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

In the Matter of:	:	
	:	
RALEIGH BYNUM, II,	:	
	:	
Respondent.	:	Board Docket No. 16-BD-029
	:	Bar Docket No. 2014-D378
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 503380)	:	

Report and Recommendation of the Ad Hoc Hearing Committee

Disciplinary Counsel charged Respondent Raleigh Bynum, II, a member of the District of Columbia Bar, with violating[1]:

a. D.C. Rule 1.3(a) (S.C. Rule 1.3), by failing to provide zealous and diligent representation;

b. D.C. Rule 1.3(b)(1) (S.C. Rule 1.3), by intentionally failing to seek the lawful objectives of his clients;

c. D.C. Rule l.3(c) (S.C. Rule 1.3), by failing to act with reasonable promptness in representing his clients;

[1] "D.C. Rule" refers to the Rules of Professional Conduct for the District of Columbia Bar. "S.C. Rule" refers to the Rules of Professional Conduct for the South Carolina Bar. The Specification of Charges cites to violations of both District of Columbia and South Carolina Rules: "Respondent's conduct violated the following District of Columbia Rules of Professional Conduct, and/or the counterpart provisions in the South Carolina Rules of Professional Conduct, as made applicable by D.C. Rule 8.5(b)(1)." Spec. ¶ 45. D.C. Rule 8.5(b)(1) is discussed *infra* at 42-44.

d. D.C. Rule 1.4(a) (S.C. Rule 1.4(a)), by failing to keep his clients reasonably informed about the status of their matter and failing to promptly comply with reasonable requests for information;

e. D.C. Rule l.4(b) (S.C. Rule 1.4(b)), by failing to explain a matter to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation;

f. D.C. Rules l.5(b) and (e) (S.C. Rules 1.5(b) and (e)), by associating with a lawyer from another firm, but not providing his clients anything in writing about the division of fees or the fee to be paid to the other lawyer, and not obtaining his clients' informed consent to the arrangement;

g. D.C. Rule l.7(b)(2) (S.C. Rule l.7(a)(2)), by representing clients with respect to a matter where his representation was or likely would be affected by his representation of another client, without obtaining the informed consent of all affected clients;

h. D.C. Rule l.7(b)(3) (S.C. Rule l.7(a)(2)), by representing clients with respect to a matter where his representation of another client was or likely would be affected by such representation, without obtaining the informed consent of all affected clients; and

i. D.C. Rule 8.4(c) (S.C. Rule 8.4(d)[2]), by engaging in conduct involving dishonesty and misrepresentation.

I. INTRODUCTION

The charges in this case stem from Respondent's representation of members of the Reid family in connection with the 2008 death of Dierdre Gist Reid, who passed away after she went into labor and delivered a baby girl at a hospital in South Carolina. The Estate of Dierdre Gist Reid, a resident of South Carolina, had a potential medical malpractice action against the hospital, medical providers, and the anesthesiologist because of the claim (supported by a medical expert) that an incorrectly placed epidural caused her death after the birth of her daughter. Her husband, William Henry Reid, Jr., ("Mr. Reid"), hired Thomas Boggs, Esquire, a South Carolina lawyer, to file a petition for probate in the Probate Court in the County of Spartanburg, South Carolina, and Mr. Reid initially named himself as personal representative.

Mr. Reid, however, withdrew his application to be appointed personal representative of his deceased wife's estate when he was arrested on drug distribution charges. He substituted his parents, Frances Reid and William H. Reid, Sr., as personal representatives, and the Probate Court appointed his parents in 2008. Frances Reid and William H. Reid, Sr., were then represented by Cameron Boggs, Esquire (no relation to Thomas Boggs), in Probate Court, and Ms. Boggs found a

[2] The Specification of Charges erroneously refers to S.C. Rule 8.4(d) as "S.C. Rule 8.4(c)." The mistake was noted on the record at the hearing. *See* Tr. 549.

medical malpractice attorney licensed in South Carolina, S. Blakey Smith, Esquire, who filed two wrongful death and survival actions ("the medical malpractice actions") in 2009 on behalf of the Estate in the South Carolina courts against the hospital, medical providers, and Dr. Gregory Pacentine, who attended the birth. After extensive discovery and attempted mediation of the claims in December 2011, however, Mr. Smith withdrew from representing Frances Reid and William H. Reid, Sr., due to Mr. Smith's disagreements with Mr. Reid, who remained as the statutory beneficiary of his wife's Estate.

In early 2012, Respondent, a member of the District of Columbia Bar but not the South Carolina Bar, began representing both Mr. Reid and his parents. The charges in the Specification relate to Respondent's representation of both Mr. Reid and his parents in the South Carolina medical malpractice actions, the Estate of Deirdre Gist Reid in Probate Court in South Carolina, and Mr. Reid in a separate life insurance matter.[3]

Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to Bar R. XI, § l (a), jurisdiction is found because Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on March 5, 2007, and assigned Bar number 503380. DX 1.[4]

[3] Frances Reid and William H. Reid, Sr., were named as plaintiffs in the two medical malpractice actions in their capacity as personal representatives of the Estate. *See* DX 11-H, 11-I. Mr. Reid was not identified as a party of either action, but he remained as a statutory beneficiary of the Estate.

[4] "DX" refers to Disciplinary Counsel's exhibits, and "RX" refers to Respondent exhibits. "Spec." refers to the Specification of Charges filed on June 5, 2016. "Tr." refers to the transcript of the

II. PROCEDURAL HISTORY

Disciplinary Counsel's Specification of Charges was filed on June 5, 2016 and served on Respondent on June 9, 2016. DX 2, 4. The Chair of the Ad Hoc Hearing Committee, Christian S. White, Esquire, granted Respondent's request to extend the time for filing his Answer until July 29, 2016.

A prehearing conference was held on August 10, 2016, before the Chair with Disciplinary Counsel represented by Julia L. Porter, Esquire, and Respondent represented by William C. Johnson, Jr., Esquire. Respondent informed the Chair that he would be filing, before the end of the day, both an Answer to the Specification of Charges and a Notice of Intent to Raise Disability in Mitigation of Sanction. Preh. Tr. 5, 15. On August 11, 2016, the Chair issued an order memorializing the prehearing conference and granting Disciplinary Counsel's unopposed motion to present the testimony of Frances Reid and William H. Reid, Sr., by videoconference. On August 26, 2016, the Chair issued an order accepting the late-filed Answer and Notice of Intent to Raise Disability in Mitigation.

A contested hearing was held on August 30 and 31, 2016, before the Ad Hoc Hearing Committee, which included the Chair, Lisa A. Wilson, Esquire, and Mary C. Larkin, public member. Disciplinary Counsel called four witnesses: Respondent; Mr. Reid; Frances Reid (Mr. Reid's mother); and Kevin O'Connell (an investigator with the Office of Disciplinary Counsel). Respondent testified on his own behalf

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hearing on August 30 and 31, 2016. "Preh. Tr." refers to the transcript of the prehearing conference on August 10, 2016.

and did not call any other witnesses. During the hearing, the Chair admitted all of Disciplinary Counsel's exhibits (DX 1-41) and Respondent's exhibits (RX 1-3). *See* Tr. 174-183, 270, 294, 468, 523, 539-540 (Disciplinary Counsel's exhibits); Tr. 471-73 (Respondent's exhibits).

Disciplinary Counsel filed Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanction on September 26, 2016. Respondent filed his Response on October 11, 2016 and, as directed by the Chair, his Amended Response on October 25, 2016. Disciplinary Counsel filed its Reply on November 1, 2016.

III. FINDINGS OF FACT

The Hearing Committee finds that Disciplinary Counsel has established the following facts by clear and convincing evidence:

A. Respondent and His Law Practice

1. Respondent graduated from law school in 1998 but did not become a member of the District of Columbia Bar until March 5, 2007. DX 1 (Registration Statement); Tr. 25 (Respondent). Respondent has never been a member of any other State Bar, but in 2009, he became a member of the Bar of the United States District Court for the District of Columbia. Tr. 25-26.

2. Before becoming a member of the District of Columbia Bar in March 2007, Respondent had not worked in a law firm and had no experience representing clients. Tr. 26-27 (Respondent). Since becoming a member of the District of Columbia Bar, Respondent has practiced alone—he never had any partners or associates. Tr. 27-28.

3. Respondent practices civil and some criminal law. Tr. 32 (Respondent). When he agreed to represent Mr. Reid and then also his parents, Respondent had no experience in litigating a medical malpractice action. Tr. 32-33.

4. Between 2011 and approximately January 2014, Respondent had an office address at 1776 I Street, N.W., Suite 900, Washington, D.C. *See* DX 5. In January or February 2014, Respondent moved his office to 910 17th Street, N.W., Suite 800, Washington, D.C. DX 37; Tr. 28 (Respondent). Respondent continued to use the 17th Street address (which he still lists with the District of Columbia Bar as his sole address), but, in or around 2015, he used the office only to receive mail. Tr. 24-25, 28-31, 145 (Respondent); Tr. 279-80 (O'Connell).

B. The Medical Malpractice Actions

5. Deidre Gist Reid died on October 7, 2008, a few weeks after giving birth to her second daughter. Tr. 193 (Mr. Reid); Tr. 334 (Frances Reid); DX 7 at 22 (Estate of Deirdre Gist Reid Probate Court file). Ms. Reid was twenty-nine years old and a resident of Spartanburg, South Carolina when she died. She was survived by her husband, William Henry Reid, Jr. ("Mr. Reid"), their newborn daughter, as well as another daughter born in 2001 who does not have the last name of "Reid." DX 7 at 2-3.

6. Mr. Reid filed a petition for probate on October 9, 2008, with the Probate Court in County of Spartanburg, South Carolina. DX 7 at 2-7. When he filed the petition for probate, Mr. Reid was represented by Thomas Boggs, a criminal defense lawyer in South Carolina whom Mr. Reid had known for many years and

who said he could handle the medical malpractice case. Tr. 194-97 (Mr. Reid); Tr. 337-38 (Frances Reid); DX 7 at 7. Mr. Boggs identified Mr. Reid and Deirdre Gist Reid's two daughters as intestate heirs to the Estate. DX 7 at 3.

7. Deidre Reid had few assets when she died, but her Estate had a potential medical malpractice action against the hospital, the medical providers, and the doctors who treated her before her death. DX 7 at 26-31, 42-43, 106-07. Based on the investigation done by lawyers representing the Estate, they believed that the medical providers had incorrectly placed the epidural, resulting in the mis-delivery of anesthetic, which caused Ms. Reid to go into cardiac arrest and ultimately led to her death a few weeks after the birth of her daughter. Tr. 193-94 (Mr. Reid); DX 11 at 29-31.

8. On October 29, 2008, Mr. Reid withdrew his application to be appointed personal representative of his late wife's Estate, and Mr. Boggs filed a petition for Mr. Reid's parents—Frances Reid and William H. Reid, Sr.—to be appointed personal representatives. DX 7 at 9-16. Mr. Reid had asked his parents to act as personal representatives because he had been charged with criminal drug offenses. Tr. 198 (Mr. Reid); Tr. 335-36 (Frances Reid).

9. Mr. Reid and Ms. Reid's newborn daughter lived with one of his sisters upon his arrest on these charges in late 2008. Tr. 198-99 (Mr. Reid); Tr. 334 (Frances Reid). In April 2011, Mr. Reid was convicted of felony drug offenses and sentenced to eight years in prison. Spec. ¶ 12; Answer ¶ 12. At the time of the

disciplinary hearing, Mr. Reid was still serving the eight-year sentence. Tr. 190, 198 (Mr. Reid).

10. On November 10, 2008, the Probate Court appointed Frances Reid and William H. Reid, Sr., as personal representatives of Ms. Reid's estate. DX 7 at 20-21. Frances Reid took the lead in dealing with the Probate Court and communicating with the lawyers whom her son retained to assist in the representation. Tr. 337-342, 357 (Frances Reid); Tr. 72 (Respondent). Until becoming the personal representatives for the Estate, neither Frances Reid nor William H. Reid, Sr. had ever been involved in any court matter. Tr. 336, 362, 372-73 (Frances Reid); *see* Tr. 56, 61 (Respondent described the parents as "not the most sophisticated of people").

11. Thomas Boggs, the lawyer who filed the initial probate papers for Mr. Reid, also represented his parents in the probate case until late 2008 or early 2009, when Cameron Boggs (unrelated), another South Carolina lawyer who was representing Mr. Reid in his criminal matter, took over the representation of his parents in the probate case. Tr. 197 (Mr. Reid); Tr. 337-38 (Frances Reid); DX 7 at 15, 39-40, 112-14, 120-21.

12. At Cameron Boggs's request, S. Blakey Smith, a South Carolina lawyer experienced in medical malpractice matters, assumed responsibility for pursuing the Estate's claims against the hospital, medical providers, and doctors who treated Ms. Reid before her death. Tr. 195-97, 200-01 (Mr. Reid); Tr. 338 (Frances Reid). Frances Reid and William H. Reid, Sr., entered into an agreement with Mr. Smith

and met with him a number of times concerning the medical malpractice action. Tr. 338, 340-41 (Frances Reid); *see also* Tr. 200-01 (Mr. Reid).

