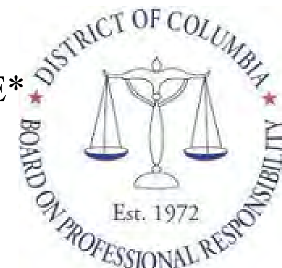
THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*



DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
March 25, 2019

In the Matter of:	:	
	:	
JOHNNIE L. JOHNSON, III	:	
	:	
Respondent.	:	Board Docket No. 17-BD-003
	:	Disciplinary Docket No. 2016-D112
A Member of the Bar of the District	:	
of Columbia Court of Appeals	:	
(Bar Registration No. 235614)	:	

REPORT AND RECOMMENDATION OF
THE BOARD OF PROFESSIONAL RESPONSIBILITY

This matter arises out of Respondent Johnnie L. Johnson, III's representation of a client with a workers' compensation claim against the D.C. government. The Hearing Committee's thorough and well-reasoned report (attached hereto and incorporated herein) exhaustively catalogs Respondent's misconduct, including his pervasive dishonesty for personal gain in his pursuit of an unreasonable legal fee. The Hearing Committee's findings of fact "are supported by substantial evidence in the record." *In re Ukwu*, 926 A.2d 1106, 1115 (D.C. 2007) (quoting *In re Cleaver-Bascombe*, 892 A.2d 396, 401 (D.C. 2006)). The Board has reviewed *de novo* the Hearing Committee's findings that Respondent gave intentionally false testimony during the disciplinary hearing, its conclusions that Respondent violated each of the charged Rule violations, and its recommendation that Respondent should be disbarred. *See In re Bradley*, 70 A.3d 1189, 1194 (D.C. 2013) (per curiam). Upon

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

consideration of the parties' briefs,[1] as well as the entire record in this case, we agree with the Hearing Committee's finding of dishonest testimony, its recommendation regarding Rule violations, and its recommendation that Respondent be disbarred for his misconduct and required to make restitution as a condition of reinstatement. We briefly summarize the most salient portions of the Hearing Committee report.

I. Factual Summary

In July 2014, Respondent's client received a $58,050.63 workers' compensation award from an ALJ. Because the award did not include an attorneys' fee, Respondent sought review pursuant to D.C. Code §§ l-623.27(b)(2), l-623.27(e)(1), which requires that all attorneys' fee awards in successful workers' compensation cases involving the D.C. government be approved by an ALJ, and which permits the ALJ to award a fee (not to exceed 20% of the award), which fee is paid to the claimant's attorney "by the Mayor or his or her designee." *See* D.C. Code §§ l-623.27(b)(2), l-623.27(e)(1). Without telling the client that he was seeking fees from the D.C. government, Respondent informed his client that Respondent was entitled to one-third of the award ($19,350.21) pursuant to the client's retainer agreement with Respondent. The client paid the requested amount. When the ALJ denied Respondent's request for fees paid by the D.C. government, Respondent petitioned the Court of Appeals, seeking attorney's fees, without

[1] The parties agreed to waive oral argument and submit the matter for consideration on the parties' briefs, thus this matter is decided on the record before the Board pursuant to Board Rules 13.4(a) and 13.7.

disclosing that he had already received $19,350.21 from the client. The Court denied the petition because it was taken from a non-final order. FF 21-34.

In July 2015, the client acting *pro se* asked the ALJ to release Respondent as his counsel and complained that Respondent has "distorted [sic] funds" owed to the client. In November 2015, after the ALJ concluded that Respondent had charged and attempted to collect a fee in excess of the statutory limitation, and without prior approval, Respondent asserted that he "truly believed" that payment had been approved because the check had been sent to the client "in care of" Respondent. Respondent also misrepresented to the ALJ that the fee he received covered "substantial" legal work unrelated to the workers' compensation claim. The Hearing Committee found that there was no such "substantial" work, and his statement was "untrue and calculated to mislead the ALJ." FF 22, 35-42.

