DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
July 26, 2018

In the Matter of:	:	
	:	
JAY S. WEISS,	:	
	:	Board Docket No. 14-BD-089
Respondent.	:	Bar Docket No. 2012-D437
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 29652)	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

Respondent represented a client in connection with a civil suit arising out of an altercation with two WMATA police officers, but failed to file that suit within the statute of limitations. Respondent maintains that he missed the statute of limitations deadline because he put a civil case in a "criminal" case drawer, and as a result, his office's tickler system did not alert him to the looming statute of limitations in the civil case. The Hearing Committee found, and we agree, that Respondent had a number of interactions with his client and another attorney representing the client in a separate matter that should have caused him to review the file. He did not do so. Instead, he led his client to believe things were under control and, ultimately, that the lawsuit had been filed, even though it had not been filed, and the statute of limitations had expired. Then, in an attempt to cover-up his

failure to file the suit and give his client the false impression that it had been filed, Respondent led his client to believe that he could receive a sum of money from the never-filed and time-barred lawsuit.

An Ad Hoc Hearing Committee found that Respondent's conduct violated Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.4(b), and 8.4(c), and recommended that he be suspended for ninety days. Respondent concedes that he missed the statute of limitations, and that he "should have communicated better" with his client when he discovered the error. Although he acknowledged some misconduct, he argues that Disciplinary Counsel failed to prove violations of Rules 1.1(a) and 8.4(c), and that he should receive an Informal Admonition for his misconduct. Disciplinary Counsel supported the Hearing Committee's recommendations, except for its failure to find violations of Rules 1.3(b)(1) and 1.3(b)(2). Upon consideration of the parties' briefs, and oral argument, as well as the entire record in this case, and for the reasons set forth below, we agree with and adopt the Hearing Committee's thoughtful report, including its recommendation that Respndent be suspended for ninety days.

We address the parties' exceptions to the Hearing Committee report below, and set out facts sufficient to provide context to the resolution of the parties arguments.

II. FINDINGS OF FACT

A. Challenge to the Hearing Committee's Factual Findings

Before setting forth the findings of fact, we first address Respondent's objections to a large number of factual findings of the Hearing Committee. None of

these factual findings are relevant to our decision here. There are a number of such exceptions. *See* Respondents Brief ("Respondent's Br.") at 6-23. By way of example, we discuss three of his exceptions here.

Respondent takes exception to a Hearing Committee finding that Respondent wrote a letter memorializing his understanding of a meeting with Mr. Morgan, based on his memory of a meeting. Respondent's Br. at 8, discussing Hearing Committee ¶ 9. Instead, Respondent urges us to reject that finding because the basis for Respondent's understanding of what happened at the meeting is not in the record before the Hearing Committee. Respondent points out that it could have been that Respondent based the letter on his notes from the meeting. *Id.* While that may have been what happened, resolving this factual issue is simply not relevant to any of the disciplinary violations at issue here.

Similarly, Respondent "takes exception to and has concern regarding" some of the rhetoric used by the Hearing Committee in describing what happened in this case. Respondent's Br. at 6, n.1 (describing Respondent as "playing Russian Roulette" with Mr. Morgan's case and sending Respondent's casefile to "Never Never Land"). To be sure, Respondent is correct that those who have cases in the disciplinary system should be treated with respect. But this language does not bear on, or influence in any way, our decision in this matter. And it is not relevant to our consideration of the disciplinary violations here.

Perhaps most relevant is Respondent's exception to the Hearing Committee's findings in paragraph 21. Respondent's Br. at 8-9. In that paragraph, the Hearing

Committee found that during numerous phone conversations before and after the statute of limitations passed, "Respondent always reassured Mr. Morgan that he was advancing Mr. Morgan's interests. However, despite repeated contacts by telephone and in person, Respondent did not review Mr. Morgan's file, nor did he take any steps to advance Mr. Morgan's interests in the civil matter." (internal citations omitted). Respondent argues that while there is evidence in the record that Mr. Morgan visited Respondent's office to drop off documents, there is no support for the proposition that Respondent and Mr. Morgan actually met and discussed Mr. Morgan's case during those visits. Respondent's Br. at 9. For that reason, Respondent asks us to not adopt a finding that Mr. Morgan and Respondent had contacts in person. To be clear, Respondent does not dispute the Hearing Committee's finding that Respondent spoke with Mr. Morgan repeatedly on the telephone. He merely disputes whether they also spoke in person.