13. On April 14, 2009, Mr. Smith filed a Notice of Intent to File Suit with the Court of Common Pleas, County of Spartanburg, South Carolina, on behalf of Frances Reid and William H. Reid, Sr., in their capacity as personal representatives of the Estate of Deirdre Gist Reid. DX 7 at 78-80. The notice listed the medical providers and hospital that had treated Deidre Reid as defendants, and attached an affidavit of a medical expert describing the negligent treatment. DX 7 at 81-91.

14. On August 14, 2009, Mr. Smith filed a wrongful death and survival action against the medical providers and hospital with the Court of Common Pleas, Civil Action No. 2009-CP42-4453 (the medical malpractice action). *See* DX 8 (Spartanburg County Seventh Judicial Circuit Public Index, *Reid Sr. v. Ellington, et al.*); DX 11 at 1-14 (selected documents from medical malpractice cause of action). The complaint identified the following parties as defendants: Dr. Kenneth R. Ellington, MD; James Fleitz, CRNA, Crescent Anesthesia Associates, LLC; and Mary Black Health Systems d/b/a Mary Black Memorial Hospital. DX 28 at 35-37 (Complaint). Frances Reid and William H. Reid, Sr., personal representatives of the Estate, were named as the plaintiffs.

15. In January 2010, Mr. Smith notified the Probate Court of the pending medical malpractice action and the need to keep the Estate open until the action was resolved. DX 7 at 78. By that time, the medical malpractice action was the only asset of the Estate. Tr. 59-60, 434 (Respondent).

16. In July 2009, October 2009, and February 2010, Mr. Reid sent letters to the Probate Court asking it to remove his parents as personal representatives because of their age and memory problems. More importantly, he believed Ms. Boggs and Mr. Smith were trying to convince his parents not to let him participate in the medical malpractice action or share in any award or judgment. Tr. 202-04 (Mr. Reid); DX 7 at 41, 56, 104-105, 135.

17. When Mr. Reid wrote the Probate Court to have his parents removed as personal representatives, he was incarcerated. Mr. Reid continued to be incarcerated for the remainder of 2009 and thereafter. Spec. ¶ 12; Answer ¶ 12.

18. Frances Reid did not know about her son's letters to the Probate Court seeking to remove her and her husband as personal representatives. Frances Reid, however, had talked to her son about their withdrawing because of their age, her own health problems, the anxiety it was causing, and their failure to get things done. Tr. 343, 372-73 (Frances Reid).

19. The Probate Court declined to remove the parents as personal representatives, so Frances Reid and William H. Reid, Sr., continued to serve in that capacity through at least 2015. Tr. 205 (Mr. Reid); Tr. 373-74 (Frances Reid); DX 7 at 42-43, 59, 106-07, 137-38.

20. While he was representing Frances Reid and William H. Reid, Sr., in their role as "Personal Representatives of the Estate of Deirdre Gist Reid" and the plaintiffs in the medical malpractice action, Mr. Smith took extensive discovery and arranged for experts to testify about the defendants' negligence and the extent of the

Estate's actual and punitive damages. DX 11 at 15-24; DX 28 at 25-26, 61-78. Over twenty depositions had been taken, and over twenty-nine medical records had been obtained by Mr. Smith. DX 28 at 25-26 (Letter forwarding documents from Mr. Smith to Respondent, Dec. 20, 2011). Based on evidence uncovered during the litigation, Mr. Smith filed a second medical malpractice action in May 2011 against Dr. Gregory Pacentine, the doctor who placed the epidural in Deirdre Reid (*Reid, et al. v. Pacentine*, 2011-CP-42-2318). DX 11 at 25-35.

21. Frances Reid was in frequent communication with Mr. Reid and told him about her discussions with Mr. Smith and what was transpiring in the medical malpractice actions and related Probate Court proceeding. Tr. 200-01, 204-05 (Mr. Reid); Tr. 388-89 (Frances Reid).

22. Mr. Smith also communicated with Mr. Reid, who was a statutory beneficiary of the estate. Tr. 201-02 (Mr. Reid); Tr. 340-41 (Frances Reid). After the litigation was underway, Mr. Smith requested that Mr. Reid waive his statutory right to receive anything from the estate.[5] Mr. Reid would not agree to do so. Tr. 206-07 (Mr. Reid). Frances Reid knew that Mr. Smith was frustrated by the fact she shared their attorney-client communications with Mr. Reid. Tr. 341-43, 389 (Frances Reid) ("[H]e said that I was the representative and I wasn't supposed to tell my son anything.").

[5] The record is unclear as to why Mr. Smith wanted Mr. Reid to waive his statutory right as a beneficiary of the Estate. Ms. Reid's two daughters were the other two potential statutory beneficiaries.

23. Around the time of the mediation of the case, Mr. Smith advised Frances Reid that he would seek to withdraw from the representation because of his disagreements with Mr. Reid. Tr. 341-42, 388-89 (Frances Reid); *see also* Tr. 205-07 (Mr. Reid); DX 11 at 36. As recalled by Mr. Reid, Mr. Smith "basically gave me an ultimatum basically stating that, you know, if he don't – if I don't remove myself from the case [renounce rights to the estate] that he is, he's going to remove his self [sic] from the case." Tr. 206.

24. On December 5, 2011, Mr. Smith moved to withdraw as counsel for Frances Reid and William H. Reid, Sr., in both the initial wrongful death/medical malpractice action against the medical providers and the hospital, and the second wrongful death/medical malpractice action against Dr. Pacentine.

25. At the same time, Mr. Smith filed motions to remove the two actions from the docket pursuant to Rule 40(j)—a South Carolina procedural rule that permits a party to strike its complaint from the docket one time and restore it, by motion, within one year, provided all the adverse parties agree. DX 11 at 37-46, 55-62; *see also* Tr. 207 (Mr. Reid); Spec. ¶ 14; Answer ¶ 14.

26. On December 7 and 8 of 2011, the Court of Common Pleas entered orders removing the medical malpractice case against the hospital and providers and the individual case against Dr. Pacentine from the regular docket. Spec. ¶ 15; Answer ¶ 15. The Court granted Mr. Smith's motion to withdraw from both cases. DX 11 at 47, 49, 49-54, 63, 66-69. Accordingly, Mr. Smith acted as Frances Reid

and William H. Reid, Sr.'s counsel until early December 2011. Tr. 338, 340-41 (Frances Reid); DX 8; DX 11 at 1-59.

27. Based on the evidence that Mr. Smith had developed during his representation, the Estate had a "very good" and "solid" case against the hospital and medical providers. DX 17 at 2-3 (April 14, 2015 Letter from Respondent to ODC); Tr. 58 (Respondent). An award or settlement could have made a substantial difference in the life of Ms. Reid's statutory beneficiaries, especially her two children. The initial and supplemental inventories reflected that Ms. Reid only had $108 in bank accounts, a car valued at less than $4,000, and a house subject to a mortgage exceeding the value of the house by more than $4,000. After the estate was opened, the house was sold at foreclosure. DX 7 at 26-31, 33-38, 47-55, 125.

C. The Joint Representation of Mr. Reid and His Parents, Frances Reid and William H. Reid, Sr.

28. After Mr. Smith advised Frances Reid and William H. Reid, Sr. of his intention to withdraw from the representation, Mr. Reid began to look for another lawyer to pursue the medical malpractice actions. Initially, he contacted another South Carolina lawyer, but the lawyer declined to take the case. Tr. 207-08 (Mr. Reid).

29. Brian Eaves, another inmate in the South Carolina prison where Mr. Reid was incarcerated, told Mr. Reid about Respondent, whom Mr. Eaves said could represent him in the South Carolina medical malpractice actions. Tr. 208-09; 215-16 (Mr. Reid); Tr. 342-43 (Frances Reid); *see also* Tr. 35-36, 417-18 (Respondent). Mr. Reid testified that Mr. Eaves told him Respondent was his cousin. Tr. 208 (Mr.

Reid). *But see* Tr. 35 (Respondent stated Eaves was not his cousin, but an "associate" from Charlotte, North Carolina).

30. After Mr. Eaves's introduction, Mr. Reid talked to Respondent by telephone two or three times and later met with Respondent in late December 2011, when Respondent traveled to the South Carolina prison. Tr. 209-10, 213 (Mr. Reid); Tr. 37, 418-19 (Respondent). Mr. Reid credibly testified that Respondent told him he had handled other medical malpractices actions. Tr. 215 (Mr. Reid); DX 12 at 1 (Letter from Mr. Reid to Office of Disciplinary Counsel ("ODC"), Oct. 27, 2014); DX 19 at 2 (Letter from Mr. Reid to ODC, May 3, 2015). Mr. Reid also credibly testified that Respondent did not tell him during their initial conversations or anytime thereafter that he (Respondent) was not licensed to practice law in South Carolina and therefore could not appear in court without associating with South Carolina counsel. Tr. 215-16, 223, 251 (Mr. Reid); *see also* DX 12 at 1; DX 19 at 2.

31. Respondent denied that he failed to inform Mr. Reid that he was not licensed in South Carolina. Tr. 38-39; 420-21; DX 17 at 2 (Respondent falsely claimed he advised Mr. Reid that he was "not locally licensed") (Letter from Respondent to ODC, Apr. 15, 2015). The Hearing Committee, however, notes that Respondent had no record of the conversations that he claims he had with Mr. Reid or his parents, and Respondent's retainer agreement did not suggest any limitations of Respondent's legal representation in South Carolina courts or his ability to handle a medical malpractice claim. The Committee finds that Respondent's testimony that

he did advise Mr. Reid that he was not licensed in South Carolina was intentionally false.

32. In late December 2011 or early January 2012, Respondent mailed Mr. Reid a retainer agreement stating that Respondent would provide his "Client," Mr. Reid, with "representation in filing a wrongful death/medical malpractice cause of action in the death of Deidre Reid." DX 5 (Retainer Agreement); Tr. 210-12, 220, 267 (Mr. Reid); *see also* Tr. 37 (Respondent). Although not named as a plaintiff in the medical malpractice action (his parents were named as plaintiffs in their role as personal representatives), Mr. Reid was a statutory beneficiary of the Estate of Deirdre Gist Reid. Tr. 261 (Mr. Reid).

33. Based on the pleadings, discovery, and other documents that Mr. Smith had sent him, Respondent knew that the case had been filed more than two years earlier and that the parties had completed substantial discovery. Tr. 58-60, 66-67 (Respondent); DX 28 at 25-26 (Letter from Mr. Smith to Respondent, Dec. 20, 2011 letter) (transmitting pleadings, transcripts of deposition, medical records, and other documents).

34. The contingent fee Respondent set forth in the retainer agreement he gave to Mr. Reid was for 33% of the amount recovered before suit was filed, and 40% after suit was filed (even though the suit already had been filed by Mr. Smith). Respondent admitted that the fee described in the retainer agreement had made no adjustment for any lien asserted by Mr. Smith or the sharing of fees for completed work. Tr. 66-68 (Respondent); DX 5 at 1. The boilerplate language in the retainer

did not account for the fact that the suit itself had already been filed. The retainer agreement included a provision permitting Respondent to retain co-counsel but only after consulting with the client about the co-counsel and disclosing any fee arrangement prior to retaining, or consulting with, co-counsel. DX 5 at 2. Respondent did not include any language in the retainer agreement about how his association with another South Carolina counsel would affect the fees to be charged or why association with local counsel was required. DX 5.

35. Mr. Reid testified that he did not sign Respondent's retainer agreement because he had some concerns about some of the terms. Tr. 210-12, 250 (Reid); *see also* DX 19 at 2 (Letter from Reid to Office of Disciplinary Counsel, May 7, 2015). Yet, the retainer agreement Respondent later produced to Disciplinary Counsel included what purported to be Mr. Reid's signature. DX 5 at 3. Respondent testified that he had received the Retainer agreement pursuant to a fax transmission from Mr. Reid's girlfriend, Adrian Middleton. Tr. 423-27 (Respondent). Respondent's testimony on this question, however, directly contradicts what he had previously written to Disciplinary Counsel. *See* DX 17 at 2 (Letter from Respondent to ODC, April 14, 2015). In that letter, Respondent wrote that Mr. Reid "executed the retainer agreement during one of those [jail] visits." *Id*. Accordingly, either his testimony or his written representation to ODC on this question was intentionally false.