When the client's successor counsel requested information regarding the amount of the fee Respondent had received, he provided evasive and misleading responses in an effort to convince successor counsel that Respondent had not received one-third of the settlement amount as his fee. FF 43-58. Respondent provided similarly evasive and misleading responses when Disciplinary Counsel investigated this matter. FF 71-81.

In July 2016, Respondent filed a Petition for Attorneys' Fees, in which he requested $40,324.66, and which was supported by a series of untrue representations regarding his work for the client. The Petition was denied as untimely. FF 59-70.

Finally, Respondent gave extensive false testimony to the Hearing Committee, including testifying that he never received any attorneys' fees, despite overwhelming evidence to the contrary. FF 82-90. Despite his insistence when testifying before the Hearing Committee that he "didn't get a penny" of the client's award, Respondent argues in his brief to the Board that the client had a constitutional right to pay Respondent a legal fee from the award, thus conceding that he was, in fact, paid by the client. FF 84; Resp. Br. to Board at 8.

II. The Hearing Committee's Legal Conclusions

The Hearing Committee concluded that Disciplinary Counsel established by clear and convincing evidence that Respondent violated Rule 1.4(b) by failing to explain to his client the law regarding legal fee recovery in his workers' compensation matter (HCR at 36); Rule 1.5(a) by taking an illegal and unreasonable fee in violation of D.C. Code and by seeking an additional $40,324.66 in a falsely inflated fee petition (HCR at 37); Rule 3.3(a)(1) by knowingly making false or deceptively incomplete statements to the ALJ in defense of his fee petition (HCR 37-38); Rule 8.4(c) by his dishonesty to the ALJ about entries on his fee petition, and dishonesty to successor counsel and Disciplinary Counsel (HCR at 38-42); Rule

8.1(b) by his misstatements and evasive responses to Disciplinary Counsel about the fee during the disciplinary investigation (HCR at 42); and Rule 8.4(d) by engaging in misconduct that resulted in additional workers' compensation proceedings before the ALJ (HCR 42-43).

When considering sanction, the Hearing Committee found several aggravating factors including Respondent's exploitation of a vulnerable client, his pattern of dishonesty in the underlying conduct, his obstruction of the investigation and disciplinary proceeding, his failure to repay the client, as well his false testimony during the hearing. HCR at 45. The Hearing Committee recommended that Respondent be disbarred, be required to pay restitution to the client as a condition of reinstatement, and be required to prove his fitness in the event he is suspended rather than disbarred. HCR at 45-47.

III. Respondent's Exceptions

Respondent excepts to the Hearing Committee's conclusion of the Rule 1.4(b) violation, asserting that he communicated with the client while litigating the claim and negotiating the award check. Resp. Br. to Board at 10. Regarding the Rule 1.5(a) violation, Respondent asserts that his fees were not unreasonable because he performed substantial work on the client's behalf, the D.C. government did not question the work that he performed, and the client obtained restoration of his workers' compensation benefits. *Id.* at 6-7. Further, Respondent argues that the

client has a constitutional right to use the proceeds of his benefit check in any manner once the check is cashed and becomes his property, thus any payment to Respondent after the check was cashed cannot be illegal. *Id.* at 7-8. Finally, Respondent asserts that there is insufficient evidence to establish the remaining violations by clear and convincing evidence, although he failed to brief his exceptions to the Rule 3.3(a)(1), 8.4(c), 8.1(b), and 8.4(d) violations found by the Hearing Committee. *See Id.* at 10.

Respondent's exceptions have no merit, for all of the reasons set forth in the Hearing Committee report. With respect to Rule 1.4(b), there is clear and convincing evidence that Respondent did not tell his client of the law governing the award of attorney's fees in workers' compensation cases. Similarly, there is clear and convincing evidence that Respondent took an illegal fee and submitted a fee request supported by false information. Finally, Respondent's argument that his client had a constitutional right to disburse the settlement funds as he saw fit is unavailing because Respondent's receipt of one-third of the client award as his fee violated D.C. Code § 1-623.27, regardless of who cashed the award check. *See* HCR at 36-37

IV. Respondent's Motions to Dismiss

Pursuant to Board Rule 7.16, we must also consider the Hearing Committee's recommended denial of Respondent's four motions to dismiss. The Board has reviewed these motions and denies Respondent's motions for the reasons set forth in the Hearing Committee's Report. *See* HCR at 33-36.