We are sympathetic to how reading a list of detailed findings must strike a person facing discipline. To be sure, even minor inaccuracies in a Hearing Committee's Report can be frustrating for an attorney who stands to lose much of his or her professional status and reputation. However, because none of the factual findings identified by Respondent are material to the conclusions in this case, we adopt the substance of the Hearing Committee's factual findings, as supported by substantial evidence in the record, and we set forth our summary of those relevant facts below.

B. Factual Findings

Respondent has practiced in the District of Columbia since 1967, focusing primarily on personal injury cases. In October 2008, Romeo Morgan, the owner of Morgan's Seafood Restaurant in the District of Columbia, had an altercation with two WMATA law enforcement officers, with the result that Mr. Morgan was taken to the hospital and subsequently criminally charged with disorderly conduct, two counts of assault on a police officer, and unlawful possession of an open container of alcohol. FF 1-3.

Mr. Morgan was interested in pursuing a civil claim arising out of the altercation, and sought Respondent's legal advice on October 31, 2008. They agreed to delay any civil action until after the criminal case against Mr. Morgan. Respondent did not inform Mr. Morgan that the one-year statute of limitations for intentional torts would expire on October 22, 2009. FF 4-6. Mr. Morgan did not sign an engagement letter at that time, but Respondent opened a file for Mr. Morgan, and obtained certain medical records. FF 7-9.

Mr. Morgan was found guilty of only an "open container" violation on February 25, 2009, and he retained another lawyer to represent him against WMATA. He later became dissatisfied with that lawyer, and returned to Respondent's office on October 22, 2009, the day the one-year statute of limitations for intentional torts expired. Respondent agreed to represent Mr. Morgan in a civil suit against WMATA, and presented Mr. Morgan with a retainer agreement, which Mr. Morgan signed. FF 10-13.

Respondent did not tell Mr. Morgan that the one-year statute of limitations for intentional torts expired on October 22. Instead, Respondent told Mr. Morgan that the statute of limitations was three years. Tr. 53. This is the statute of limitations for negligence actions. FF 14.

Mr. Morgan left his file with Respondent. Respondent's secretary marked Mr. Morgan's file as a criminal matter by writing "criminal" on the front of the folder. Tr. 414-15 (Respondent). Because of this designation, Respondent did not receive alerts on his computer that would have given him notice that the statute of limitations was approaching. Tr. 416, 418 (Respondent). The file remained in a completely "stagnant state" and was not seen again by Respondent until December 2011, after the three-year statute of limitations for negligence actions had expired. FF 16, 18-19.

Although Respondent did no work for Mr. Morgan between 2009 and 2011, Mr. Morgan frequently called or visited Respondent's office. Respondent reassured Mr. Morgan that he was advancing Mr. Morgan's interests. Sometime during 2011, Respondent had told Mr. Morgan that suit had been filed. These statements were not true. Respondent did no work on Mr. Morgan's civil case after the October 2009 meeting. FF 20-22, 25.

Respondent did not immediately inform Mr. Morgan that his casefile had been misfiled and that the statute of limitations had expired, and did not mention it when they spoke about another matter. In the summer of 2012, Respondent called Mr. Morgan and told him that WMATA offered to settle the case for $10,000. Respondent did not tell him that suit had not been filed and that the statute of

limitations had expired. FF 23-24, 26-27, 29, 35. Mr. Morgan was disappointed in the amount of the offer, and asked another attorney (Jennifer Bezdicek) to check on the status of the case. Ms. Bezdicek found no evidence that the case had been filed, and she called Respondent on September 6, 2012, to inquire. He explained that the statute of limitations for intentional torts had expired years ago, that he never intended to file a lawsuit but rather would handle it administratively, and the $10,000 "offer" was not an "offer" from WMATA, it was "just what I think I can get." Respondent had never told Mr. Morgan that he had not planned on filing suit. FF 30-32.