36. In early March 2012, Respondent called Frances Reid and told her that he was representing her son and would be sending her and her husband a retainer agreement to sign and return so that he could represent them in the medical

malpractice actions. Tr. 344, 359 (Frances Reid). During the call, Respondent did not tell Frances Reid anything about himself, including that he was not licensed to practice law in South Carolina and that he could not appear in court without associating with a South Carolina lawyer. Tr. 349 (Frances Reid). Frances Reid testified that she received Respondent's retainer agreement in the mail with three blank signature lines. Tr. 344-47, 531 (Frances Reid). The retainer agreement that Respondent sent, which Respondent later signed and dated March 15, 2012, included the exact same provisions as the retainer agreement Respondent had provided to Mr. Reid, with one exception—the contingent fee Respondent said he would charge the parents was 35% before suit was filed. DX 6; DX 41. Frances Reid and William H. Reid, Sr. signed the retainer agreement, although William H. Reid, Sr. signed his name on the line for the attorney's signature in error. Tr. 532, 534, 538 (Frances Reid); DX 41. The copy of the retainer agreement that Respondent later produced to ODC as part of his file, however, included a fully-executed retainer agreement. Frances Reid testified that someone else had signed her husband's name on the correct line. Tr. 345-46, 533, 536-39 (Frances Reid: signature on retainer agreement, DX 6 at 3, not her husband's; her husband did not include "Sr." after his signature, and he included middle initial of "H"). *Compare* DX 6 at 3, *with* DX 41 at 3.

37. Disciplinary Counsel did not present any testimony or writing analysis from a handwriting expert to support its claim that Respondent forged Mr. Reid's or his parents' signatures in the retainer agreements. Absent such evidence, the

Committee is unable to determine whether the alleged forgeries have been proven by clear and convincing evidence.

38. With or without a validly signed retainer agreement, both Mr. Reid and Respondent testified that they had an agreement that Respondent would represent Mr. Reid in the medical malpractice actions. Tr. 33-34, 59, 496-98 (Respondent); Tr. 260-62, 268 (Mr. Reid). Respondent further testified that he viewed Mr. Reid, as well as his parents, as "his clients" regardless of the viability of an enforceable retainer agreement. Tr. 496, 498 (Respondent).

39. Respondent knew that Mr. Reid had tried previously to remove his parents as personal representatives. Tr. 74 (Respondent). Information about Mr. Reid's attempts to remove his parents was included in the court records that Respondent reviewed (Tr. 58-60), and Respondent acknowledged that he and Mr. Reid had discussed the prior effort to remove his parents as personal representatives. *See* Tr. 73-74 (Respondent); Tr. 217, 220-21 (Mr. Reid); DX 17 at 2 (Letter from Respondent to ODC, April 14, 2015); DX 28 at 9-12 (documents from Respondent's file). Respondent also admitted also that he was aware that prior counsel, Mr. Smith, had attempted to have Mr. Reid renounce his share to his late wife's estate. Tr. 494 (Respondent).

40. Respondent, however, never advised Mr. Reid that representing his parents at the same time presented a conflict or potential conflict. Tr. 219 (Mr. Reid). Mr. Reid credibly testified that Respondent did not tell him whether information would be shared, or make any disclosures about nature of the conflict or potential

conflict and the possible adverse consequences of joint representation. Tr. 219-220. 222-23 (Mr. Reid). Respondent also never sought the informed consent for joint representation of Frances Reid and William H. Reid, Sr., or for the joint representation with their son. Tr. 349-350 (Frances Reid). Tr. 219-220; 149-150.[6] Respondent testified that he was unaware of the South Carolina rule that requires attorneys to obtain informed consent in writing prior to joint representations. Tr. 149-150.

41. Respondent claimed that he initially could not recognize the conflict in representing both Mr. Reid and his parents. *See* Tr. 147 (Respondent). Respondent testified that advice concerning a potential conflict was not required because "when I first became involved everyone was . . . on the same page" and "if I was going to get involved, I told Mr. Reid that, you know all of the foolishness that had happened with the other attorneys, we weren't going to have that . . . ." Tr. 147 (Respondent).

42. By August 2012, however, Mr. Reid wrote the Probate Court again to seek removal of his parents as personal representatives because of their age and because he thought they wanted to remove him as a statutory beneficiary. DX 7 at 135 (Mr. Reid's letter of August 16, 2012); *see also* DX 28 at 21-24 (Letter to Mr. Reid from Michael E. Spears, August 15, 2012).[7]

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[6] Respondent never met with William H. Reid Sr., Frances Reid's husband, and never had any substantive communication with him. Tr. 72, 423 (Respondent). As described by Respondent, William H. Reid, Sr. was "technically" a client, "but only on paper." Tr. 453-54, 521-22 (Respondent).

[7] In August 2012, Frances Reid and William H. Reid, Sr., independently met with Michael Spears, a South Carolina lawyer. They asked him if he would take over the representation in the medical

D. Respondent Took No Action For a Year Aside from Seeking Local Counsel.

43. Respondent admitted that in the first year of his representation of Mr. Reid, from December 2011 to December 2012, he did not take any action beyond trying to find local counsel. Tr. 76-77.

44. In the cover letter forwarding the deposition testimonies and medical records, prior counsel Mr. Smith specifically offered to meet with Respondent in person to discuss the case and the work already completed. *See* DX 28 at 25. However, Respondent acknowledged that he never arranged to meet with Mr. Smith. Tr. 62. Respondent also never reached out to defense counsel, who had offered to settle the case previously. *See* Tr. 454-55 (Respondent testifying he was aware that the defendants had made an offer to settle).

45. In or around early April 2012, Respondent contacted the law firm of Motley Rice about assisting in the representation, but the firm informed him it was not interested. DX 28 at 27. In mid to late May 2012, Respondent contacted another South Carolina firm, McGowen, Hood & Felder, and sent them the medical records relating to the case. DX 28 at 28-30. The McGowen firm wrote Respondent on October 30, 2012, saying it could not take the case. DX 28 at 31. Respondent stated

malpractice case. DX 28 at 21-24; Tr. 342, 357-58 (Frances Reid). Mr. Spears stated he would be willing to represent them only if Mr. Reid surrendered his rights as a beneficiary of his wife's Estate. Mr. Spears wrote a letter to Mr. Reid explaining that he believed no jury would be willing to award a money judgment that would "inure to the benefit of an incarcerated felon." DX 28 at 21. Mr. Spears explained that Mr. Reid's and Ms. Reid's young daughter and Ms. Reid's older daughter from another relationship could benefit from the lawsuit as beneficiaries of the Estate; however, Mr. Spears wrote that he would not be willing to represent Mr. Reid's parents or the Estate unless Mr. Reid surrendered his rights as a statutory beneficiary of the Estate. *Id*. at 21-22.

he contacted more than three attorneys or "numerous" other South Carolina lawyers (Tr. 77, 428-29), but nothing in his file supports this claim. DX 28. We find that his testimony was deliberately false and discredit his claim that he contacted "numerous" others.

46. Sometime after November 7, 2012, but before December 6, 2012, Respondent reached an agreement with O. Cyrus Hinton, Esq., a lawyer licensed in South Carolina, to act as local counsel in the medical malpractice action. Tr. 77-78, 82 (Respondent). Mr. Hinton practiced criminal law and, like Respondent, had never litigated a medical malpractice case. DX 17 at 46-47; Tr. 88-89 (Respondent testifying that he did not know if Mr. Hinton had ever handled a medical malpractice action).

E. Local Counsel Restored Only One of the Medical Malpractice Actions, and Respondent Subsequently Stopped Communicating with His Clients.

47. On December 6, 2012, Mr. Hinton moved to restore the initial medical malpractice action against the medical providers and the hospital by filing the single page motion. DX 11J at 70-73 (Motion to Restore). Respondent admitted that he did not assist Mr. Hinton in preparing the Motion to Restore, but Respondent accompanied Mr. Hinton to the courthouse at its filing. Tr. 62-65 (Respondent).

48. On February 8, 2013, the Court of Common Pleas granted the Motion to Restore the medical malpractice action against the medical providers and the hospital. DX 11 at 74-76. The Clerk of Court entered the order on February 11, 2013, and that action was placed on the court's general docket. *Id.*

49. Although Respondent had Mr. Hinton file a Motion to Restore the initial medical malpractice action, Respondent failed to have Mr. Hinton file a similar motion to restore the related action against Dr. Pacentine. DX 9 (*Reid, et al. v. Pacentine*, No. 2011-CP42-2318). Respondent admitted in his testimony that he did nothing to ensure that the second medical malpractice action was restored. Tr. 128-130. As a result, the one-year period for restoring the case against Dr. Pacentine expired, and it remained dismissed. DX 9.

50. Respondent introduced Mr. Hinton to Frances Reid over a single telephone conference call. Tr. 389-390 (Frances Reid). Respondent admitted that by the time he made the introduction, Mr. Hinton had already filed the Motion to Restore. Tr. 431 (Respondent) ("[H]e had actually all ready [sic] filed it. . . . Part of the conversation, was notification that we were good.").

51. Respondent did not inform Frances Reid that he would have to file a *pro hac vi*ce motion if he were to participate in the South Carolina proceedings; Respondent asserted to the Hearing Committee that such advisement was not necessary because he was "going the other way, that Mr. Hinton was going to be taking over the lead and such." Tr. 432 (Respondent). Because Respondent never explained that he was not a member of the South Carolina Bar, Frances Reid did not understand the purpose of Mr. Hinton's involvement as local counsel in the case. Tr. 353-59, 378, 381 (Frances Reid). Frances Reid never heard from Mr. Hinton again after that single conference call. Tr. 355, 381.

52. After February 2013, Respondent and Mr. Hinton did nothing to further litigate or undertake discovery in the sole remaining medical malpractice action against the medical providers and hospital. DX 8; DX 10 (*Reid et al. v Elllington, et al.*, Nos. 2009-CP42-4453, 2013-CP4203924).

F. Respondent's Communication with Mr. Reid and His Parents

53. Respondent went to visit Mr. Reid toward the end of February 2013. Tr. 225, 229 (Mr. Reid); Tr. 127 (Respondent); DX 28 at 32-34. Respondent called Frances Reid shortly before the visit, and she also traveled to the prison to meet Respondent for the first and only time. Tr. 347-48 (Frances Reid).

54. During the February 28, 2013 meeting at the prison, Respondent did not provide Frances Reid or Mr. Reid with any information about the status of the medical malpractice case or what he had done (or not done) to pursue their claims. Tr. 233-35 (Mr. Reid). Instead, Respondent attempted to persuade Frances Reid that Mr. Reid should waive his rights as a beneficiary, which Mr. Reid was not willing to do. Tr. 229-230, 233-34 (Mr. Reid); Tr. 350-51, 371 (Frances Reid). Respondent testified that Mr. Reid's refusal to renounce his interest was a "sensitive situation" and a "sticking point" in the representation (Tr. 437, 458), and Mr. Reid "was going to mess everything up." Tr. 154 (Respondent). Yet, Respondent never raised any concern about a conflict in representation or request their consent to a waiver of the conflict during his jail visit. Tr. 230 (Mr. Reid); Tr. 349-350 (Frances Reid).

55. During the prison visit, Respondent also did not notify them that the one-year deadline for filing the Motion to Restore in the case against Dr. Pacentine had passed. Tr. 233-37 (Mr. Reid); Tr. 359-362, 378-380 (Frances Reid).

56. After their single meeting, Frances Reid repeatedly called Respondent seeking information about the case, but had difficulty reaching him. Tr. 359-362, 375, 385-86, 388 (Frances Reid). On the one occasion that Frances Reid was able to get Respondent to answer her call, she complained about his failure to communicate with her son and the lack of progress in the case. Tr. 360, 386 (Frances Reid). In that single phone call, Respondent told Frances Reid that there was nothing to report, but he would call her when something happened. *Id*. This was their final communication. Respondent conceded that he was not sure if he ever spoke to Frances Reid in 2014. Tr. 502 (Respondent).

57. Both Frances Reid and Mr. Reid testified credibly that Respondent failed to return their phone calls and refused to accept their calls. *See* Tr. 361-62, 375, 385-86, 388 (Frances Reid); Tr. 236-38 (Mr. Reid); *see also* DX 12 (Letter from Mr. Reid to ODC, Oct. 31, 2014).

58. Contacting Respondent by mail also was difficult. Respondent never informed Mr. Reid or Frances Reid of his new work address and did not leave a forwarding address once he moved his office. Tr. 236-38, 263 (Mr. Reid); DX 12; DX 19 at 2; *see also* DX 39 (court correspondence sent to Respondent between April and June 2014 to the address of "1776 I Street" in an unrelated case was returned to for "insufficient address unable to forward"). Letters that Mr. Reid wrote to

Respondent were returned. *See* Tr. 263 (Mr. Reid); DX 12 (Letter from Mr. Reid to ODC, Oct. 31, 2014); DX 19 at 2 (Letter from Mr. Reid to ODC, May 7, 2015); *see also* DX 37 (in federal pleading filed by Respondent in mid-February 2014, Respondent claimed his "office mail [was] not being properly forwarded").

G. Respondent Made False Representations to the South Carolina Probate Court and Did Not Respond to the Defendants' Motion to Dismiss for Failure to Prosecute.