Before the Board, Respondent requests dismissal of the charges on the following grounds: (1) inaccuracies in the original Specification of Charges, (2) alleged bias based on the presumed racial and religious makeup of the Hearing Committee, and (3) requiring Respondent to testify was a fundamental violation of his constitutional rights where he acted as his own attorney. Resp. Br. to Board at 1-2.

Respondent's request for dismissal based on inaccuracies in the original Specification of Charges is denied as moot because Disciplinary Counsel corrected the inaccuracies in the Specification of Charges prior to the disciplinary hearing and Respondent was provided an opportunity to file an Answer to the Corrected Specification of Charges. *See* HCR at 34. The request for dismissal based on Respondent's assumptions as to the racial and religious backgrounds of the members of the Hearing Committee is denied. Respondent failed to provide any evidence to support his claims of bias and failed to comply with the procedural requirements set forth in Board Rule 7.22, which provides that challenges to hearing committee members must be made by affidavit alleging personal bias or prejudice and stating the facts upon which such allegations are based, and requires that the affidavit be filed seven days prior to the hearing date "or the challenge shall be deemed waived." Finally, Respondent's request for dismissal because he was required to testify while acting *pro se* is denied. As discussed in the Hearing Committee Report, Disciplinary

Counsel may call a *pro se* respondent to testify in its case in chief and may rely on that testimony to meet its burden of establishing a rule violation by clear and convincing. *See* HCR at 34-35; *In re Barber*, 128 A.3d 637, 640 (D.C. 2015) (per curiam).

V. Sanction Recommendation

The Hearing Committee found that Respondent's misconduct was serious, harmed his client, involved dishonesty, and violated multiple disciplinary rules. Further, there were numerous aggravating factors including: Respondent's lack of remorse, exploitation of a vulnerable client, a pattern of dishonesty, obstruction of the investigation and disciplinary proceeding, and failure to repay the client. The Board concurs with and adopts the Hearing Committee's conclusions regarding the sanction factors. *See* HCR at 44-45.

There is also the significant aggravating factor of Respondent's false testimony to the Hearing Committee, which the Board reviews *de novo*. *Bradley*, 70 A.3d at 1194. Respondent testified at the hearing that he never received $19,350.21 from the client. The Hearing Committee found that this was a lie, relying on the client's contrary testimony, a contemporaneous signed memorandum that Respondent provided to the client at the time he took the fees, and bank records. *See* FF 82-90. Respondent does not directly address the false testimony findings in his brief to the Board, but does assert that the client, H.G., was dishonest in the

underlying litigation and testified falsely. Resp. Br. to Board at 6-8. Based on the Board's *de novo* review of the Hearing Committee's credibility determinations under *Bradley*, we conclude that Findings of Fact 82-90 establish by clear and convincing evidence that Respondent gave intentionally false testimony to the Hearing Committee regarding his receipt of fees from H.G.

As to sanction, the Board agrees with the Hearing Committee that Respondent's conduct is comparable to that in *In re Cleaver-Bascombe*, 986 A.2d 1191, 1192, 1200 (D.C. 2010) (per curiam) and *In re McClure*, Board Docket No. 13-BD-018 (BPR Dec. 31, 2015), *recommendation adopted*, 144 A.3d 570, 571 (D.C. 2016) (per curiam), and recommends that Respondent be disbarred. The Board also agrees that a fitness requirement be imposed in the event that the Court suspends Respondent rather than disbars him. *See* HCR at 46-47. Finally, the Board agrees that Respondent should be ordered to "pay restitution to the client in the amount of $19,350.21, plus interest accrued on that amount since July 28, 2014, as a condition of reinstatement." *See* HCR 47.