By conveying a purported offer to settle a case that had not been filed (and which could not be filed because the statute of limitations had expired) Respondent intentionally attempted to mislead Mr. Morgan about the true status of his case, and thus avoid discovery of the fact that Respondent had not been pursuing Mr. Morgan's interests, and had instead allowed the statute of limitations to expire.

III. CONCLUSIONS OF LAW

Neither party disputes the Hearing Committee's conclusion that Respondent violated Rules 1.1(b), 1.3(a), 1.3(c), 1.4(a), and 1.4(b).[1] We thus adopt and incorporate by reference the Hearing Committee's discussion of these Rule violations. We address below Respondent's argument that Disciplinary Counsel did

[1] Respondent argues that the Hearing Committee relied on incorrect facts in finding each Rule violation, but only argues that Disciplinary Counsel failed to prove violations of Rules 1.1(a) and 8.4(c). As we understand it, Respondent has conceded the violations of Rules 1.1(b), 1.3(a), 1.3(c), 1.4(a) and 1.4(b), albeit not on all of the facts found by the Hearing Committee.

not prove violations of Rules 1.1(a) and 8.4(c), and Disciplinary Counsel's argument that the Hearing Committee erred in not finding violations of Rules 1.3(b)(1) and 1.3(b)(2). For the reasons discussed below, we find that the Hearing Committee was correct in finding violations of Rules 1.1(a) and 8.4(c), and in not finding violations of Rules 1.3(b)(1) and 1.3(b)(2).

A. Respondent Violated Rule 1.1(a) Because He Failed to Provide the Requisite Level of Attention to Mr. Morgan's Case.

Rule 1.1(a) provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Respondent argues that he did not violate Rule 1.1(a) because there was no evidence that he was not competent to handle a personal injury matter, and in fact, there is abundant evidence that he had been effectively handling personal injury matters for fifty years.

But our inquiry is not whether Respondent is generally competent. Rather, Rule 1.1(a) requires only that a lawyer's representation in a particular matter be competent. *See In re Cole*, Bar Docket No. 268-05, at 8 (BPR Dec. 20, 2007) ("The issue, of course, is not whether the attorney lacks competence. Rather, it is whether he handled a particular legal matter in a competent manner."), *recommendation adopted without discussion*, 967 A.2d 1264 (D.C. 2009). '"Competent handling of a particular matter includes . . . use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation, and continuing attention to the needs of the representation to assure that there is no

neglect of such needs."' *In re Cater*, 887 A.2d 1, 16 (D.C. 2005) (quoting D.C. Rules of Prof'l Conduct R. 1.1 cmt [5]). Notably, *Cater* found a violation of Rule 1.1(a) because the respondent failed to adequately supervise a staff member who was assisting in a representation, not because the respondent was not generally competent to handle the representation.

Respondent argues that his case is distinguishable from *In re Outlaw*, 917 A.2d 684, 687 (D.C. 2007) (per curiam) because *Outlaw* involved an attorney who was licensed in the District of Columbia and Maryland, but represented a client in a personal injury matter in Virginia. She incorrectly entered the Virginia statute of limitations in her tickler system and, as a result, missed the statute of limitations for a client. Respondent argues that *Outlaw* involved a mistake of law, rather than a mistake of office management. Respondent's Br. at 30. We find that a distinction without a difference. Particularly in light of the frequent contacts between Respondent and Mr. Morgan and Respondent's view that he does not need to do any investigation or preparation on a case until shortly before the statute of limitations, we have little trouble concluding that his reliance on his tickler system and its flawed execution violated Rule 1.1(a). *See also In re Douglass*, 859 A.2d 1069, 1080 (D.C. 2004) (per curiam) (appended Board Report); *In re Sumner*, 665 A.2d 986, 988-89 (D.C. 1995) (per curiam) (appended Board Report) ("dropping of the ball" violates Rules 1.1(a) and 1.1(b)). Here, Respondent did not pay sufficient attention to the case to avoid the expiration of the statute of limitations. That is not competent representation.

