 34. Disciplinary Counsel did not present witnesses. Respondent testified on his own behalf in mitigation of sanction, and did not present witnesses or submit exhibits. Tr. 36.

[2] "Tr." references the corrected transcript of the July 15, 2015 hearing.

[3] Disciplinary Counsel substituted DX A (Registration Statement) with a redacted version to comply with Board Rule 19.8(f) (privacy requirements) during the hearing. Tr. 25.

After the close of the hearing, Disciplinary Counsel timely filed Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanction. Respondent timely filed Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanction. Disciplinary Counsel declined to file a reply brief.

II. FINDINGS OF FACT

A. Facts Relevant to the Alleged Violations

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals having been admitted on December 10, 2007 and assigned Bar number 978229. DX A. Respondent is also a member, although not active, of the Massachusetts and Virginia Bars. Stipulation ¶ 1; Tr. 49, 60.

2. In or around 2009, Respondent requested that he be placed on the Court's list of lawyers seeking to be appointed to represent defendants in appellate cases. Stipulation ¶ 2; Tr. 50.

3. Between March 2012 and February 2013, the Court appointed Respondent to represent the appellants in seven criminal/juvenile matters pursuant to the Criminal Justice Act ("CJA"), as described in paragraphs 5-11, below. Stipulation ¶ 2; Tr. 30-31.

4. On March 5, 2012, the Court appointed Respondent to represent appellant Omar Rimmer in the appeal of his misdemeanor conviction. Stipulation ¶ 3; Tr. 63-64; DX 3 at 1.

a. The Court issued a Briefing Order on March 5, 2012, requiring appellant's brief and appendix to be filed within 40 days. DX 3 at 9.

b. On April 13, 2012, Respondent filed a motion seeking an extension of time to file appellant's brief. *Id.* at 11-12. The Court granted the motion and directed Respondent to file the brief and appendix by June 14, 2012. *Id*. at 14.

c. On June 14, 2012, Respondent sought a second extension of time to file the brief. *Id.* at 15-16. The Court granted the motion and directed Respondent to

file the brief and appendix by August 14, 2012, but cautioned Respondent that "[a]ny further requests for extensions of time will be looked upon with disfavor and granted only upon a showing of good cause." *Id*. at 18.

d. After Respondent failed to file the brief and appendix as directed, the Court issued another order, *sua sponte*, on August 22, 2012, directing Respondent to file the brief and appendix within 20 days, together with a motion for leave to file out of time. *Id*. at 19. Respondent still failed to file the brief and appendix.

e. On October 4, 2012, the Court issued a second order, *sua sponte*, directing Respondent to file the brief and appendix within 15 days, together with a motion for leave to file out of time. *Id*. at 20. Respondent still failed to file the brief and appendix.

f. On November 21, 2012, the Court issued a third order, *sua sponte*, directing Respondent to file the brief and appendix within 15 days (by November 6, 2016), together with a motion for leave to file out of time. *Id*. at 21. This time, the Court also directed Respondent to show "good cause for the failure to timely file the documents" or to "show cause why he should not be held in contempt for failure to comply" with the Court's prior orders. *Id*. The record does not show whether Respondent was charged with contempt, but his failure to comply with those two Court orders would have provided an adequate basis for such charges.

g. On February 13, 2013, the Court vacated Respondent's appointment as counsel for the appellant and directed Respondent to transmit all documents pertaining to the appeal to successor counsel within 20 days. *Id*. at 22.

5. On May 8, 2012, the Court appointed Respondent to represent appellant Gary N. Murphy in an appeal of a misdemeanor conviction. Stipulation ¶ 3; DX 1 at 6.

a. The Court issued a Briefing Order on November 15, 2012 requiring the appellant's brief to be filed within 40 days. DX 1 at 11. Respondent did not file the brief as directed. *Id*.

b. On January 9, 2013, the Court issued a second order, directing Respondent to file the brief and appendix within 20 days, along with a motion for leave to file out of time. *Id.* at 12. Again, Respondent did not file a brief as directed by the Court.

c. On February 13, 2013, the Court vacated Respondent's appointment as counsel for the appellant and directed Respondent to transmit all documents pertaining to the appeal to successor counsel within 20 days. *Id.* at 13.