VI. Conclusion

For the reasons set forth in the Report and Recommendation of the Ad Hoc Hearing Committee, which we adopt and append hereto, the Board recommends that Respondent be disbarred, and that he be required to pay restitution to the client in the amount of $19,350.21, plus interest accrued at the legal rate on that amount since

July 28, 2014, as a condition of reinstatement. In the event a suspension, rather than disbarment, is imposed, the Board recommends that Respondent be required to prove his fitness to practice prior to reinstatement.

BOARD ON PROFESSIONAL RESPONSIBILITY

By:
Bernadette Sargeant

All Board members concur in this Report and Recommendation except Ms. Smith, who did not participate, and Ms. Pittman, who is recused.

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

In the Matter of:	:	
	:	
JOHNNIE L. JOHNSON, III	:	
	:	Board Docket No. 17-BD-003
Respondent,	:	Disciplinary Docket No. 2016-D112
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 235614)	:	

REPORT AND RECOMMENDATION
OF THE AD HOC HEARING COMMITTEE

This is a contested disciplinary proceeding. Based upon the evidence presented at a two-day evidentiary hearing, the Hearing Committee concludes that Respondent Johnnie L. Johnson, III, Esquire, committed multiple serious violations of the Rules of Professional Conduct. Johnson collected an illegal and unreasonable fee from a vulnerable client, and intentionally used deceit and misdirection to mislead his client, his client's new attorney, the administrative law judge who considered his fee petition, the Office of Disciplinary Counsel, and this Hearing Committee in an effort to conceal his prior wrongdoing, to obtain additional fees, and to retain the illegal fee he had received. Although, affording Mr. Johnson the benefit of the doubt required by a clear and convincing evidence standard, we have determined that some of Mr. Johnson's initial wrongful conduct, though serious, may have been merely reckless, his efforts to deceive were intentional, and ultimately he lied under oath before the undersigned Hearing Committee. The Hearing Committee finds that Johnson violated Rules 1.4(b), 1.5(a), 3.3(a)(1), 8.4(c), 8.1(b), and 8.4(d), and recommends that he be disbarred and ordered to pay restitution to the client he intentionally harmed.

I. PROCEDURAL HISTORY

Respondent was personally served with the Petition and Specification of Charges on December 27, 2016. The caption mis-identified Respondent as "Johnnie C. Johnson, III" and misstated the year of his Bar admission. On January 10, 2017, Respondent filed his Answer and Motion to Dismiss with Prejudice (arguing that the case should be dismissed with prejudice because he is not "Johnnie C. Johnson III"). [1]

During the pre-hearing conference held on June 9, 2017, Disciplinary Counsel acknowledged the errors in the case caption, and was directed to serve Respondent with a Corrected Specification of Charges, which she did on June 13, 2017. Respondent filed his Answer to the Corrected Specification on July 6, 2017, denying the alleged Rule violations, and incorporating a renewed motion to dismiss with prejudice, as well as a motion for an Order to Show Cause against Senior Assistant Disciplinary Counsel Julia L. Porter based on the inaccuracies and typographical errors contained in the Specification and Affidavit of Service.[2]

On July 28, 2017, Respondent filed a Motion to Quash Subpoena and Motion to Dismiss with Prejudice, requesting that the D.C. Court of Appeals enter an order quashing Disciplinary Counsel's subpoena compelling him to testify during the disciplinary hearing and dismissing the Specification of Charges with Prejudice on the grounds that there was insufficient evidence to support the allegations if Disciplinary Counsel required Respondent's testimony to establish the

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[1] The motion was lodged by e-mail. Although Johnson asserted that he wanted the motion included in the record, he did not file an original with the Board Office as required under Board Rule 7.14. *See* Pre-hearing Transcript at 10 (June 9, 2017).

[2] Pursuant to Board Rule 7.16(a), we include below our recommendation that all of Respondent's various motions to dismiss be denied.