59. As a personal representative of the Estate, Frances Reid went to the Probate Court every couple of months to meet with Sandra Crosby, a court clerk, about the Estate matter, which remained open because of the medical malpractice actions. Tr. 358, 382 (Frances Reid). Ms. Crosby would tell her that they had not heard anything from Respondent and that he was supposed to be faxing them a letter. Tr. 358 (Frances Reid). Respondent acknowledged that the Probate Court continued to call him, and he was aware that Frances Reid had to "file some disbursement records or financial records, or some type of fiduciary records from time to time with the court regarding the estate." Tr. 433-35, 440 (Respondent). Ms. Crosby told Frances Reid that she had repeatedly asked Respondent to submit a letter to the Probate Court to get a status report on the pending litigation, but Respondent delayed and did not reply. Tr. 354-55, 357-58, 367, 383-84 (Frances Reid).

60. On April 16, 2012, the Probate Court judge wrote to Frances Reid and William H. Reid, Sr., to emphasize that she needed a "current status letter from the attorney handling the wrongful death litigation" no later than April 27, 2012. DX 28 at 13 (Respondent's file). On June 26, 2012, the Probate Court faxed Respondent

a copy of its April 16, 2012 letter. DX 28 at 13. However, it was not until *November 27, 2012*, that Respondent (using "The Bynum Firm" letterhead) wrote to the Court:

> Let me first most humbly apologize to the court for our tardiness in submitting this letter. Please allow this document to serve as this firm's letter of representation of the Estate of Deirdre Gist Reid. The litigation in the above-captioned matter, however, does remain ongoing. I am sure that the court is well aware of the various complexities and complications inherently involved in attempting to resolve the wrongful death litigation in this particular matter. We sincerely believed that we had reached an agreement with local counsel. Sadly several events combined to make said agreement just not possible. Currently, we are in conversations with other firms. Our desire is a timely resolution by settlement or at trial. We look forward to speaking with the court once this matter is completed.

DX 28 at 14.

61. Respondent did not notify the Probate Court when Mr. Hinton entered his appearance to file the Motion to Restore on *December 6, 2012*, very soon after the November 27, 2012 letter to the Probate Court. According to Respondent's testimony, sometime after November 7, 2012, but before December 6, 2012, Respondent reached an agreement with Mr. Hinton to act as local counsel in the medical malpractice action. Tr. 77-78, 82 (Respondent); *see* FF 43.

62. On December 2, 2013, Defendants' counsel filed a Motion to Dismiss for failure to prosecute. DX 11 at 77-89. Defendants' counsel served the motion on Mr. Hinton (DX 11 at 87-88), and Mr. Hinton notified Respondent and sent him a copy of the motion. Respondent falsely testified, however, that he never got a copy of the motion from Mr. Hinton. Respondent falsely testified that he got a copy from the court, but his copy was missing the court's filing date stamp. Tr. 99-100,

102-04, 130-31, 438, 511 (Respondent). *Compare* DX 11 at 77-88, *and* Tr. 275-76 (O'Connell) (motion to dismiss with court filing date stamped), *with* DX 28 at 93-102 (unstamped copy of motion to dismiss Respondent provided to ODC, reflecting that Respondent did not receive it from the court).

63. Respondent did not draft a response to the Motion to Dismiss or ensure that Mr. Hinton filed a response. DX 8; DX 10. Respondent did not ever notify Mr. Reid, Frances Reid, or William H. Reid, Sr., of the Motion to Dismiss or forward a copy of the motion to them. Tr. 237-38 (Mr. Reid); Tr. 360-62 (Frances Reid). Responded asserted that he did not notify them because it was the responsibility of Mr. Hinton to do so. Tr. 105, 513. Mr. Hinton, however, did not notify Mr. Reid or his parents about the Motion to Dismiss. Tr. 231-32, 245 (Mr. Reid); Tr. 361-62 (Frances Reid). The Defendants' Motion asserted that:

> An order removing the case from the active docket was entered on December 7, 2011. The case languished for over a year until it was placed back on the docket on or about February 11, 2013 . . . . At the time of the restoration order, Plaintiffs did not pay the required $150 court filing fee. To date some 9 months later, Plaintiffs have still failed to pay that fee or engage in any further action in prosecution of their case. . . . On March 5, 2013 Defendants' counsel contacted Plaintiffs' counsel and other counsel regarding a proposed amended scheduling order and other matters. (Ex. "A"). Plaintiff's counsel did not respond to that inquiry nor taken any further action on this matter. Defendants now request the court enter and order dismissing them from this action due to Plaintiffs' failure to timely pay the restoration fee and failure to prosecute this matter.

DX 11-L at 79.

64. It was not until March 4, 2014, that Respondent sent a letter (again using "The Bynum Firm" letterhead) to the Probate Court, providing the identity and

contact information for Mr. Hinton, whom Respondent described as local counsel. DX 28 at 16. In that letter, Respondent also stated:

> Please allow this document to serve as this firm's continued letter of representation of the Estate of Deirdre Gist Reid. The litigation in the above-captioned matter, however, does remain ongoing. I am sure that the court is well aware of the various complexities and complications inherently involved in attempting to resolve the wrongful death litigation in this particular matter. We are currently in discussions with counsel for the defense. Our desire is a timely resolution by settlement or at trial.

Id. Respondent, however, admitted in his testimony before the Hearing Committee that he actually had not, in fact, ever spoken or written to defense counsel to discuss settling the case. Tr. 62-63, 455 (Respondent). Respondent's March 4, 2014 letter to the Probate Court also failed to mention the Defendants' Motion to Dismiss that had been filed four months earlier. In that Motion, Defendants' counsel specifically alleged that "Plaintiffs' counsel *did not respond* to their inquiry" requesting plaintiffs' agreement to their proposed scheduling order and re-mediation of the case. DX 11-L at 79, 83-84 (Ex. A, March 5, 2013 Letter from Defendants' counsel to Mr. Hinton) (emphasis added).

65. When confronted during his hearing testimony with the delay in notifying the Probate Court of Mr. Hinton's role as local counsel, Respondent stated that the letter might have been incorrectly dated. Tr. 136 (Respondent). When confronted with the dated fax confirmation sheet, Respondent admitted that the date of March 4, 2014 that he had written on the letter was, in fact, correct. Tr. 136-37.

66. Consistent with Mr. Reid's and his parents' understanding of Respondent's role, Respondent had written to the Probate Court that as late as March 2014, his firm[8] "continued . . . [its] representation of the Estate of Deirdre Gist Reid." DX 28 at 16. Respondent in no way suggested to the Probate Court that he had handed off the case to Mr. Hinton as lead counsel.

67. On April 7, 2014, after holding a hearing that neither Respondent nor Mr. Hinton attended, the Court of Common Pleas granted the Defendants' Motion to Dismiss for failure to prosecute which was unopposed. DX 10; DX 11 at 100-07. Noting the lack of a response by and absence of Plaintiffs' counsel, Circuit Judge Brian M. Gibbons of the County of Spartanburg Court of Common Pleas granted the Motion to Dismiss holding that:

> Plaintiffs chose to wait over a year, until December 6, 2012, to have new counsel file a motion to restore the case. Even after the year-plus delay, Plaintiffs did not pay the mandatory restoration fee for over 9 months. Moreover, Plaintiffs' counsel failed to respond to Defendants' inquiries about a revised scheduling order or other action on the case. Further, Defendants showed that Plaintiffs have not filed any motions, attempted to conduct any discovery, or otherwise done anything to prosecute the case in the last two years. In short, Defendants argue that Plaintiffs have done nothing to prosecute this action since failing to meaningfully participate in mediation back in October of 2011.

DX 11-O at 105 (Order Dismissing Plaintiffs' Claims with Prejudice, Apr. 14, 2014).

[8] According to Respondent, he was a solo-practitioner and never had associates in his practice of law, FF 2, but Disciplinary Counsel did not allege any impropriety with his use of the phrase "The Bynum Firm" on his letterhead.

68. Because Respondent was not taking her phone calls, Frances Reid had no understanding of what was transpiring in the medical malpractice actions, including when either was dismissed. Tr. 360-61 (Frances Reid).

H. Respondent's Failure to Notify Mr. Reid and His Parents of Any Fee-Sharing Arrangement with Mr. Hinton and the Absence of Any Evidence Supporting Respondent's Claim of a Termination of Legal Representation

69. Respondent did not provide Mr. Reid or his parents with any writing memorializing any agreement with Mr. Hinton, including any fees that Mr. Hinton would receive and how they would be calculated. Tr. 82-83, 415-17, 440, 506, 508-09 (Respondent). ODC Investigator Kevin O'Connell testified that the Special Receiver for Mr. Hinton's law practice, appointed after his death, informed him that Mr. Hinton's files had no record of documents connected to the names Raleigh Bynum, William Reid, or Deirdre Gist Reid. Tr. 285-86 (O'Connell).

70. Respondent claimed he had two fee-sharing arrangements with Mr. Hinton, but he did not have written copies of the terms because they were not put into writing. Tr. 416 (calling the fee-sharing agreement a "handshake deal"). Respondent testified that he initially expected to receive a large percentage of any malpractice award under his oral agreement with Mr. Hinton, and his agreement with Mr. Hinton did not change until "several months after the filing" of the Motion to Restore. Tr. 416-17. Respondent claimed that at that point, he agreed to a modification of the fee-sharing arrangement whereby his payment was to be reduced to a one-third of his 40 percent, as a "referral fee." Tr. 416. In addition to not having any record of a written agreement with Mr. Hinton, Respondent conceded that he

never wrote a letter to Mr. Hinton—not even to confirm what role he would play in the litigation. Tr. 92.

71. At the same time, Respondent never told Mr. Reid that he was withdrawing from the representation of the medical malpractice action. Tr. 230-32 (Mr. Reid). Nor did Respondent ever tell or write to Mr. Reid to inform him that Mr. Hinton would be acting as lead counsel. Tr. 231-32, 268-69 (Mr. Reid). Respondent admitted that he did not tell Mr. Reid he was withdrawing from representation or put into writing any intention to terminate the attorney-client relationship. Tr. 110-11 (Respondent).

72. Respondent never told Frances Reid that he was withdrawing from the representation. Tr. 353 (Frances Reid). Respondent again admitted that he had no recollection of sending Frances Reid or William H. Reid, Sr., a letter indicating that he was terminating the legal representation. Tr. 448 (Respondent).

I. Respondent's Representation on the Claim for Insurance Proceeds

73. In addition to pursuing the medical malpractice action, Respondent agreed to represent Mr. Reid in seeking an additional recovery from MetLife, the insurance company that issued a life insurance policy for Deirdre Gist Reid. Spec. ¶ 22; Answer ¶ 22. Respondent did not provide Mr. Reid with a separate fee or retainer agreement for the life insurance matter. Spec. ¶ 23; Answer ¶ 23. Mr. Reid gave Respondent his only copy of the insurance policy during their initial meeting in December 2011. Tr. 224-26, 259-]61, 262-63 (Mr. Reid); DX 14; DX 33. Respondent admitted he agreed to assist Mr. Reid on the insurance matter but

claimed any delay in contacting the insurance company was due to Mr. Reid not asking for his help in the matter until 2013. *See* Tr. 75-77 (Respondent).

74. In November 2012, Respondent received additional information from J.W. Woodward Funeral Home, Inc. about the MetLife insurance policy for which Mr. Reid was the beneficiary. DX 28 at 80-85 (documents faxed to Respondent from J.W. Woodward who had obtained an assignment on the insurance proceeds). On December 7, 2012, Respondent faxed a letter to MetLife, stating his office was representing Mr. Reid and the Estate of Deidre Gist Reid. DX 28 at 86-87. Respondent's file does not include any documents or records reflecting that MetLife responded to Respondent's letter or that Respondent did anything else to pursue the matter. DX 28; *see also* Tr. 140-42 (Respondent admitted he did not spend a lot of time or put much effort into the matter).

75. Mr. Reid was unaware of anything Respondent had done in the insurance matter and was unable to learn its status because Respondent would not communicate with him or respond to his calls. Tr. 226-27 (Mr. Reid); DX 14.

76. After he filed a disciplinary complaint against Respondent, Mr. Reid asked Respondent to return his documents, including the insurance policy that he had given him. Tr. 227-28, 264-65 (Mr. Reid); DX 33-34. At the time of the hearing, Respondent still had not returned Mr. Reid's insurance policy. Tr. 228, 246 (Mr.

Reid); Tr. 144-46, 173 (Respondent). Respondent admitted he never returned any of Mr. Reid's documents, including the insurance policy. Tr. 173.[9]

J. Mr. Reid Filed an Attorney Discipline Complaint and Learned that Respondent is Not a Member of the South Carolina Bar and that the Medical Malpractice Cases Were Dismissed.