6. On August 1, 2012, the Court appointed Respondent to represent appellant Ashton Walker in an appeal of his misdemeanor conviction. Stipulation ¶ 3; DX 2 at 1.

a. The Court issued a Briefing Order on September 26, 2012. DX 2 at 1. Respondent did not file a brief as directed by the Court. *Id*.

b. On November 26, 2012, the Court issued a second order, directing Respondent to file the brief and appendix within 20 days, along with a motion for leave to file out of time. *Id.* Again, Respondent did not file a brief as directed by the Court.

c. On December 31, 2012, the Court issued a third order directing Respondent to file the brief and appendix, this time within 15 days. *Id.* Respondent still did not file a brief as directed by the Court.

d. On February 13, 2013, the Court vacated Respondent's appointment as counsel for the appellant and directed Respondent to transmit all documents pertaining to the appeal to successor counsel within 20 days. *Id.* at 6.

7. On June 25, 2012, the Court appointed Respondent to represent appellant Sonceria Rayford in in an appeal of her conviction of a misdemeanor. Stipulation ¶ 3; DX 4 at 5.

a. The Court issued a Briefing Order on September 20, 2012. DX 4 at 13. Respondent did not file a brief as directed by the Court.

b. On November 21, 2012, the Court issued a second order, directing Respondent to file the brief and appendix within 20 days, along with a motion for leave to file out of time. *Id.*at 14. Again, Respondent did not file a brief as directed by the Court.

c. On January 8, 2013, the Court issued a third order directing Respondent to file the brief and appendix, this time within 15 days. *Id.* at 15. Respondent still did not file a brief as directed by the Court.

d. On February 11, 2013, the Court issued a fourth order directing Respondent to file the brief and appendix within 15 days, along with a motion for leave to file out of time or to show cause why he should not be held in contempt. *Id.* at 16. Respondent still did not file a brief as directed by the Court.

e. On February 13, 2013, the Court vacated Respondent's appointment as counsel for the appellant and directed Respondent to transmit all documents pertaining to the appeal to successor counsel within 20 days. *Id.* at 17.

8. At some point between March 2012 and August 2012, the Court appointed Respondent to represent appellant P.W. in an appeal of a juvenile matter. Stipulation ¶ 3; DX 5.

a. The Court issued three orders directing Respondent to file the brief, but Respondent failed to do so. DX 5.

b. On February 13, 2013, the Court vacated Respondent's appointment as counsel for the appellant and directed Respondent to transmit all documents pertaining to the appeal to successor counsel within 20 days. *Id.*

9. At some point between March 2012 and August 2012, the Court appointed Respondent to represent appellant T.H. in an appeal of a juvenile matter. Stipulation ¶ 3; DX 6.

a. The Court issued five orders directing Respondent to file the appellant's brief, but Respondent failed to do so. DX 6.

b. On February 13, 2013, the Court vacated Respondent's appointment as counsel for the appellant and directed Respondent to transmit all documents pertaining to the appeal to successor counsel within 20 days. *Id.*

10. At some point between March 2012 and August 2012, the Court appointed Respondent to represent appellant A.T. in an appeal of a juvenile matter. Stipulation ¶ 3; DX 7.

a. The Court issued four orders directing Respondent to file the appellant's brief, but Respondent failed to do so. DX 7.

b. On February 13, 2013, the Court vacated Respondents' appointment as counsel for the appellant and directed Respondent to transmit all documents pertaining to the appeal to successor counsel within 20 days. *Id.*

11. Respondent was aware that he was appointed as counsel in each of the seven cases described above, and he received notice of the Court's orders instructing him to file briefs. Tr. 45, 66; *see also* Stipulation ¶ 3.

12. Respondent promptly turned over the client files for each of the seven cases to each successor counsel. Stipulation ¶ 4; Tr. 62.

13. In its orders vacating Respondents' appointment as counsel in each of the seven cases described above, the Court ordered that Respondent's name be removed from the list of attorneys eligible for appointment to appeals before the Court. DX 1-7; *see also* Stipulation ¶ 4. The Court also directed the Clerk to submit each matter to Disciplinary Counsel for investigation. *Id*.

14. Respondent's name has been removed from the list of attorneys eligible for appointment to appellate cases before the Court of Appeals. Stipulation ¶ 4.