Rule violations.[3] Disciplinary Counsel filed a response to the motion to quash subpoena and motion to dismiss with prejudice on July 31, 2017. The Hearing was held on August 7 and 8, 2017. The Hearing Committee Chair denied Respondent's Motion to Quash Subpoena during the hearing. Hearing Transcript ("Tr.") at 6-7 (Aug. 7, 2017).

The parties submitted post-hearing briefs on September 5, 2017, September 25, 2017, and September 26, 2017. On October 17, 2017,[4] Johnson filed a Motion for an Order Permitting Respondent to File a Surreply Brief to address Disciplinary Counsel's arguments made in its Reply Brief. Respondent's motion included a renewed request for dismissal of the charges with prejudice on various grounds. Disciplinary Counsel filed an objection on October 12, 2017. Respondent's motion to file a Surreply Brief was granted on November 2, 2017, and the lodged Surreply Brief was accepted for filing as of October 17, 2017.

Disciplinary Counsel filed a motion for permission to supplement the record on September 19, 2017, seeking to admit Disciplinary Counsel's Exhibit ("DX") 93, which contained additional records relating to the negotiation of the $58,050.63 check issued by the District of Columbia's workers' compensation administrator on July 22, 2017 (DX 54 at 1). Respondent filed his opposition to the motion to supplement the record on September 29, 2017. The Hearing Committee granted Disciplinary Counsel's motion on November 2, 2017 and requested that the parties submit supplemental briefs concerning the relevance of the bank records. Disciplinary Counsel filed its statement on November 3, 2017, and Respondent filed his statement on November 27, 2017.

[3] Respondent did not invoke his Fifth Amendment right against self-incrimination.

[4] Respondent's motion to dismiss was served on Disciplinary Counsel on October 11, 2017.

On November 27, 2017, the Hearing Committee Chair granted Disciplinary Counsel's previously filed motion for a protective order, placing under seal DX 24, and Respondent's Exhibits ("RX") J (pages 5-9) and V.

II. FINDINGS OF FACT

A. Johnnie L. Johnson, III

1. Johnson became a member of the Bar of the District of Columbia Court of Appeals on November 11, 1976 and was assigned Bar number 235614. DX 1. He also is admitted to practice law in Virginia and in Tennessee. Tr. 150-51 (Johnson). Johnson's principal office is in his home in Virginia. Tr. 150 (Johnson).

B. Johnson's Client H.G.

2. H.G. worked as a bus driver for the D.C. Public Schools. Tr. 23 (H.G.). In October 2010, he suffered injuries on the job, including a torn rotator cuff. Tr. 24-25, 28 (H.G.). The District began paying H.G. workers' compensation benefits. Tr. 25-26 (H.G.). In January 2012, however, the D.C. Office of Risk Management advised H.G. that it had terminated his benefits. DX 15; Tr. 26-27 (H.G.).

3. Acting *pro se*, H.G. filed an appeal with the Department of Employment Service ("DOES"). DX 15-20; Tr. 28-31, 48 (H.G.). On June 12, 2012, a DOES administrative law judge ("ALJ") dismissed H.G.'s appeal without prejudice and encouraged H.G. to find counsel. DX 20 at 17; Tr. 29, 31-32 (H.G.).

C. District of Columbia Law on Attorneys' Fees in Public Workers' Compensation Cases

4. District of Columbia law has special provisions governing attorneys' fees in public sector workers' compensation cases. In such cases, the District is required to pay successful claimants' "reasonable attorney's fee[s], not to exceed 20% of the actual benefit secured":

> If a person utilizes the services of an attorney-at-law in the successful prosecution of his or her claim . . . there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee, not to exceed 20% of the actual benefit secured, which fee award shall be paid directly by the Mayor or his or her designee to the attorney for the claimant in a lump sum within 30 days after the date of the compensation order.

D.C. Code § l-623.27(b)(2).