77. In October 2014, Mr. Reid complained to the South Carolina Bar about Respondent. DX 12. It was only after filing the complaint with the South Carolina Bar that Mr. Reid learned that Respondent was not licensed to practice law in South Carolina. Tr. 239 (Mr. Reid); DX 12 at 1 (Letter originally sent to South Carolina Bar Association, Oct. 27, 2014). Mr. Reid complained to the South Carolina Bar because (1) Respondent refused to communicate with him about the case, and (2) his letters to Respondent had been returned. Tr. 237-38, 240-41 (Mr. Reid); DX 12 at 1-2. Mr. Reid's complaint to the South Carolina Bar was later forwarded to the District of Columbia Bar. *See* DX 12.

78. After filing the disciplinary complaint, Mr. Reid learned that the two malpractice actions concerning his deceased wife had been dismissed. Tr. 238, 243 (Mr. Reid). Mr. Reid wrote his mother a letter once he learned of the dismissal, and Frances Reid asked the Probate Court for clarification because she did not understand what happened. Tr. 362-63, 366 (Frances Reid).

79. Ms. Crosby, the Probate Court clerk, confirmed that the remaining medical malpractice action case had been dismissed. Tr. 354, 358, 363 (Frances

[9] Disciplinary Counsel did not charge Respondent with a violation of D.C. Rule 1.16(d) (returning papers and property upon termination of representation) or its S.C. Rule counterpart.

Reid). A couple of weeks later, Ms. Crosby told Frances Reid that Mr. Hinton had been killed. Tr. 364, 366, 383. Mr. Hinton was murdered by his son on April 12, 2015. DX 17 at 3. Mr. Hinton died a few days before Respondent filed his response to the ODC investigation in this matter. Tr. 172 (Respondent).

K. Mitigating Factors: Respondent Alleges Medical Disability.

80. Respondent represented that in 2004, three years before his admission to the District of Columbia Bar, he suffered a stroke due to his cardiomyopathy, and that he has had congestive heart failure since at least 2006. DX 17 at 1 (Letter from Respondent to ODC, Apr. 14, 2015); Tr. 113, 394-95 (Respondent). Respondent testified that he had surgery in June 2015 and February 2016, due to problems with his defibrillator, which had been implanted in 2006. Tr. 113, 394, 398, 401-02 (Respondent). Other medical conditions Respondent reported were diabetes (as of June 2015) and gout (as of February or June 2016). Tr. 401-03, 471, 473 (Respondent).

81. On the second day of hearing, Respondent submitted into evidence three documents that showed he received medical treatment in February 2015, June 2015, and June 2016. RX 1-3.[10]

[10] On February 27, 2015, Dr. Akinyele O. Aluko of Novant Health Heart & Vascular Institute reported that Respondent had not been seen by their office in more than two years, but, during this examination, Respondent had complaints of "intermittent edema and shortness of breath." RX 1 at 2. On June 8, 2015, Dr. John Russell Bailey, also with Novant Health, reported that he had not seen Respondent in several years, but Respondent was scheduled for a device replacement/upgrade (for his defibrillator) later that week. RX 2 at 1-2. On June 9, 2016, Respondent was seen in the emergency room for gout. RX 3.

82. Respondent could not provide a timeline of when his alleged medical deterioration affected his representation of Mr. Reid and Mr. Reid's parents. Tr. 112-14 (Respondent). Respondent testified that his heart problems improved in 2006 when he had surgery to implant a defibrillator. *Id*.

83. Respondent admitted that he had filed complaints and motions in other matters when representing other clients during August 2011 through July 2014. Tr. 116-126, 482-493 (Respondent); *see also* DX 35-37, 39-40. Respondent testified, in an attempt to explain, that he could handle the District of Columbia cases because he could file papers electronically in the District of Columbia federal courts and Superior Court, but the South Carolina courts required paper submissions in the traditional manner. Tr. 524-25. Respondent could not identify any matter for which he filed a motion to withdraw due to health issues. Tr. 116-126, 481.

84. Respondent never told Mr. Reid or Frances Reid that he was ill or that he had any health problems that affected his ability to represent them. Tr. 233 (Mr. Reid); Tr. 353 (Frances Reid).

L. Aggravating Factors

(i) Failure to Cooperate with the Investigation

85. In November 2014, Disciplinary Counsel opened an investigation of Respondent's conduct based on Mr. Reid's complaint. On November 19, 2014, Disciplinary Counsel sent Respondent a copy of the disciplinary complaint and asked him to respond by December 3, 2014. DX 13. Respondent did not respond or seek additional time to do so. Tr. 278 (O'Connell).

86. On March 10, 2015, Disciplinary Counsel sent Respondent a second letter enclosing a copy of the complaint and requesting his response. DX 15. When Respondent again failed to respond, Disciplinary Counsel filed a motion to compel with the Board on April 6, 2015. DX 16; Tr. 278 (O'Connell).[11]

87. Respondent submitted a response that was received by the Office of Disciplinary Counsel on April 17, 2016. Respondent blamed Mr. Reid for his failure to pursue the medical malpractice case. DX 17 at 1-3 (referring to Mr. Reid's "constant intrusions"). In his response, Respondent falsely claimed that he "made several visits to the Walden Correctional Facility in South Carolina to meet with Mr. Reid." *Id*. at 2. Respondent also falsely claimed that he had met with Mr. Reid's parents on "several occasions." *Id*. Post-hearing, Respondent now admits that he only met Mr. Reid at the prison twice, he only met Mr. Reid's parents once, and he only arranged for one conference call with Frances Reid and Mr. Hinton. *See* Amended Response to Disciplinary Counsel's Proposed Findings of Fact at 16, 26.

88. In a meeting with Disciplinary Counsel a year later on April 27, 2016, Respondent stated that he was the lead counsel for Mr. Reid and his parents. Tr. 282-83, 284-85, 288 (O'Connell). Respondent did not contend during the meeting that he had withdrawn from the representation or that Mr. Hinton had taken over the representation of the medical malpractice actions. Respondent did not assert that he

[11] Disciplinary Counsel later withdrew the motion after receiving Respondent's response. DX 18.

told Mr. Reid and his parents that he could no longer pursue their claims for health reasons (or any other reason). Tr. 283-84, 287, 292 (O'Connell).[12]

89. Respondent did not produce to Disciplinary Counsel documents that he admitted receiving—*e.g.*, the court records, deposition transcripts, and other documents provided by Mr. Smith, Mr. Reid's parents' prior counsel in the representation in the medical malpractice actions (DX 28 at 25-26; Tr. 49-51 (Respondent)), as well as the boxes of documents delivered to him by Mr. Reid's

[12] On direct examination by Senior Assistant Disciplinary Counsel Julia Porter, Mr. O'Connell testified as follows:

> Q. What if anything did Mr. Bynum say about his role in the representation of the Reids?
> A. He said he was lead counsel.
> Q. How did that come up?
> A. In questioning him. I believe you specifically asked him if he was lead counsel and he said yes, and Mr. Hinton was local counsel.
> Q. Did Mr. Bynum, during that meeting, ever say that he had withdrawn from the representation of either Mr. Reid or his parents?
> A. No.
> Q. Did Mr. Bynum ever tell or say anything during this meeting that he had been ill or somehow medically unable from continuing the representation?
> A. He indicated he had a lot of medical problems, but he never said it prevented him from continuing the representation.
> Q. Did he ever tell or did he ever state, Mr. Bynum state, that he had referred the matter to Mr. Hinton and Mr. Hinton was able to handle it?
> A. No.
> Q. Did Mr. Bynum ever say it was Mr. Hinton's responsibility to communicate with the Reids?
> A. No.
> Q. Did Mr. Bynum ever say it was Mr. Hinton's responsibility to file motions or pleadings with the court?
> A. No.

Tr. 282-84.

girlfriend, Adrian Middleton (Tr. 61, 155-57 (Respondent's description of documents from Ms. Middleton)).

90. Disciplinary Counsel sent follow-up letters and e-mails to Respondent, requesting all documents responsive to Disciplinary Counsel's subpoenas, including the original insurance policy that Mr. Reid had given him. DX 29-30, 32-34. Respondent did not produce the additional documents and did not respond to Disciplinary Counsel's follow-up letters and e-mails. Tr. 281 (O'Connell).

91. On June 9, 2016, Disciplinary Counsel served Respondent with the Specification of Charges. DX 30-31. Respondent requested an additional thirty days to file his answer but then did not file his answer by the date he had proposed.

(ii) False Answers to the Specification of Charges and False Testimony[13]

92. On August 10, 2016, after the pre-hearing conference, Respondent filed a verified Answer to the Specification of Charges, *see* DX 4, which Respondent reviewed before signing. Tr. 92-94 (Respondent). The Committee finds that certain of his answers were deliberately false. While testifying before the Hearing Committee, Respondent repeated many of these false representations. The false representations and testimony included:

(a) Respondent falsely answered that he had informed Mr. Reid and his parents that he was not licensed to practice law in South Carolina and that he would

[13] Disciplinary Counsel listed additional examples of Respondent's alleged false claims in his Answer and false testimony at the hearing. *See* Disciplinary Counsel's Proposed Findings of Fact at 30-33. In this report, we identify all false claims and statements that were proven by sufficiently clear and convincing evidence.

have to get local counsel and get "*pro haced* in" in order to participate in the medical malpractice actions and the probate matter. DX 4 at 4 (¶ 43); Tr. 38-39, 419-21, 428, 454. The weight of the evidence shows that Respondent never advised Mr. Reid or his parents that he could not practice law in South Carolina, nor appear in the courts without a South Carolina lawyer. *See* FF 30-31, 36. The only contrary evidence is Respondent's own assertion that he did advise them.

(b) Respondent falsely answered that he had referred the medical malpractice action to Mr. Hinton and informed both Mr. Reid and Frances Reid that Mr. Hinton was now lead counsel. DX 4 at 2-4 (¶¶ 30-32, 35, 38, 45); Tr. 88, 106-11, 430, 432-33, 448-49, 456, 506 (Respondent). Respondent, however, remained lead counsel—as he represented to the Probate Court and Disciplinary Counsel. FF 60, 64, 66, 88. Nothing in the record or Respondent's file indicates that he had withdrawn from the case or terminated his representation. FF 71-72. The clients' actions in continuing to call and write Respondent further indicates that they believed Respondent was their attorney. FF 57-58. Finally, the absence of records from Mr. Hinton's own files supports the conclusion that the purported change in Respondent's role in the case is a fabrication developed for the disciplinary hearing. FF 69.

(c) Respondent falsely answered that his health prevented him from participating *pro hac vice*, and that he told Mr. Reid and his parents that he could no longer represent them because of his poor health. DX 4 at 2-5 (¶¶ 30, 35, 37, 40-41, 45a-i); Tr. 85-89, 99-100, 112, 408, 447-49, 480-81, 486. Respondent's medical

condition, however, which existed since 2004, did not limit his ability to participate *pro hac vice* between late 2011 and 2014. *See* FF 81-84. During that same three-year period, he actively filed complaints and motions in other legal matters. FF 83. Both Mr. Reid and Frances Reid credibly testified that Respondent never told them he had health problems that affected his ability to represent them. FF 84.

(d) In his Answer, Respondent falsely claimed that Mr. Hinton never provided him with a copy of the Defendants' Motion to Dismiss and that he "procured" a copy of the motion from the court. FF 62, DX 4 at 3 (¶ 36). The copy of the Motion to Dismiss in Respondent's file, however, had no court filing stamps. *See* DX 11 at 77-88; DX 28 at 93-112. After initially testifying that Mr. Hinton did not give him a copy, Respondent subsequently admitted that he did, in fact, get a copy of the Motion to Dismiss from Mr. Hinton. Tr. 104.

(e) Respondent falsely answered and falsely testified that he and Mr. Hinton explained the potential conflict in joint representation to Mr. Reid and his parents. DX 4 at 5 (¶ 45g); Tr. 149-150 (Respondent's testimony). Mr. Reid and his parents credibly testified that Respondent, in fact, never discussed the conflict or potential client with them. FF 40-41.

IV. LEGAL CONCLUSIONS

The Hearing Committing finds that the exhibits and witness testimony prove by clear and convincing evidence that Respondent violated the following Rules as charged in the Specifications of Charges: S.C. Rules 1.3, 1.4(a) and (b), 1.5(b),

1.7(a)(2), and 8.4(d); and D.C. Rules 1.3(a), (b)(1), and (c), and 1.4(a) and (b).[14] Clear and convincing evidence is more than a preponderance of the evidence; it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (citation omitted).

However, the Committee does not find that a violation of S.C. Rule 1.5(e) (division of fees between lawyers) occurred. *See* Board Rule 11.6 (Disciplinary Counsel has burden of proving violations by clear and convincing evidence).

Choice of Law

Disciplinary Counsel charged Respondent with violating each of the two jurisdictions' attorney discipline rules because Respondent, although licensed only in the District of Columbia, represented clients in the South Carolina medical malpractice actions and the related probate case that was pending in the South Carolina Probate Court.

Rule 8.5 of the D.C. Rules of Professional Conduct provides, in pertinent part, the following regarding choice of law:

> (b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows:
>
> (1) For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits,

[14] As noted, *infra*, the South Carolina Rules of Professional Conduct ("S.C. Rules") at issue are substantively similar to the D.C. Rules of Professional Conduct ("D.C. Rules").