B. Respondent Did Not Violate Rules 1.3(b)(1) and 1.3(b)(2)

Rule 1.3(b) directs that "[a] lawyer shall not intentionally: (1) [f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or (2) [p]rejudice or damage a client during the course of the professional relationship." Neglect is deemed intentional for the purposes of Rule 1.3(b) when it "is so pervasive that the lawyer must be aware of it" or "when a lawyer's inaction coexists with an awareness of his obligations to his client." *In re Ukwu*, 926 A.2d 1106, 1116, 1135 (D.C. 2007) (appended Board Report) (citations omitted); *see In re Reback*, 487 A.2d 235, 240 (D.C. 1985) (per curiam), *adopted in relevant part*, 513 A.2d 226, 229 (D.C. 1986) (en banc). "Neglect of a client's matter, often through procrastination, can 'ripen into . . . intentional' neglect in violation of Rule 1.3(b) 'when the lawyer is aware of his neglect' but nonetheless continues to neglect the client's matter." *In re Vohra*, 68 A.3d 766, 781 (D.C. 2013) (appended Board Report) (quoting *In re Mance*, 869 A.2d 339, 341 n.2 (D.C. 2005) (per curiam)).

Disciplinary Counsel argues that Respondent violated Rules 1.3(b)(1) and 1.3(b)(2) because Mr. Morgan's inquiries reminded him that he was representing Mr. Morgan, and put him on notice that he should have looked into the status of the case. Thus, on Disciplinary Counsel's view, Respondent's "inaction coexist[ed] with an awareness of his obligations to his client," *Ukwu*, 926 A.2d at 1116, and it has shown that Respondent's neglect violates Rules 1.3(b)(1) and (b)(2).

While it is true that Mr. Morgan's inquiries put Respondent on notice of Mr. Morgan's case, it does not follow that the inquiries put Respondent on notice that he had put Mr. Morgan's case file in the wrong folder. To find intentional neglect, we have to find that Respondent was '"aware of his neglect."' *Vohra*, 68 A.2d at 781 (citation omitted). Respondent was aware that he represented Mr. Morgan. And he was aware that Mr. Morgan had a claim he wanted to pursue. But, as far as Respondent knew, he was still complying with his obligations to Mr. Morgan. This case is factually similar to *In re Reback*, where the Board found intentional neglect, concluding that as a result of the client's brother's phone calls "every three or four weeks" to find out what was happening, the respondent was "being 'continually' reminded" of the case, and could not have forgotten about it. *In re Reback*, Bar Docket No. 370-91, *et al.*, at 8-9 (BPR Nov. 3, 1983). However, the Court disagreed with the Board, and found that the frequent reminders made the respondent's neglect more egregious, but did not make it intentional. *Reback*, 487 A.2d at 241, *adopted in relevant part*, 513 A.2d 226, 229 (D.C. 1986) (en banc). Thus, we agree with the Hearing Committee that Disciplinary Counsel has not shown that Respondent engaged in intentional neglect of Mr. Morgan's case.

C. Respondent Violated Rule 8.4(c) by Engaging in Conduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation.

Rule 8.4(c) states that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." The Hearing Committee found that Respondent violated Rule 8.4(c) because he misled his client into believing that he was working on the civil case when, in fact, no work was being

done, and he misled his client into thinking that he would get a settlement from WMATA when, in fact, Respondent himself was offering to pay the funds to keep his misconduct from coming to light.

We agree with the Hearing Committee that Respondent engaged in dishonest conduct. Mr. Morgan testified credibly that he spoke with Respondent while his file was languishing in Respondent's filing cabinet and Respondent assured him that his case was being taken care of. FF 21, 65. These false statements were made recklessly because Respondent did not know of or check on the status of Mr. Morgan's case before reassuring him that Respondent was advancing his interests. *See In re Romansky*, 938 A.2d 733, 741-42 (D.C. 2007) (reckless false statements violate Rule 8.4(c)). Respondent told his client that he would be paid from the suit, creating the impression that the money would come from WMATA. FF 66. These statements could not be anything other than dishonest.