5. "*In all cases*, fees for attorneys representing the claimant shall be approved" by an ALJ. D.C. Code § l-623.27(e)(1) (emphasis added). It is a misdemeanor for a person (including an attorney) to collect a fee for representing a client in a public-sector workers' compensation case, unless an ALJ or the Compensation Review Board has approved the fee:

> A person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of the claimant in an administrative or judicial proceeding under this subchapter . . . , unless such consideration or any gratuity is approved as part of an order, shall be guilty of a misdemeanor . . . .

D.C. Code § l-623.27(c).

6. In cases where the Claimant is unsuccessful, and the attorney looks to his unsuccessful client for payment of a fee, an ALJ still would need to approve the fee. *See* D.C. Code § l-623.27(e)(1).

7. In addition, an attorney can obtain a lien against a client's recovery only if the ALJ first approves:

> An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation order due under an award, and the administrative law judge or court shall fix *in the award approving the fee* such lien and manner of payment.

D.C. Code § l-623.27(e)(2) (emphasis added).

8. Before July 2016, the DOES had issued a "policy directive" to its ALJs stating that the "maximum hourly rate for an attorney's fee award" was $240 for attorneys with 20 or more

years of experience in workers' compensation law (and lesser rates for less experienced attorneys). DX 88.

D. Johnson's Fee Arrangement with H.G.

9. On June 21, 2012, based on a referral, H.G. traveled to Johnson's home in Virginia and met with him for less than one hour. Tr. 34-38, 97 (H.G.); DX 21. They agreed that Johnson would represent H.G. in a "Workers' Compensation claim in the District of Columbia, including the hearing of his Complaint before an Administrative Judge as a result of certain job related injuries." DX 21 at 1 (*sic*); *see* Tr. 38 (H.G.); Tr. 157 (Johnson).

10. Johnson and H.G. entered into a written fee agreement that stated that Johnson's "billing . . . range[d] from $500 per hour for work performed to a maximum of $5,000 per day for work performed outside of the areas of Washington, D.C., the Commonwealth of Virginia and the State of Tennessee." Elsewhere, the fee agreement stated:

> The Law Offices of Johnnie Louis Johnson III agrees to accept one third (1/3) of the total dollar amount value of the money and other benefits, or the maximum amount allowed by the District of Columbia Workers' Compensation law awarded in this matter.

DX 21 at 3. The fee agreement provided that "[t]he retainer required in an amount that will cover the Law Offices of Johnnie Louis Johnson III's best estimate of the initial costs in both of these matters is the $350.00." *Id.*

11. H.G. signed Johnson's fee agreement. DX 21 at 3. H.G. paid Johnson $50 when he signed the agreement. *Id.* at 3; Tr. 39, 100-01 (H.G.). Johnson wrote on the last page of the fee agreement: "paid $50.00." DX 21 at 3; Tr. 157 (Johnson).

E. Johnson Performs Very Little Legal Work for H.G.

12. On June 22, 2012, Johnson entered his appearance as counsel for H.G. before the DOES Administrative Hearing Division, Office of Hearings and Adjudication. DX 22 at 2, 3; Tr. 47 (H.G.); *see also* Tr. 168-170 (Johnson); DX 29.

13. In July 2012, H.G.'s wife sent Johnson documents about H.G.'s case by facsimile and e-mail. DX 23; DX 25-28; Tr. 48-49 (H.G.); Tr. 176-77 (Johnson). One document she sent was a two-page form "Application for Formal Hearing" to reinstate H.G.'s case. H.G. and his wife already had completed most of the form, and H.G. already had signed it. DX 25 at 2-3; DX 28 at 2-3; Tr. 52 (H.G.); *see also* Tr. 175-76 (Johnson). Johnson added two typewritten sentences to the form and submitted it. DX 29 at 2-3; Tr. 174-78 (Johnson).

14. In September 2012, Johnson prepared and served discovery requests on the District. DX 32. The requests were generic boilerplate workers' compensation requests, *compare id.*, *with* DX 89, and we find that they should have taken no more than a couple of hours to prepare from scratch, and substantially less time if Johnson copied a model (*e.g.*, from the internet or from a prior case). *See also* Tr. 181-84 (Johnson). Johnson also prepared a very short brief opposing the District's motion to dismiss. DX 34.