> unless the rules of the tribunal provide otherwise, and
>
> (2) For any other conduct,
>
> (i) If the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction. . . .

Accordingly, where a lawyer's misconduct is "in connection with" a proceeding in another state's court, we are to apply that state's attorney discipline rules. *See, e.g.*, *In re Ponds*, 888 A.2d 234, 235 (D.C. 2005) (applying Maryland Rules of Professional Conduct to a District of Columbia Bar member's misconduct connected to a proceeding before the U.S. District Court in Maryland); *In re Gonzalez*, 773 A.2d 1026, 1029 (D.C. 2001) (citing D.C. Rule 8.5(b) and applying discipline rules of the Virginia State Bar Association, as well as its Legal Ethics Opinions); *cf. In re Bernstein*, 707 A.2d 371, 375 n.6 (D.C. 1998) (absent a showing of prejudice, attorney's argument that West Virginia (not D.C.) rules of discipline were applicable is moot where Hearing Committee chose to apply D.C. Rules).

In addition, under D.C. Rules 8.5(b)(1) and (2), the S.C. Rules may apply to some conduct and the D.C. Rules may apply to other conduct. *See, e.g.*, *In re Wheeler*, Bar Docket No. 372-00, at 11-12 (BPR May 10, 2004) (Connecticut Rules apply to underlying allegations of misconduct, while D.C. Rules apply to false statements related to Bar Counsel's investigation), *dismissed*, 871 A.2d 476 (D.C. 2005) (case dismissed in light of disbarment order entered against respondent in another case).

In the instant case, the S.C. Rules apply to Respondent's alleged misconduct in connection with his representation in two wrongful death/medical malpractice actions in South Carolina and his alleged misrepresentations to the South Carolina Probate Court. The alleged misconduct and misrepresentations were "in connection with a matter pending before a tribunal." Rule 8.5(b)(1). Respondent's alleged misconduct related to the representation on the insurance matter is, however, governed by the D.C. Rules because that matter was not pending before a tribunal, and Respondent is only licensed to practice law in the District of Columbia. *See* Rule 8.5(b)(2)(i).

Respondent's Credibility

Many of the findings and conclusions in this case depend, in part, on whether one believes Respondent or his clients. Respondent testified that he told his clients certain information. The clients testified that he did not. Respondent's version of the facts is too frequently contradicted by his own documents (letters and pleadings) or discredited by his own unexplained failure to memorialize significant conversations. *See, e.g.*, FF 60, 64, 66, 74 (Respondent's letters to Probate Court and MetLife Insurance contradicting his testimony); FF 31 (failing to document purported disclosure to clients of non-licensure in South Carolina).

Respondent's attempt to lay blame for each of the charges on the deceased Mr. Hinton is unconvincing. Mr. Hinton is obviously not able to defend his conduct, but the record speaks for itself. Mr. Hinton's law office did not have any record of a fee-sharing agreement with Respondent or any documents to suggest a significant

role in Respondent's legal representation of Mr. Reid and his parents. FF 69. Respondent's letter to the Probate Court unequivocally stated that "The Bynum Firm" continued its representation of the medical malpractice action as late as March of 2014. FF 64. When initially questioned by the Office of Disciplinary Counsel in April 2016, Respondent claimed that he was the lead attorney representing Mr. Reid and his parents. FF 88. As he became aware of the seriousness of the charges and had to defend himself in the disciplinary process, however, Respondent then shifted blame to Mr. Hinton. The Committee has no difficulty concluding that numerous statements and representations by Respondent during his hearing testimony were, in fact, intentionally false. *See* FF 92 (a)-(e).

A. Respondent Failed to Provide Diligent and Prompt Representation to His Clients, in Violation of S.C. Rule 1.3 and D.C. Rules 1.3(a), (b)(1), and (c).

1. The Medical Malpractice Actions—S.C. Rule 1.3

S.C. Rule 1.3 requires lawyers to represent their clients with "reasonable diligence and promptness." *See, e.g.*, *In re Broome*, 589 S.E.2d 188, 195-96 (S.C. 2003) (per curiam) (S.C. Rule 1.3 violation where Respondent allowed client to go into default without taking action to protect client's interests); *In re Carter*, 733 S.E.2d 897, 901-02 (S.C. 2012) (per curiam) (S.C. Rule 1.3 violation for failing to keep incarcerated client informed and not notifying him that the case was likely to be dismissed). Comment [3] to S.C. Rule 1.3 provides that:

> Perhaps no professional shortcoming is more widely resented by clients than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal

> position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

Respondent violated S.C. Rule 1.3 in his failure to act with reasonable diligence in the medical malpractice actions. Although he knew he could not pursue the case without associating with a South Carolina lawyer, Respondent dragged his feet for almost a year before finding local counsel. FF 46. During this time, Respondent did not interview the previously-retained plaintiff experts or write to Defendants' counsel, who had previously offered to settle the case. FF 43-44. It is undisputed that during the first year of Respondent's representation of the Mr. Reid and his parents in 2012, the medical malpractice actions languished. *Id*.

Respondent's lack of diligence and promptness during that initial year caused the Estate's claims against Dr. Pacentine to be dismissed because they were not restored in time. FF 49. Even after the original action against the medical providers and hospital was restored by the motion filed by Mr. Hinton (so that it was again on the court's docket), Respondent did nothing to advance it. FF 52. That following year, in 2013, he did not undertake additional discovery, failed to communicate with opposing counsel, and still did not file the motion to appear *pro hac vice*. *Id*.; FF 43-44. As a result, the Defendants moved to dismiss for failure to prosecute. FF 62. Respondent then never responded to the motion despite Mr. Hinton having notified him and provided him with a copy of the Motion to Dismiss. FF 62-63.

Respondent's attempt to entirely shift responsibility to Mr. Hinton is unavailing.[15] Mr. Hinton's action in reinstating the case in no way relieved Respondent of his ethical duties of diligence and promptness to Mr. Reid and his parents. Comment [4] to S.C. Rule 1.3 (emphasis added) highlights the ongoing nature of an attorney-client relationship:

> *Unless* the relationship is terminated as provided by Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client . . . . Doubt about whether a client-lawyer relationship still exists should be clarified by a lawyer, preferably in writing so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so.

Respondent was demonstrably aware of his pervasive neglect. The Probate Court called Respondent on numerous occasions—as he admitted—seeking information about the status of the malpractice actions, and it faxed him a letter written to his clients requesting an update on the status. FF 59-60. Mr. Hinton told Respondent about the motion to dismiss and sent Respondent the motion to dismiss for failure to prosecute, yet he continued to ignore the Mr. Reid's and his mother's phone calls. FF 56-57, 61. Respondent's fabricated excuses for the failure to act—including claiming for the first time in his eve-of-hearing answer that he had

[15] Comment [7] to S.C. Rule 1.5 explains in pertinent part that:

> Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer who assumed joint responsibility should be available to both the client and the other fee-sharing lawyer as needed throughout the representation and should remain knowledgeable about the progress of the legal matter. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter.

withdrawn from the representation and told his client that he had (FF 92(b))—further demonstrate Respondent's awareness that he did not act with the necessary diligence and promptness in the medical malpractice actions.

2. Mr. Reid's Insurance Matter—D.C. Rules 1.3(a), (b)(1), and (c)

D.C. 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*")).

D.C. Rule 1.3(b)(1) provides that "[a] lawyer shall not intentionally . . . fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules." *See In re Lawrence*, 526 A.2d 931, 932-33 (D.C. 1986) (per curiam) (adopting Board Report) (rejecting lawyer's excuses at the hearing for intentionally failing to seek client's lawful objectives, because the excuses were not corroborated by the lawyer's file and he never communicated them to his client during the representation). The Court has defined neglect as "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." *Reback II*, 487 A.2d at 238 (quoting ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1273 (1973)).

D.C. 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." D.C. 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."

In the insurance matter, Respondent waited a year before taking any steps to pursue Mr. Reid's claims for insurance benefits. In December 2012, Respondent wrote a letter to the insurer seeking information. FF 74. He then dropped the matter, and did nothing more. FF 74-75. Respondent admitted he did not spend a lot of time and effort on the matter. FF 74.

Respondent argues that his agreement to look into Mr. Reid's insurance problem was an "aside" and therefore he did not assume any ethical obligation to pursue the matter diligently because it was not included in the retainer agreement. To the contrary, when a lawyer agrees to pursue a matter for a client, the lawyer is ethically bound to do so diligently. *See, e.g.*, Rule 1.2(a) (Scope of Representation); Rule 1.3, cmt. [6] ("a lawyer should always act in a manner consistent with the best

interests of the client"). A lawyer who agrees to handle a legal matter for a client cannot *sub silentio* decide whether his actions are subject to the Rules of Professional Conduct. When Respondent agreed to look into Mr. Reid's dispute with the insurance company, he was bound to do so diligently and zealously as required of any attorney. A retainer agreement can serve a variety of important functions, but it is by no means a prerequisite to forming a lawyer-client relationship. *See In re Lieber*, 442 A.2d 153, 156 (D.C. 1982) (neither written agreement nor payment of fees is necessary to create an attorney-client relationship). In any event, Respondent's testimony on this point is flatly contradicted by his own letter to the insurance company. FF 74 (Letter from Respondent to MetLife in which he stated he was representing Mr. Reid in this matter). When Respondent's hearing testimony conflicts with such a relevant document (drafted by himself), it loses all credibility.

B. Respondent Failed to Keep His Clients Reasonably Informed About the Status of Their Matters, Respond to Their Inquiries, or Explain Matters to the Extent Reasonably Necessary to Permit Them to Make Informed Decisions, in Violation of S.C. Rules 1.4(a) and (b) and D.C. Rules 1.4(a) and (b).

S.C. Rule 1.4 provides that:

(a) A lawyer shall:

> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(g), is required by these Rules;
>
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
>
> (3) keep the client reasonably informed about the status of a matter;

> (4) promptly comply with reasonable requests for information; and
>
> (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

In *In re Longtin*, 713 S.E.2d 297, 298-99 (S.C. 2011) (per curiam), an out-of-state client retained attorney James Longtin to handle some collection matters, but Longtin failed to communicate with the client regarding the status of his case and ignored several phone calls from the client. In a second matter, Longtin repeatedly told the client he would file a Stipulation of Dismissal, but he never did, which resulted in a delay for the client's resolution of the matter. 713 S.E.2d at 300. As did the South Carolina Supreme Court in *Longtin*, we find clear and convincing evidence that Respondent violated his S.C. Rule 1.4 obligations to his clients by not replying promptly to their reasonable requests for information and by not informing and updating them on the status of the medical malpractice actions.

Beginning when he agreed to represent Mr. Reid and his parents, in December 2011 and early 2012, and continuing after April 2014 (when the court dismissed the original medical malpractice action), Respondent withheld important information from Mr. Reid and his parents. From the start, Respondent actively misled them about his ability to represent them in South Carolina, in a medical malpractice action, and jointly. *See, e.g.*, FF 30 (regarding his licensure), FF 31 (his lack of experience

in medical malpractice), FF 40 (regarding the conflict of interest). When he told Mr. Reid that he had handled other medical malpractice actions, he gave Mr. Reid the false assurance that he was competent to handle the Estate's claim. FF 30. Respondent also misled Mr. Reid and his parents about his ability to represent them before the South Carolina courts. *Id*. He never told them he could not appear in court unless he associated with another lawyer in the state. Nor did he give them the information they needed to understand the possibility that their interests in the cases might conflict and how that could affect the representation. FF 40.

Respondent himself admitted that he did not provide Frances Reid with information about Mr. Hinton until *after* Mr. Hinton had appeared in court to restore one of the medical malpractice actions. FF 50. Respondent failed to inform Mr. Reid and his parents that one of the medical malpractice actions was dismissed in December 2012. FF 49 (malpractice action against Dr. Pacentine). When the court dismissed the other medical malpractice action in April 2014 on Defendant's Motion for Failure to Prosecute, Respondent again did not tell his clients. FF 56, 68. Mr. Reid and his parents did not learn about the dismissals until after October 2014, when Mr. Reid had filed his South Carolina Bar complaint against Respondent. FF 77-78.

Respondent conceded that he failed to respond to his clients' calls and letters requesting information and status updates. FF 54-58; *see also* S.C. Rule 1.3, cmt. [4] ("A lawyer should promptly respond to or acknowledge client communications."). In her last communication with Respondent, Frances Reid

complained about the lack of information and progress. FF 56. Respondent did not tell her what he had done (or not done), but claimed there was nothing to report at that time. *Id*. He then declined to communicate with her again. *Id*. In his post-hearing briefing, Respondent admitted that he did not take or return Frances Reid's subsequent calls and that his communication with Mr. Reid were not any better. *See* Amended Response to Disciplinary Counsel's Proposed Findings of Fact at 20-21. Finally, when Mr. Reid wrote to Respondent, his letters were returned as undeliverable due to Respondent's nondisclosure of his new work address. FF 58.