B. Facts Relevant to Mitigation

15. By the fall of 2012, Respondent was overwhelmed by his workload and personal difficulties that had arisen throughout the year.

a. The Respondent and his wife began to experience marital difficulties, causing significant stress to Respondent. Tr. 36-37.

b. Respondent's wife also sought help from Respondent to care for the couple's two children, then ages 2 and 5. *Id*. Respondent took on additional child-care responsibilities despite his growing workload. Tr. 37-38.

16. Respondent's mental state deteriorated throughout the course of the year as he struggled to manage the changes in his life and the numerous stresses he was under.

a. At the hearing, Respondent testified that "things really came to a head in September 2012," after a close friend passed away, and that he was "in a type of haze or funk" between September 2012 and February 2013. Tr. 41-43.

b. Respondent described that, prior to receiving a call from Disciplinary Counsel, he "lacked the current awareness . . . to actually realize or to ask for help from the

court and . . . admit to [himself] that there was no way [he] could just plow through all the to do lists . . . ." Tr. 43.

17. Respondent did not miss any deadlines in any cases other than the seven appellate matters described in Findings of Fact, paragraphs 4-10 above. Tr. 64-65 (Respondent testified that he appropriately handled his appellate cases until the "problematic period" that began in March 2012).

18. After Disciplinary Counsel initiated its investigation, Respondent voluntarily took a number of steps to address the factors that contributed to his actions.

a. In 2013, Respondent substantially reduced his workload by declining new cases and systematically working to resolve his pending matters. Tr. 55. In 2014, Respondent voluntarily closed his practice. He started to close it in the summer of 2014, but he had final commitments in his remaining cases through October or November of 2014. *Id.* Respondent then transferred his remaining cases to other attorneys and filed motions to notify judges that his practice was closed and that case files had been transferred to successor counsel. Tr. 56.

b. As of the hearing date, Respondent was on inactive status with both the Massachusetts and Virginia Bars. Tr. 49, 60.

c. Respondent entered into a close relationship with three parish priests in an effort to repair his marriage, family, and approach to work. Tr. 54, 59.

d. As of the date of the hearing, Respondent's wife had found a new job. Tr. 56.

e. As of the date of the hearing, Respondent was no longer practicing law. Instead, he was a stay-at-home father raising his young children. Tr. 56. Respondent stated

that his plan was to return to trial work in approximately three years (2018), when his oldest child could be trusted to go to and from school independently. Tr. 57.

19. Respondent explained that the process of reducing his workload in 2013 and eventually closing his practice in 2014 allowed him to determine the number of hours he could work per week. Tr. 81.

20. Respondent credibly testified that he now understands that he should have sought help when his workload became overwhelming. Tr. 43.

21. Respondent has taken full responsibility for his actions and has cooperated fully with Disciplinary Counsel. *Id.*

III. CONCLUSIONS OF LAW

Disciplinary Counsel contends that the parties' factual stipulations, along with the exhibits and Respondent's testimony, provide clear and convincing evidence that Respondent violated each of the alleged Rule violations. Respondent also stipulated to violations of each of the alleged Rule violations. Stipulations ¶ 5(a)-(d). We find that Disciplinary Counsel has proven violations of each of the alleged Rules by clear and convincing evidence, as explained below. *See* Board Rule 11.5.

A. Respondent Violated Rules 1.1(a) and (b) by Failing to Provide Competent Representation to his Clients and by Failing to Serve Clients with Skill and Care.

Rule 1.1(a) requires a lawyer to "provide competent representation to a client." The Court has determined that competent representation requires 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) (lawyer who has requisite skill and knowledge, but who does not apply it for particular client, violates obligations under Rule 1.1(a)). Rule 1.1(b) mandates that "a lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." The comments to Rule 1.1 state that competent representation

includes "adequate preparation, and continuing attention to the needs of the representation to assure that there is no neglect of such needs." Rule 1.1, cmt. [5].

In *In re Evans*, the Court explained that:

> To prove a violation [of Rule 1.1(a)], [Disciplinary] Counsel must not only show that the attorney failed to apply his or her skill and knowledge, but that this failure constituted a serious deficiency in the representation. . . . The determination of what constitutes a "serious deficiency" is fact specific. It has generally been found in cases where the attorney makes an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence. . . . Mere careless errors do not rise to the level of incompetence.