15. In October and early November 2012, Johnson attended the pre-hearing conference and performed a few other pre-hearing tasks. DX 81 at 9-10.

16. On November 19, 2012, Johnson represented H.G. at the merits hearing before the ALJ. H.G. was the only witness. DX 45; Tr. 63 (H.G.); Tr. 191 (Johnson). Johnson had not met with H.G. before the hearing to discuss H.G.'s testimony. Tr. 63 (H.G.). The hearing lasted less than one hour. Tr. 63 (H.G.).

F. H.G.'s District-Sponsored Insurance Coverage

17. In early 2014, while H.G. and Johnson were awaiting the ALJ's decision, an insurer sent H.G. a notice that it was terminating the accident insurance coverage he had enjoyed as a District of Columbia government employee. DX 49 at 2. H.G. discussed it with Johnson, who agreed to contact the insurer. Tr. 65-66 (H.G.).

18. Johnson wrote a half-page letter to the insurer, in which he provided information about H.G.'s claim for workers' compensation benefits and said that the District was responsible for paying the insurance premium. DX 50; Tr. 69, 92 (H.G.).

19. The insurer confirmed receipt of Johnson's letter, and wrote that "the requested transaction"—presumably termination of the coverage—"was completed." DX 51 (Letter from Washington National Insurance Company to Law Offices of Johnnie Louis Jhonson II [*sic*] (May 1, 2014) (responding to Johnson's April 21, 2014 letter (DX 50) requesting that the decision to cancel H.G.'s coverage for non-payment of premiums be rescinded)). Aside from forwarding the insurer's letter to H.G. and following up with the insurance company by phone, Johnson did no further work in connection with the termination of that insurance. Tr. 197-98 (Johnson).

G. Johnson Seeks Attorneys' Fees from the District

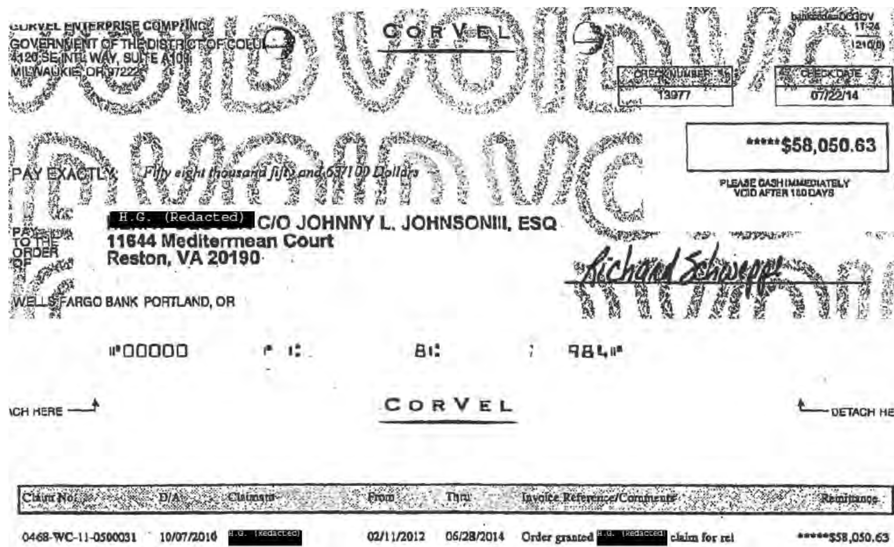
20. On June 24, 2014, the ALJ issued a Compensation Order in H.G.'s favor. DX 53. The ALJ granted his claims for medical treatment and wage loss benefits. *Id.*

21. On July 23, 2014, Johnson filed with the Compensation Review Board ("CRB") an application for review of the ALJ's decision on the ground that it failed to award attorneys' fees and costs to H.G. as a prevailing party. DX 55. In his application for review, Johnson quoted the D.C. Code section that provides that "a reasonable attorney's fee, not to exceed 20% of the actual benefit secured . . . shall be paid directly by the Mayor or his or her designee to the attorney . . . ." DX 55 at 6. The subsection immediately following the one quoted by Johnson provides that "[a]

person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of the claimant . . . shall be guilty of a misdemeanor" "unless such consideration or any gratuity is approved as part of an order . . . ," D.C. Code § l-623.27(c), and the subsection after that one[5] provides that "[i]n all cases, fees for attorneys representing the claimant shall be approved in the manner herein provided." D.C. Code § l-623.27(e)(1).