Respondent clearly violated S.C. Rule 1.4(a)(4) by failing to "promptly comply with reasonable requests for information." Respondent failed to keep Mr. Reid and his parents "reasonably informed about the status of the matter." S.C. Rule 1.4(a)(3); *see In re Dickey*, 718 S.E.2d 739, 745 (S.C. 2011) (per curiam) (violation of S.C. Rule 1.4(a) where Respondent never told client the status of her case or why it had been dismissed). In short, Respondent refused to communicate with his clients by ignoring their efforts to reach him.

In regard to the representation for additional life insurance benefits, conduct covered by the D.C. Rules, Respondent again did not provide Mr. Reid with the information concerning the status of his claim or what work Respondent had completed. FF 75. Respondent also did not comply with Mr. Reid's request for a copy of the insurance policy. FF 76. D.C. Rule 1.4 provides that:

> (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information [, and]

> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Accordingly, we find clear and convincing evidence that Respondent also violated D.C. Rules 1.4(a) and (b). *See* Rule 1.4, cmt. [2] (attorney must "initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete").

C. Clear and Convincing Evidence of an S.C. Rule 1.5(b) Violation, But Insufficient Evidence to Prove an S.C. Rule 1.5(e) Violation

S.C. Rule 1.5(b) provides, in pertinent part, that "[t]he scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate."

Respondent's copies of two retainer agreements (one for Mr. Reid and a second for Mr. Reid's parents) had internally conflicting provisions about the fees Respondent would charge (hourly and contingent). The retainer agreement also incorrectly stated he would "file" a medical malpractice action as to the scope of representation, when Respondent knew that actions already were filed and had been litigated for more than two years before his involvement. FF 34, 36. The retainer agreements essentially contain boilerplate text that Respondent used verbatim without considering the actual circumstances of his clients' situations. FF 34. Disciplinary Counsel also faults Respondent for not mentioning the representation

on the insurance matter in the retainer agreement for Mr. Reid. FF 73. Although the agreements themselves were in writing and forwarded to the clients "within a reasonable time after commencing the representation," the problem is that Respondent's draft of the "scope of representation" (1) relates to legal representation that was already completed by Mr. Smith, (2) fails to refer to the representation of the Estate in Probate Court, and (3) does not mention the insurance matter. Accordingly, the scope of the representation was not communicated to either Mr. Reid or his parents, and Respondent did not fulfill the requirements of S.C. Rule 1.5(b).

Disciplinary Counsel, however, did not prove Respondent's violation of S.C. Rule 1.5(e), because the Committee finds that Respondent's claim that he had a fee-sharing arrangement with Mr. Hinton is a fabrication.[16] Respondent cannot violate a rule requiring that a client consent to a fee-sharing arrangement, or that the agreement be in writing as required by S.C. Rule 1.5(e)(2), if we do *not* believe in the existence of the fee-sharing arrangement advanced by Respondent.

[16] S.C. Rule 1.5(e) provides that:

> (e) A division of a fee between lawyers who are not in the same firm may be made only if:
>
> (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
> (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
> (3) the total fee is reasonable.

We find it incredible that Respondent and Mr. Hinton would have failed to keep a record of the alleged fee-sharing agreement or not put into writing what role Mr. Hinton would play in the litigation. FF 69. Respondent was intentionally dishonest in testifying that he agreed to only a referral fee due to his limited role in the case. FF 70. All the record evidence repeatedly points toward a conclusion that Respondent fabricated the lead role Mr. Hinton was to play for the purpose of defending against the disciplinary charges. Accordingly, an S.C. Rule 1.5(e) violation has not been proven because we do not believe a fee-sharing agreement itself was proven.

D. Respondent's Conflict or Potential Conflict Existed at the Outset of the Representation, but Respondent Never Discussed it with the Clients or Sought a Waiver, in Violation of S.C. Rule 1.7(a)(2).

S.C. Rule 1.7(a)(2) provides that:

> Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

S.C. Rule 1.7 is substantively similar to D.C. Rule 1.7 except that the S.C. Rule requires that the client's informed consent to a waiver of conflict be put into writing. *See* S.C. Rule 1.7(b)(4). At the onset, Respondent was aware that Mr. Reid had wanted to remove his parents as personal representatives of the Estate and that he had written letters to the probate court to do so, but those requests were denied. Both Mr. Reid and Frances Reid credibly testified that Respondent did not advise

them concerning the conflict in representation or request a waiver of the conflict in the joint representation of Mr. Reid, a beneficiary of the Estate, and his parents, as personal representatives of the Estate.

S.C. Rule 1.7(b) provides that:

> Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) each affected client gives informed consent, confirmed in writing.

S.C. Rule 1.7(b)(3) does not allow waiver of a conflict (even with an informed consent in writing) where the joint representation involves the assertion of a claim by one client against the other client in the same proceeding.[17]

Here, Respondent had a conflict of interest when he agreed to represent Mr. Reid and then also sought to represent his parents concerning the very same action. Respondent admitted that he knew early on of Mr. Reid's multiple attempts to remove his parents as personal representatives, and Respondent was also aware that

[17] The D.C. Rule similarly does not allow, even after advising a client, a lawyer to "advance two or more adverse positions in the same matter." D.C. Rule 1.7(a).

prior counsel had tried to have Mr. Reid renounce his rights as a statutory beneficiary to the Estate. FF 39. Yet, he testified that because everyone was getting along when he started the representation, no need existed for any legal advice on the potential conflict and he did not request a waiver of the conflict from either Mr. Reid or his parents.

These issues did not go away when Respondent became counsel for both Mr. Reid and his parents. FF 41-42. In August 2012, Mr. Reid again tried to have his parents removed as personal representatives of the estate. FF 42. Respondent testified that during his second visit with Mr. Reid in prison (and Respondent's only meeting with Frances Reid), Respondent asked Frances Reid to convince her son, Mr. Reid, to renounce his statutory share. FF 54. We believe clear and convincing evidence exists that Respondent did not ask either Mr. Reid or his parents for their consent to a waiver of the conflict at any point in the representation. Respondent, indeed, never discussed the conflict with either client during the entire period of representation. FF 40; *see, e.g.*, *In re Pennington*, 668 S.E.2d 402, 404 (S.C. 2008) (per curiam) (violation of S.C. Rule 1.7 where respondent did not advise clients of conflict of interest in his dual representation in custody dispute among family members). Respondent's representations in his Answer and his testimony at the hearing—that he later discussed the conflict with both Mr. Reid and his parents—were false. FF 92(e). *See Dickey*, 718 S.E.2d at 744-45 (regardless of clients being aware of the dual representation, attorney found in violation of S.C. Rule 1.7). Moreover, Respondent concededly never obtained their informed consent to a

waiver of the conflict, in writing or otherwise. *See, e.g.*, FF 41 (Respondent, instead, minimized the obvious conflict during his hearing testimony: "[W]hen I first became involved everyone was . . . on the same page."). The record shows that Respondent sought joint representation of Mr. Reid, Frances Reid, and William H. Reid, Sr., despite the recognized history of conflict and then never sought a waiver of the conflict, and thus, never received such a waiver. *See* FF 40-41.

E. Respondent Engaged in Dishonesty and Made Misrepresentations in Violation of S.C. Rule 8.4(d).

Under S.C. Rule 8.4(d), a lawyer may not "engage in misconduct that involving dishonesty, fraud, deceit or misrepresentation." *See In re Cromartie*, 736 S.E.2d 856, 859 (S.C. 2012) (S.C. Rule 8.4(d) violation based on admitted tax evasion); *In re Johnson*, 668 S.E.2d 416, 418 (S.C. 2008) (S.C. Rule 8.4(d) violation for false statements made during disciplinary counsel's investigation); *see also In re Taylor*, 762 S.E.2d 25, 26 (S.C. 2014) (per curiam) (fabricating letters to demonstrate communications with client is conduct involving dishonesty, fraud, deceit, or misrepresentation).[18]

The Committee accepts that Mr. Hinton filed the single-page motion that succinctly requested that the case be put back on the docket—but that is a far cry

[18] The D.C. Court of Appeals has defined the term "dishonesty" to include not only fraudulent, deceitful or misrepresentative conduct, but is a more general term that also encompasses "conduct evincing 'a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness.'" *In re Hager*, 812 A.2d 904, 916 (D.C. 2002) (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990)). Dishonesty includes not only affirmative misrepresentations but also a failure to disclose when there is a duty to do so. "Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation." *Reback*, 487 A.2d at 239-40 (citation omitted).

from Respondent's claim that Mr. Hinton was acting as lead counsel. From the limited documentation, on the part of both Respondent and Mr. Hinton, and the testimony of Frances Reid, we find that Mr. Hinton was a colleague of Respondent's who agreed to help Respondent out, and Respondent admittedly did not write to his clients to notify them of his withdrawal from representation or advise them of Mr. Hinton's role. FF 70-71. Respondent instead wrote to the Probate Court indicating he remained as lead counsel and that the Bynum Firm's representation of the Estate of Deirdre Gist Reid was ongoing. FF 60, 63.

Respondent was not straightforward or honest with his clients and misrepresented his ability to represent them in their medical malpractice actions. FF 30-31, 40. The Committee finds that Mr. Reid credibly testified that Respondent falsely told him that he had handled other medical malpractice cases. FF 30. The Committee also has determined that Respondent concealed from Mr. Reid and Frances Reid the important fact that he was not licensed in South Carolina—a significant fact in their decision to retain him, as Frances Reid confirmed. FF 30, 51. Respondent engaged in further dishonesty by concealing his need to associate with local counsel and his own inaction in the case. FF 30-31, 46-47. When the court granted the Motion to Dismiss for failure to prosecute, Respondent did not tell his clients. FF 66-67, 77. This omission or concealment was dishonest.

Respondent delayed several months before responding to the Probate Court about the status of the malpractice action, which he then misrepresented. FF 60, 63.

Respondent wrote to the Probate Court in March 2014 that his delay was due to complexities in the litigation, yet he was not engaged in the case at all but was ignoring Defendants' Motion to Dismiss for Failure to Prosecute. *See* FF 63-65. Respondent also dishonestly claimed to the Probate Court that he was in discussions with defense counsel. *See* FF 63 (falsely writing that he was "currently in discussions with counsel for the defense").

We, accordingly, have no trouble finding that Respondent violated S.C. Rule 8.4(d) based on the following: (1) Respondent's admission to Disciplinary Counsel's investigator that he was the lead attorney, and then his subsequent position at the hearing that he was not the lead attorney; (2) the recorded false content of his letters to the Probate Court; and (3) his too convenient, unverifiable claim that the now-deceased Mr. Hinton understood that he was in charge of the case. All these factors point to one conclusion—Respondent intentionally misrepresented key facts throughout. When Defendants' counsel moved to dismiss for failure to prosecute, Mr. Hinton alerted Respondent and sent him the motion. FF 61. We believe this conduct is consistent with Mr. Hinton viewing Respondent as the lead attorney. When Mr. Reid and his parents wanted to know the status of the medical malpractice actions, they attempted to reach Respondent, *not* Mr. Hinton. FF 56-58. Both Mr. Reid's and Frances Reid's conduct was consistent with an honestly-held belief that Respondent was a licensed South Carolina attorney experienced in medical malpractice actions who was their only attorney.

V. SANCTION

Disciplinary Counsel has recommended that Respondent be disbarred. We, however, believe that sanction is not consistent with comparable misconduct and instead recommend a three-year suspension with a requirement that Respondent demonstrate his fitness to practice law before being reinstated.[19]

A. Three-Year Suspension Consistent with Comparable Violations

Attorney discipline is imposed to protect the public interest by maintaining the integrity of the profession, protecting the public and the courts, and deterring other attorneys (as well as the respondent-attorney) from engaging in similar misconduct. *Reback II*, 513 A.2d at 231. The sanction imposed must be consistent with sanctions for comparable misconduct. D.C. Bar Rule XI, § 9(h)(1) (Court seeks to avoid "inconsistent dispositions for comparable conduct").

In determining the proper sanction to impose, the Court has considered the following factors: (1) seriousness of the misconduct; (2) prejudice, if any, to the client; (3) whether the conduct involves dishonesty and/or misrepresentation; (4) violations of any other disciplinary rules; (5) whether the attorney had a previous disciplinary history; (6) whether the attorney acknowledges the wrongful conduct;

[19] Discipline can be imposed against a member of the District of Columbia Bar for the violation of another jurisdiction's rule of conduct. *See* D.C. Rule 8.5(a) ("A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs."); *see also In re Ponds*, 876 A.2d 636, 637 (D.C. 2005) (per curiam) (D.C. Court of Appeals may impose a sanction for a violation of the Maryland Rules).

and (7) circumstances in mitigation and aggravation. *See*; *In re Vohra*, 68 A.3d 766, 771 (D.C. 2013); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013).