902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board Report). Although *Evans* referred to Rule 1.1(a) only, the "serious deficiency" requirement applies equally to 1.1(b). *See In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014). To prove a "serious deficiency," Disciplinary Counsel must prove that the conduct "prejudices or could have prejudiced the client." *Id.* at 422.

Rule 1.1(b) is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report). 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." *In re Nwadike*, Bar Docket No. 371-00 at 28 (BPR July 30, 2004), *recommendation approved*, 905 A.2d 221 (D.C. 2006) (*inter alia*, at the time of the deadline for a plaintiff's attorney to file a D.C. Super. Ct. Civil R. 26(b)(4) expert witness statement and by the close of discovery, the attorney not only failed to fulfill the attorney's court-ordered discovery obligations regarding essential expert opinion, but also had not yet even obtained an opinion and was unaware of whether or not the attorney had proof to sustain the plaintiff's claim); *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00 at 13 (BPR Dec. 27, 2002), *recommendation approved*, 840 A.2d 657 (D.C. 2004) (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").

The competency, skill, and care of an attorney under Rules 1.1(a) and (b) must be evaluated 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].

Here, even if Respondent began work in one or more cases, he then proceeded to ignore Court orders to file briefs in seven court-appointed criminal appeals. FF 4-10. By essentially abandoning his clients and failing to file their briefs, Respondent failed to represent his clients with the requisite levels of competence, skill, and care. *See Drew*, 693 A.2d at 1132; *Lewis*, 689 A.2d at 564. Thus, we find that Disciplinary Counsel has proven violations of Rules 1.1(a) and (b) by clear and convincing evidence.

B. Respondent Violated Rules 1.3(a), (b)(1), and (c) by Failing to Represent Clients Zealously and Diligently Within the Bounds of the Law, Intentionally Failing to Seek His Clients' Lawful Objectives, and Failing to Act with Reasonable Promptness.

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." "Neglect has been defined as indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1254 (D.C. 1997) (quoting *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc) ("*Reback II*")). Rule 1.3(a) "does not require proof of intent, but only that the attorney

has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Bar Docket Nos. 2004-D240 & 2004-D302 at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam); *see also In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report) (Rule 1.3(a) violated even where "[t]he failure to take action for a significant time to further a client's cause . . . [does] not [result in] prejudice to the client").

The Court has found neglect in violation of Rule 1.3(a) where an attorney persistently and repeatedly failed to fulfill duties owed to the client over a period of time. *See In re Chapman*, 962 A.2d 922, 923-24 (D.C. 2009) (per curiam) (respondent violated Rule 1.3(a) where he did not perform any work on the client's case during the eight month term of the representation, failed to conduct any discovery, and did not respond to discovery requests from the opposing party); *In re Ukwu*, 926 A.2d 1106, 1135 (D.C. 2007) (appended Board Report) (respondent violated Rule 1.3(a) when he repeatedly failed to inform his clients about the status of their cases, prepare his clients for hearings and interviews with immigration officials, or prepare himself for court appearances); *Wright*, 702 A.2d at 1255 (appended Board Report) (respondent violated Rule 1.3(a) by failing to respond to discovery requests, a motion to compel, and a show cause order, and failed to respond to the client's numerous requests for information).

Rule 1.3(b)(1) provides that a lawyer shall not intentionally "[f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules." A violation of Rule 1.3(b) requires proof that the respondent was (1) "demonstrably aware of [the] neglect," or (2) "the neglect was so pervasive that [the respondent] must have been aware of it." *Reback II*, 487 A.2d at 240; *see Ukwu*, 926 A.2d at 1116. The Court has explained that ordinary neglect of a client matter "can 'ripen into . . . intentional' neglect in violation of Rule

1.3(b) 'when the lawyer is aware of his neglect' but nonetheless continues to neglect the client's matter." *In re Vohra*, 68 A.3d 766, 781 (D.C. 2013) (appended Board Report) (quoting *In re Mance*, 869 A.2d 339, 341 n.2 (D.C. 2005) (per curiam)).

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." "Perhaps no professional shortcoming is more widely resented by clients than procrastination," and "in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed." Rule 1.3, cmt. [8]. The Court has held that failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). *In re Dietz*, 633 A.2d 850 (D.C. 1993). 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 "very serious violation."