Respondent argues that the Hearing Committee erred in finding a Rule 8.4(c) violation, and that the Board should adopt Respondent's gloss that the statements were not misleading in the context in which Respondent presented them. For instance, he argues that statements to the effect that he was moving the case forward reflected only Respondent's constant effort to move all of his clients' cases forward. Similary, Respondent urges the Board to conclude that the settlement offer was not a settlement offer, but just an estimate of what Respondent thought the case was worth. The Hearing Committee rejected those arguments, and so do we.

IV. SANCTION

Respondent argues that the Hearing Committee's recommended ninety-day suspension is not consistent with the sanctions imposed for comparable misconduct, and that he should receive an InformalAadmonition, or at most a thirty-day suspension, stayed in favor of probation with a Continuing Legal Education requirement. Disciplinary Counsel supports the Hearing Committee's recommendation. The Board agrees with the Hearing Committee that Respondent should be suspended for ninety days.

In support of a lesser sanction, Respondent makes the following arguments:

- He did not "ignore" Mr. Morgan's case, he simply relied on his calendaring system to send him ticklers of upcoming deadlines;
- Mr. Morgan was not prejudiced by Respondent's misconduct because he did not have a meritorious cause of action;
- The Hearing Committee erred on concluding that Respondent "did nothing" on the case because he collected medical records, responded to Mr. Morgan's phone calls and responded to any medical provider who sent records;
- Respondent did not lie to Mr. Morgan regarding the possibility of a payment from WMATA; and
- Respondent accepted responsibility for the misfiling mistake, and never tried to blame his secretary.

The Hearing Committee's contrary findings, however, are supported by substantial evidence on the record as a whole.

The Hearing Committee correctly concluded that Respondent "ignored" Mr. Morgan's case. When Mr. Morgan called to inquire about the case status, Respondent told him it was progressing without actually checking to see if that was

true. Thus, this is not simply about the breakdown of Respondent's internal tickler system. Respondent's effort to cast this case in that light shows that even now he does not appreciate his failures in Mr. Morgan's representation.

Mr. Morgan was prejudiced because Respondent, the lawyer he hired to handle his case, never even considered whether his case had merit. If Respondent thought that the case was meritless, he should have informed Mr. Morgan, who then would have been able to decide whether to consult other counsel. By taking Mr. Morgan's case, and then doing nothing to prosecute it, Respondent prevented any substantive professional review of the case before the statute of limitations expired. *In re Lenoir*, 585 A.2d 771, 785 (D.C. 1991) (per curiam) (appended Board Report) (prejudice to client who never had opportunity to obtain a civil adjudication); *In re Lawrence*, 526 A.2d 931, 933 (D.C. 1986) (per curiam) (attorney suspended for ninety days for allowing statute of limitations to expire claiming suit was frivolous; Court adopts Board's finding of "inherent" prejudice to client).

Respondent next criticizes the Hearing Committee for concluding that he did "absolutely nothing while assuring Mr. Morgan that he was looking after his interests." Respondent's argument is unpersuasive because, in the light most favorable to him, his activity on the case consisted of collecting some medical records, responding to calls from Mr. Morgan, and responding to any medical provider who sent in records. Thus, as a practical matter, Respondent did little of substance to "look after" Mr. Morgan's interests. His bare minimal effort to collect records and answer the phone when Mr. Morgan called is not a mitigating factor.

The Hearing Committee found, and we agree, that Respondent lied to Mr. Morgan about the source of the "settlement" payment, and that he intended to mislead Mr. Morgan to believe that WMATA would pay to settle the case. Thus, not only did Respondent lie about the source of the $10,000 offer, he lied in an effort to cover-up his misconduct.

Finally, Respondent initially blamed his secretary for placing the file in the wrong drawer, but as the Hearing Committee correctly observed, the misfiling of Mr. Morgan's casefile was not the cause of Respondent's misconduct. Instead, the misconduct resulted from Respondent's failure to pay any attention to Mr. Morgan's case, despite repeated inquiries about the case status. The misfiling error would have been discovered if Respondent had shown an interest in Mr. Morgan's case when Mr. Morgan pressed him for updates, and checked on its status before assuring Mr. Morgan that the case was progressing.