Nature and Seriousness of Respondent's Conduct

Respondent's misconduct was serious and protracted. His misconduct in this case began in 2011, four years after Respondent became a lawyer, and continued for three years. As an aggravating factor, Respondent testified falsely before this Hearing Committee. As detailed above, Respondent violated S.C. Rule 1.3; S.C. Rules 1.4(a) and (b); S.C. Rule 1.5(b); S.C. Rule 1.7(a)(2); S.C. Rule 8.4(d); D.C. Rules 1.3(a), (b)(1), and (c); and D.C. Rules 1.4(a) and (b).

Prejudice to Respondent's Clients

Respondent's misconduct severely prejudiced his clients who lost claims that had been developed and supported by evidence obtained through prior counsel's discovery and retention of medical experts. *See* FF 20. Respondent abandoned two causes of action that could have been litigated at trial or mediated and that could have benefitted Mrs. Reid's two young daughters and Mr. Reid. FF 13-14, 20, 27.

Respondent's Dishonesty

Respondent's dishonesty was directed at his clients, the South Carolina Probate Court, and the Hearing Committee. His false representations in his Answer to the disciplinary charges and his false testimony at the hearing aggravated the dishonesty directed at his clients and the South Carolina courts. FF 92. Even when Respondent finally responded to the Office of Disciplinary Counsel, he did not provide accurate or relevant information about the status of the matters, or what he

had done to pursue the clients' claims. Instead, Respondent falsely stated he had zealously pursued the medical malpractice action, and that Mr. Reid was to blame for whatever went wrong. FF 87.

We have considered whether Respondent's dishonesty was "flagrant," thus providing the basis for disbarment. *See In re Pelkey*, 962 A.2d 268, 281 (D.C. 2008) (disbarment for "persistent, protracted, and extremely serious and flagrant acts of dishonesty"). On balance, we conclude that Respondent's dishonesty, while very serious, is not flagrant as that term has been applied by the Court. Respondent's falsehoods do not involve schemes to obtain client or public funds directly or a crime, a feature of many disbarment cases. *See, e.g.*, *In re Corizzi*, 803 A.2d 438 (D.C. 2002) (soliciting perjury); *In re Goffe*, 641 A.2d 458, 465 (D.C. 1994) (per curiam) ("respondent's conduct in tendering fabricated documents would constitute a felony involving moral turpitude if it had been prosecuted") (quoting Hearing Committee analysis).

Here, Respondent's dishonesty is comparable to that of the respondent who did not seek a personal economic benefit in *In re Steele*, 868 A.2d 146 (D.C. 2005) (three-year suspension with a fitness requirement), and the respondent who demonstrated a "cavalier attitude" and a "misguided view of his obligations toward his clients and his responsibilities under the Rules" in *In re Samad*, 51 A.3d 486, 500 (D.C. 2012) (three-year suspension with a fitness requirement). Respondent's misrepresentations to the South Carolina Probate Court about the status of the medical malpractice action and his role in the litigation did not affect the substantive

outcome of the probate proceeding. They may have led the Probate Court to keep the probate proceeding open longer, but the false letters did not change its result.

This case is also comparable to *In re Vorha*, 68 A.3d 766 (D.C. 2013) where the Court imposed a three-year suspension with a fitness requirement where the misconduct was not "grounded in malice." 68 A.3d at 773. The violations in *Vorha* (neglect, "continuously and flagrantly" failing to keep clients informed of their visa status, failing to cure deficiencies in refiled application, failing to file a proper motion to reopen after rejection of re-filed application, deliberately falsifying clients' signatures on official immigration petitions, and making multiple misrepresentations during the disciplinary process) are similar to those found in this proceeding, although they arose in several immigration cases rather than the single cause of action that forms the core of Respondent's violations here.

Respondent's Other Violations

In addition to his dishonesty, Respondent violated other fundamental obligations owed by lawyers, including the duty to communicate with clients and not undertaking representations that may involve conflicts of interests. Respondent's last-minute fabricated excuses have no documentary support. Indeed, what few documents Respondent produced refute, rather than support, his claim that he had withdrawn from the representation. *See, e.g.*, FF 34, 60, 64, 66, 74. The files Respondent submitted to Disciplinary counsel did not contain contemporaneous notes to document any of the conversations he testified took place between him and his clients or between Respondent and his local counsel.

Prior Discipline

There is one factor in mitigation: Respondent's lack of a prior disciplinary record.

Acknowledgement/Remorse

Throughout the investigation and the hearing, Respondent maintained that he had done nothing wrong, going so far as to blame the problems on his client during Disciplinary Counsel's investigation. FF 87. Respondent did not state he would do things differently and did not express any remorse for his actions or the harm they caused. Instead, he lied and stated he had withdrawn from the representation and advised his clients he had done so—testimony that was contrary to his representations to his clients (FF 71-72), to the South Carolina Probate Court (FF 64, 66), and to Disciplinary Counsel as late as April 2016 (FF 88). His conduct during the investigation and throughout the hearing evinced a casual attitude, at best, toward the disciplinary process. Respondent's post-hearing Amended Response to Disciplinary Counsel's Proposed Findings of Fact acknowledged only that he had not properly kept his clients informed of developments, only one of his serious violations. *See* Amended Response to Disciplinary Counsel's Proposed Findings of Fact at 20-21, 37 (admitting failure to inform and refusal to take or return clients' phone calls).

Mitigating and Aggravating Circumstances

Respondent contends that, in addition to his lack of any disciplinary history, his poor health should be considered in mitigation of sanction.[20] Evidence of an alleged medical disability may be considered in mitigation of sanction, if the respondent establishes the necessary causal connection. *See, e.g.*, *In re Weiss*, 839 A.2d 670, 671 (D.C. 2003) (imposing three-year suspension with one year suspended in favor of two years' probation, where the Court considered, in mitigation, psychiatrists' testimony that the respondent's misconduct was "the result of a psychological need for security born of his father's depression-era fear of poverty"); *In re Douglass*, 745 A.2d 307, 307 (D.C. 2000) (per curiam) (imposing a public censure after considering the death of the respondent's mother and son and his own medical problems at the time of the underlying misconduct in mitigation of sanction). As discussed below, we find that Respondent has not established a causal connection between the misconduct and any alleged disability.

[20] On August 29, 2016, the Board ordered that pursuant to Board Rules 7.6(d)(ii) and 7.6(d)(iii), Respondent would be permitted to raise his alleged disability in mitigation of sanction pursuant to *In re Kersey*, 520 A.2d 321 (D.C. 1987) only if he filed a notice of a consent to an interim suspension, due to Respondent's late filing of the Notice of Intent to Raise Disability in Mitigation (he filed within thirty days of the scheduled hearing date). Respondent, however, never filed the required notice of a consent to an interim suspension. As a result of his failure to comply with Board Rule 7.6, Respondent cannot request *Kersey* mitigation, which, if all the elements are met, can result in a sanction that is stayed in favor of a lesser one. *See, e.g.*, *In re Soininen*, 783 A.2d 619, 622 (D.C. 2001) (thirty-days suspension stayed for a probationary term of two years), *Kersey*, 520 A.2d at 328 (disbarment stayed for a probationary term of five years). In any event, because Respondent also did not present evidence that showed his misconduct was "substantially caused" by a disability (*see Kersey*, 520 A.2d at 327), he would not have been entitled to *Kersey* mitigation even if he had complied with Board Rule 7.6 or the Board's August 29, 2016 order.

In 2004, three years before his admission to the District of Columbia Bar, he had a stroke due to cardiomyopathy. FF 80. Since 2006, he has had congestive heart failure. *Id*. Respondent submitted three documents to show medical treatment that he received in February 2015 (complaints of edema and shortness of breath), June 2015 (doctor not having seen Respondent in several years, noted that defibrillator was to be replaced later that week), and June 2016 (emergency room visit for gout). FF 81. What the record lacks, however, is any corroboration of Respondent's assertion that his health deteriorated shortly after one of the malpractice actions was reinstated in February 2013. He was unable to provide a reasonably precise timeline for that deterioration. FF 82. Nor is there anything but his testimony to suggest that these long-existing conditions rendered him unable to carry out even the most basic duties to his clients, or to withdraw from the representation in accordance with S.C. Rule 1.16 (Declining or Terminating Representation) or D.C. Rule 1.16 (same) in this and other cases (which he admittedly did not do). FF 83.

Other evidence in the record contradicts Respondent's assertions that his poor health should be considered a factor in mitigation. First, he continued to represent to the Probate Court that he was lead counsel in the malpractice case during his alleged health problems. FF 60, 64. Second, Respondent was able to handle various cases in the District of Columbia at the same he claimed that he was unable to attend to his South Carolina clients' needs. FF 83. His explanation for this discrepancy is not persuasive. He testified that he could handle the District

of Columbia cases because he could file papers electronically while the South Carolina courts required paper submissions in the traditional manner.[21] *Id*. This leads us to conclude that Respondent's health did not affect his ability to practice law during the period at issue so seriously as to excuse the many serious violations of his ethical duty to protect his clients' interests. Accordingly, because the necessary causal connection has not been shown, we do not accord weight to his health claim as a mitigating factor.

As described *infra* at 63-65, Respondent's dishonesty, multiple rule violations, and the prejudice to his clients are aggravating factors that warrant consideration.

B. The Fitness Requirement

D.C. Bar R. XI, § 2(a) states that "[t]he license to practice law in the District of Columbia is a continuing proclamation by this Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and an officer of the Court."

The standard for the imposition of a fitness requirement has been detailed in *In re Cater*, 887 A.2d 1 (D.C. 2005). 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

[21] Certainly, filing with a keystroke on one's home computer is easier than printing and mailing, but filing court papers is such a small part of a lawyer's activities that the difference between paper and electronic filing cannot explain his failing to protect the Mr. Reid's and his parents' interests. The weakness of this argument suggests that Respondent was grasping for any excuse.

serious doubt upon the attorney's continuing fitness to practice law." *Id.* at 6. Proof of a "serious doubt" under *Cater* involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes instead "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

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

> [t]he 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.

The Court of Appeals has determined that the following 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.

Our consideration of Respondent's misconduct, as measured against the *Roundtree* factors, convinces us that there is a serious doubt regarding Respondent's continuing fitness to practice law.

Our doubt about Respondent's fitness is based on several factors. First, the many false statements enumerated above lead us to doubt his commitment to basic tenets of honesty to his clients, to the courts, and to the disciplinary process. Respondent's false statements in his Answer are particularly troubling. Second, Respondent's conduct during the investigation and the disciplinary process showed that he did not appreciate the seriousness of his misconduct. Throughout the investigation and the hearing, he never acknowledged that he had done anything wrong.[22] He even argued that the problems that arose in the representation were his clients' fault.

The number and variety of violations Respondent committed suggest that he has no effective understanding of the duties a lawyer owes to his clients. His description of his agreement to pursue an insurance claim as an "aside" demonstrates

[22] As we noted *supra* at 53, Respondent's Amended Response to Disciplinary Counsel's Proposed Findings of Fact at 20-21 acknowledged that he had not properly kept his clients informed of developments. This is a small step in the right direction, but it was too little and too late to suggest that he appreciated the consequences of his actions—both those which led to the charges and those taken in the disciplinary process.

his utter ignorance or disregard of the duties of a lawyer to his client. Respondent evinced no knowledge of how to deal with multiple clients whose interests might diverge. His description of his dealings with local counsel likewise reflect no understanding of what constitutes professional conduct in such a situation. Finally, his abandonment of responsibility for the wrongful death actions and his failing to communicate with his clients—to the extreme of not taking their calls—cause us to question his fitness for the practice of law.

We recognize that all these violations occurred in the context of one set of unfortunate facts—Dierdre Gist Reid's death after giving childbirth. We recognize that part of Disciplinary Counsel's argument was that despite Respondent's alleged health problems, he was able to handle various matters in the District of Columbia apparently without incident. We, nevertheless, conclude that the breadth of the violations in this matter and the harm they caused Respondent's clients create a substantial doubt about Respondent's fitness to practice law.

VI. CONCLUSION

Based on the foregoing clear and convincing evidence and conclusions of law, the Ad Hoc Hearing Committee finds that Respondent violated S.C. Rules 1.3, 1.4(a) and (b), 1.5(b), 1.7(a)(2), and 8.4(d). In regard to his representation in the insurance matter, Respondent violated D.C. Rules 1.3(a), (b)(1), and (c), and 1.4(a) and (b). A violation of S.C. Rule 1.5(e) has not been proven, however. The Committee recommends that Respondent be suspended from the practice of law for a period of three years with reinstatement conditioned upon his making a showing, by clear and

convincing evidence, that he is fit to resume the practice of law pursuant to D.C. Bar R. XI, § 16. *See Roundtree*, 503 A.2d at 1216.

AD HOC HEARING COMMITTEE

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Mary C. Larkin, Public Member

/LAW/
Lisa A. Wilson, Esq., Attorney Member

Dated: April 27, 2017