For the same reasons that Respondent violated Rules 1.1(a) and (b), we find that he violated Rules 1.3(a) and (c). Furthermore, we find that Respondent's neglect was intentional. Respondent acknowledged that he received multiple orders from the Court instructing him to file appellate briefs, FF 11, but failed to comply with those orders and continued to neglect the cases. FF 4(a)-(f) (Omar Rimmer - two orders granting his request for extension of time and three *sua sponte* orders); 5(a)-(b) (Gary N. Murphy – two orders); 6(a)-(c) (Ashton Walker – three orders); 7(a)-(d) (Sonceria Rayford – four orders); 8(a) (P.W. – three orders); 9(a) (T.H. – five orders); 10(a) (A.T. – four orders). Thus, we find that Respondent was "demonstrably aware" of his neglect, and therefore violated Rule 1.3(b)(1). *See Vohra*, 68 A.3d at 781.

C. 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).

Respondent testified that he was aware of the Court's orders in each of the seven CJA cases, but failed to comply with the orders. FF 4(a)-(f), 11 ("Respondent was aware that he was appointed as counsel in each of the seven cases . . . and he received notice of the Court's orders instructing him to file briefs."). For the same reason that we found a violation of Rule 1.3(b)(1), Respondent's knowledge of the Court's orders and his subsequent failure to comply with them, we find that Respondent knowingly failed to obey an obligation under the rules of a tribunal in violation of Rule 3.4(c). *See In re Askew*, Bar Docket No. 2011-D393 at 22 (BPR July 31, 2013) (finding a violation of Rule 3.4(c) where the respondent "knowingly disobeyed an order of the Court"), *adopted in relevant part*, 96 A.3d 52, 53-54 (D.C. 2014) (per curiam).

D. Respondent Violated Rule 8.4(d) by Seriously Interfering 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 he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; 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). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). Failure to respond to orders of the Court constitutes a violation

of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *Askew*, Bar Docket No. 2011-D393 at 22-23 (finding a violation of 8.4(d) where the respondent failed to comply with a court orders requiring her to file a brief and to turn over client files), *recommendation adopted in relevant part*, 96 A.3d at 54.

Here, Respondent failed to file briefs in seven cases and ignored multiple Court orders to do so. FF 4-11. This conduct bore directly on the judicial process and tainted it in more than a *de minimis* way because it delayed the Court's consideration of seven separate appeals. *See Askew*, Bar Docket No. 2011-D393 at 22-23 (finding a violation of Rule 8.4(d) based in part on the respondent's failure to respond to Court orders to file a brief, forcing the Court to appoint successor counsel and delaying the Court's consideration of the appeal), *adopted in relevant part*, 96 A.3d at 54.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a 30-day suspension, stayed in favor of one year of probation with the conditions that Respondent (1) notify Disciplinary Counsel and the Board 90 days before resuming the practice of law; (2) consult with the D.C. Bar's Lawyer Assistance Program and its Lawyers Practice Assistant Program at least once each and agrees to waive confidentiality in order to allow Disciplinary Counsel to confirm his participation; (2) not commit any additional Rule violations; and (4) report to a probation monitor and waive confidentiality to allow Disciplinary Counsel to confirm his participation. Respondent agrees with the sanction proposed by Disciplinary Counsel. For the reasons described below, we find that the parties' recommended sanction is not consistent with the sanctions imposed in other cases involving comparable misconduct. *See* D.C. Bar R. XI, § 9(h). Instead, we recommend that Respondent be suspended for six-months, with all but 60 days stayed in favor of one year of probation with the conditions described below.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

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; *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *Elgin*, 918 A.2d at 376). 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)) (internal quotation marks omitted).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent's misconduct was very serious. He intentionally neglected seven separate appeals over the course of approximately one year. Importantly, Respondent was appointed as a CJA attorney in each of those seven cases. The Court has held that "when a [CJA] panel attorney so egregiously fails to fulfill [an] obligation [to pursue an appeal], it undermines the aim of the [CJA], and reflects negatively on both this court and the legal profession." *Askew*, 96 A.3d at 60.

2. Prejudice to the Client

In each of the seven cases at issue, the clients experienced at least some prejudice, in that their cases languished while Respondent failed to work on the appellate briefs until the Court vacated his appointments and appointed successor counsel. Even though none of the appeals were dismissed as a result of Respondent's neglect, the delay he caused to each client is a significant aggravating factor. *See In re Mance*, 869 A.2d 339, 343 n.6 (D.C. 2005) (per curiam) ("Although respondent's client ultimately did not lose his right to appeal his criminal convictions, the right was in jeopardy and the client suffered unnecessary delay and anxiety.").