Respondent argues that no comparable cases support the imposition of the recommended ninety-day sanction. The Hearing Committee recognized that there is no precisely comparable case, and arrived at its ninety-day suspension recommendation, by concluding that Respondent's conduct was appreciably worse than that in *Outlaw*, 917 A.2d 684, where the respondent was suspended for sixty days for lying to the client about the claim after allowing the statute of limitations to lapse, and failing to accept responsibility.

Generally, absent aggravating factors, a first instance of neglect of a single client matter warrants a reprimand or public censure. *See, e.g.*, *In re Schlemmer*, 870

A.2d 76, 81-82 (D.C. 2005) (Board reprimand); *In re Bland*, 714 A.2d 787, 787-88 (D.C. 1998) (per curiam) (public censure). But in cases where there are aggravating factors or the respondent has a prior disciplinary history, a thirty-day suspension has been imposed. *See, e.g.*, *Mance*, 869 A.2d at 340-42 (thirty-day suspension stayed in favor of probation and CLE for neglect stemming from systematic case disorganization); *In re Ontell*, 593 A.2d 1038 (D.C. 1991) (thirty-day suspension for neglect and misrepresentations in two client matters although candid with Board and Disciplinary Counsel's investigation). The Court has imposed greater sanctions in neglect cases where there were significant aggravating factors—such as deliberate dishonesty, a pattern of neglect, or an extensive disciplinary history. *See, e.g.*, *Outlaw*, 917 A.2d 684; *In re Steinberg*, 878 A.2d 496, 497-98 (D.C. 2005) (per curiam) (sixty-day suspension for neglect where attorney had three prior thirty-day suspensions); *In re Drew*, 693 A.2d 1127 (D.C. 1997) (sixty-day suspension for neglecting two cases with a disciplinary record of three informal admonitions); *In re Chisholm*, 679 A.2d 495 (D.C. 1996) (six-month suspension and fitness for protracted and continuing dishonesty in neglect matter); *In re Fogel*, 422 A.2d 966 (D.C. 1980) (per curiam) (one-year and a day suspension where respondent was deliberately dishonest with Disciplinary Counsel and in his hearing testimony).

Respondent argues that he should receive an informal admonition, relying on a number of cases where the respondent engaged in some of the same misconduct, including missing the statute of limitations. *In re Power*, Bar Docket No. 2008-D478 (Letter of Informal Admonition July 23, 2009); *In re Katz*, Bar Docket No. 2008-

D484 (Letter of Informal Admonition July 8, 2009); *In re McMahon*, Bar Docket No. 2006-D153 (Letter of Informal Admonition Oct. 20, 2011); *In re Silver II*, Bar Docket No. 2009-D475 (Letter of Informal Admonition June 9, 2010); *In re Hearring Garrett*, Bar Docket No. 326-99 (Letter of Informal Admonition July 30, 2001); *In re Karpinski*, Bar Docket No. 2007-D424 (Letter of Informal Admonition Apr. 24, 2008). However, none of those cases involved the dishonesty present here, and thus, they do not involve comparable misconduct.

As an alternative to an informal admonition, Respondent argues for a thirty-day suspension (stayed in favor of CLE) citing *Cole*, 967 A.2d 1264 and *Mance*, 869 A.2d 339. These cases involve misconduct similar to that present here; however, the misconduct is not sufficiently comparable to warrant the same sanction. In *Cole*, the respondent failed to timely file an asylum petition, despite the client's repeated calls inquiring about the status of the application. After the respondent received an order allowing the client thirty days to depart the country to avoid deportation, the respondent lied to the client about the status of the case and said that the case had been delayed. 967 A.2d at 1265. The respondent was suspended for only thirty days because he worked with successor counsel to "reverse the impact" of his misconduct, he personally apologized to the client and refunded his fee, and he was truthful and remorseful during the disciplinary hearing. *Id.* at 1268. Notably, *Cole* discussed *Outlaw*, and determined that the misconduct in *Outlaw* was worse because the respondent was not credible during the disciplinary hearing, and she refused to accept personal responsibility for her neglect. *Id*. As these latter facts are present

here, Respondent's misconduct warrants a longer suspension that the thirty days imposed in *Cole.*

Respondent next relies on *Mance,* 869 A.2d 339, which involved the serious neglect of a criminal matter, but not the dishonesty found here. In *Mance,* the Court agreed with the Board's recommendation that a thirty-day suspension be stayed because the misconduct was an '"aberration"' and to allow the respondent to continue to provide '"much needed high quality legal representation of criminal defendants' without interruption." *Id.* at 342. While nothing in the record suggests that Respondent's neglect here is how he routinely handles client matters, his attempt to rely on *Mance* fails because *Mance* did not involve dishonesty, and there is no concern that a suspension here will interrupt the representation of criminal defendants.

Disciplinary Counsel supports the Hearing Committee's recommendation, noting that Respondent attempted to cover-up his misconduct by lying to the client, and then making it appear that he could favorably settle the case, citing *In re Daniel*, for the maxim that "[t]here is nothing more antithetical to the practice of law than dishonesty." 11 A.3d 291, 300 (D.C. 2011). Disciplinary Counsel also cites the Hearing Committee's conclusion that Respondent "attempted to deceive" it regarding his conversations with Mr. Morgan, and argues that dishonest testimony is a significant aggravating factor when determining sanction. *In re Silva*, 29 A.3d 924, 926 (D.C. 2011).

Having determined that the misconduct here is not comparable to that found in the informal admonition cases cited above, or in *Cole* and *Mance*, the Board must determine whether the Hearing Committee was correct in recommending a more substantial sanction than that imposed in *Outlaw*.

We are struck by the factual similarities between this case and *Outlaw*. Respondent was more than neglectful – he lied to his client about having filed suit and, indeed, having secured a settlement. And the Hearing Committee determined that Respondent "attempted to deceive the Hearing Committee concerning his conversations with Mr. Morgan." FF 54. While, of course, a respondent must be able to present his or her case, and there will always be discrepancies in witness testimony, a finding that a respondent tried to mislead a hearing committee is particularly troubling. We understand the Hearing Committee's conclusion that Respondent "attempted to deceive" it to be a finding that he provided false testimony to the Hearing Committee, which is a significant aggravating factor when considering the appropriate sanction. *Outlaw* recognizes that the hearing committee found the respondent "not credible," but there is no suggestion of an attempt to deceive the hearing committee.

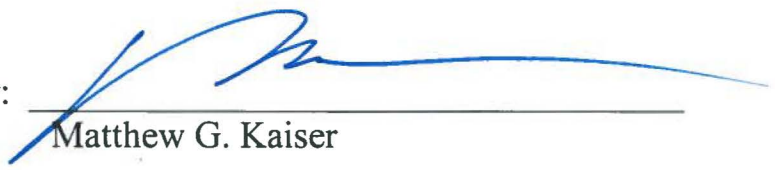
Finally, we understand the sixty-day suspension ordered on *Outlaw* is within a range of sanctions for comparable conduct. In *Outlaw*, the Court noted that Disciplinary Counsel's argument that the respondent should receive a longer suspension "carrie[d] some persuasion," but found that it was "constrained to accept" the Board's recommendation of a sixty-day suspension because it was "not

inconsistent" with the sanctions imposed for comparable misconduct. *Outlaw*, 917 A.2d at 689. Thus, recognizing that the facts of *Outlaw* may have supported a longer suspension if recommended by the Board, and considering Respondent's attempt to mislead the Hearing Committee, we agree with the Hearing Committee that a lengthier suspension is warranted here.

V. CONCLUSION

For the foregoing reasons, the Board agrees with Hearing Committee that Respondent violated Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.4(b), and 8.4(c) and should be suspended for ninety days.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 
Matthew G. Kaiser

All Board Members concur in this report and recommendation, except for Mr. Bernstein and Ms. Pittman, who are recused.