3. Dishonesty

There is no evidence that Respondent engaged in dishonesty. To the contrary, we find that Respondent testified credibly and candidly about his misconduct.

4. Violations of Other Disciplinary Rules

Respondent violated seven Rules across seven cases, as described above.

5. Previous Disciplinary History

Respondent has no record of prior discipline.

6. Acknowledgement of Wrongful Conduct

After being removed from the seven Court-appointed cases, Respondent promptly transferred his files to successor counsel. FF 13. He also cooperated with Disciplinary Counsel and was willing to stipulate to all of the underlying facts and Rule violations. FF 21. Most importantly, Respondent's testimony demonstrated his genuine remorse, recognition of the seriousness of his misconduct and lessons learned from his mistakes. *See* FF 18-20. Thus, Respondent's acknowledgment of the wrongfulness of his misconduct serves as a significant mitigating factor.

7. Other Circumstances in Aggravation and Mitigation

Respondent testified credibly that, at the time of the misconduct, he was experiencing marital problems, stress from caring for his young children, and sadness following the death of a close friend. Tr. 15-16. At the time, Respondent rationalized his neglect with the belief he would be able to eventually catch up on his to-do list. FF 16(b). Respondent is responsible for his ethical violations; however, we consider the context of his personal circumstances, which may have triggered his poor decision-making, as a factor in mitigation of sanction.

C. Sanctions Imposed for Comparable Misconduct

"Generally, absent aggravating factors, a first instance of neglect of a single client matter [in violation of Rule 1.3(a)] warrants a reprimand or public censure." *Chapman*, 962 A.2d at 926. With respect to violations of Rule 1.3(b), "a suspension of up to six months is generally imposed for cases involving serious neglect and multiple failures to zealously represent clients." *In re Lyles*, 680 A.2d 408, 418 (D.C. 1996) (per curiam) (appended Board Report); *see, e.g.*, *In re Francis*, 137 A.3d 187, 189-190 (D.C. 2016) (per curiam) (30-day suspension, stayed in favor of six months of probation, where the respondent failed to oppose a motion to dismiss due to a disagreement with

his client, in violation of Rules 1.3(b)(1) and (b)(2) and 1.4(a) and (b)); *In re Murdter*, 131 A.3d 355, 358 (D.C. 2016) (per curiam) (six-month suspension, with all but 60 days stayed in favor of one year of unsupervised probation, for the neglect of five court-appointed criminal appeals, in violation of Rules 1.1(a) and (b), 1.3(a), (b)(1), and (c), 3.4(c), and 8.4(d), notwithstanding compelling mitigation); *In re Schoeneman*, 891 A.2d 279, 284-87 (D.C. 2006) (per curiam) (appended Board Report) (four-month suspension where the respondent neglected three cases over a two-year period, resulting in prejudice to each client, failed to notify clients of his suspension, and falsely told one client that his case was "fine" after it had been dismissed, in violation of Rules 1.1(a), 1.3(a) and (b), 1.4(a), and 8.4(c) and (d)); *In re Joyner*, 670 A.2d 1367, 1368 (D.C. 1996) (30-day suspension where the respondent agreed to file a claim of assault against the District of Columbia on behalf of a client, but did no work on the case and ultimately missed the one-year statutory deadline for filing suit due to a clerical error in his office, in violation of the predecessors to Rules 1.3(a), (b)(1), and (b)(2)); *see also Askew*, 96 A.3d at 62 (six-month suspension, with all but 60 days stayed in favor of one year of supervised probation, for "egregious" neglect of a court-appointed criminal appeal, in violation of Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b), 1.16(d), 3.4(c), and 8.4(d), aggravated by her failure to cooperate with successor counsel).

In support of its recommendation of a stayed 30-day suspension, Disciplinary Counsel relies on three cases, none of which involved intentional appellate neglect of a court-appointed case. *In re Baron*, 808 A.2d 497, 498 (D.C. 2002) (per curiam) (stayed 30-day suspension) is not a neglect case; instead, it involved failure to communicate and failure to turn over the client's file in a CJA case. *In re Vohra*, 762 A.2d 544 (D.C. 2000) (stayed 30-day suspension) involved ordinary neglect, rather than intentional neglect, and the misconduct was related to a civil case, rather than seven court-appointed criminal appeals. *In re Pullings*, 724 A.2d 600, 602 (D.C. 1999)

(per curiam) (appended Board Report) (60-day stayed suspension) is the most comparable of the three cases, because it involved intentional neglect. However, it involved only one case, not seven, the respondent was not court-appointed, and she never entered an appearance or filed an appeal and thus did not ignore court orders to file a brief.

Instead, the most comparable case, which the Court decided after the briefs had already been submitted in this matter, is *Murdter*, 131 A.3d at 355, in which the respondent received a six-month suspension, with all but 60 days stayed in favor of probation with conditions. As in this case, the respondent in *Murdter* was found to have violated Rules 1.1(a) and (b), 1.3(a), (b)(1), and (c), 3.4(c), and 8.4(d). *Id.* at 357 n.2. The neglect in *Murdter* took place in the context of five CJA cases and involved the respondent's failure to respond to multiple court orders for just over one year. *Id.* at 356. Finally, the record in *Murdter* reflected substantial mitigating factors, including cooperation with Disciplinary Counsel, lack of prior discipline, the fact that that medical problems, combined with his separate trial practice, contributed to the misconduct, and demonstrable efforts to reorganize his practice, although probation conditions were designed to provide extra assurance that the respondent would be able to keep up with his workload. *Id.* at 361-62 (appended Board Report). The facts in *Murdter* are somewhat distinguishable insofar as the respondent pleaded guilty to contempt for failure to file briefs in two of the five matters, *id.* at 359 (appended Board Report); however, in two cases, Respondent was ordered file briefs or show cause why he should not be held in contempt. FF 4(f), 7(d). The record does not show whether Respondent was charged with contempt, but his failure to comply with those two Court orders would have provided an adequate basis for such charges.

In *Murdter*, Disciplinary Counsel and the respondent were in agreement that a public censure would be the appropriate sanction; however, the Court agreed with the Board's

recommended sanction of a partially stayed six-month suspension. *Id.* at 358. In so doing, the Court emphasized that CJA neglect is in its own category in terms of sanction. *Id.* at 357 ("[R]espondent's disregard of client matters took on heightened significance in the context of his appointment to represent indigent appellants . . . .") (citing *Askew*, 96 A.3d at 60). The Court considered Disciplinary Counsel's contention that the disciplinary system should not "punish" attorneys who are "genuinely remorseful and committed to remediation," but found that "that concern cannot be at the expense of deterring a lawyer's gross indifference, as exemplified here, to duties owed both clients and the court." *Id.* at 357-58. The ultimate sanction reflected a balance between the respondent's "combined defaults" in five CJA cases and the mitigating factors. *Id.* at 358. As explained above, this case is not precisely comparable to *Murdter* insofar as the mitigating factors are slightly different, *Murdter* involved a conviction on two counts of criminal contempt, and this case involved seven cases, rather than five. However, due to the overwhelming similarities between the two cases, as well as Rule XI's comparability requirement, we recommend that the Court impose the same sanction in this case that it imposed in *Murdter*.

IV. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.1(a) and (b), 1.3(a), (b)(1), and (c), 3.4(c), and 8.4(d), and should be suspended for six months, with all but sixty (60) days stayed in favor of one year of probation with the conditions that Respondent (1) notify Disciplinary Counsel and the Board ninety (90) days before resuming the practice of law; (2) consult with the D.C. Bar's Lawyer Assistance Program at least once and agree to waive confidentiality in order to allow Disciplinary Counsel to confirm his participation; (3) undergo an assessment by the D.C. Bar's Director for the Practice Management Advisory Service, or his designee, implement any recommendations he or she might make, and sign a limited waiver

permitting that program to confirm compliance with this condition and cooperation with the assessment process; (4) not commit any additional Rule violations during the period of probation; and (5) if he resumes the practice of law during the period of probation, report to a probation monitor and waive confidentiality to allow Disciplinary Counsel to confirm his compliance with monitoring.

AD HOC HEARING COMMITTEE

/CER/
Caroline E. Reynolds, Esquire,
Chair

/GK/
Gary Kloepfer
Public Member

/EY/
Esther Yong, Esquire,
Attorney Member

Dated: December 28, 2016