H. Johnson Takes One-Third of H.G.'s Award of Back Pay

22. On July 22, 2014, the day before Johnson filed his application for review, the District of Columbia's workers' compensation administrator signed a check for $58,050.63 payable to H.G. DX 54 at 1. The check was sent "c/o Johnny L. Johnson III Esq." *Id.* The check stub referenced H.G.'s claim number, the date of his accident, the ALJ's order, and the date of the back payments it covered:


CORVEL ENTERPRISE COMP, INC.
GOVERNMENT OF THE DISTRICT OF COLU
4120 SE INTL WAY, SUITE A108
MILWAUKIE, OR 97222

CORVEL

CHECK NUMBER 13977
CHECK DATE 07/22/14

*****$58,050.63

PAY EXACTLY *Fifty eight thousand fifty and 63/100 Dollars*

PLEASE CASH IMMEDIATELY
VOID AFTER 180 DAYS

PAY TO THE ORDER OF
H.G. (Redacted) C/O JOHNNY L. JOHNSONIII, ESQ
11644 Meditermean Court
Reston, VA 20190

WELLS FARGO BANK PORTLAND, OR

CORVEL

Claim No.	D/A	Claimant	From	Thru	Invoice Reference/Comments	Remittance
0468-WC-11-0500031	10/07/2010	H.G. (Redacted)	02/11/2012	06/28/2014	Order granted H.G. (Redacted) claim for rel	*****$58,050.63

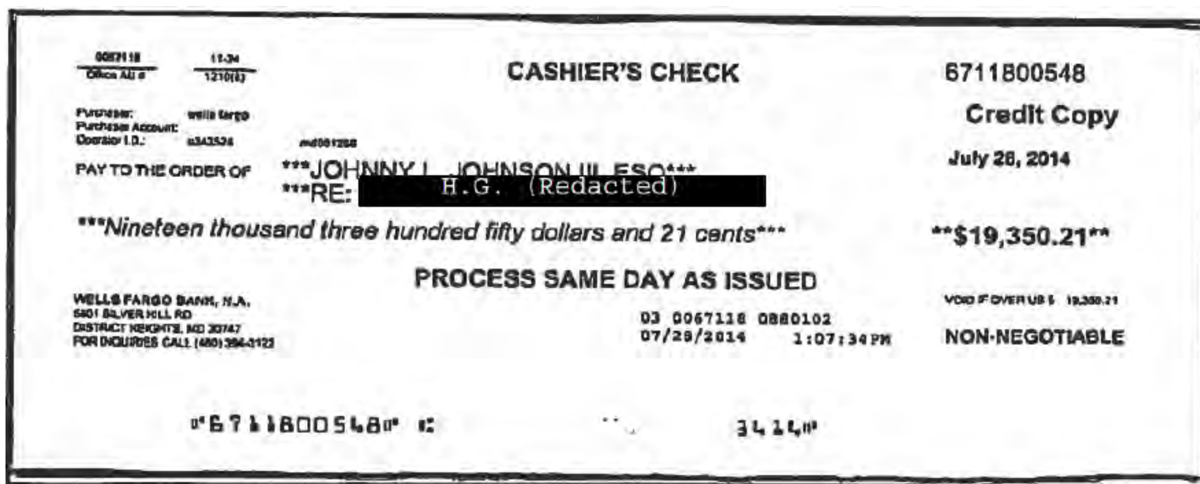
DX 93 at 3.

[5] Subsection (d) was repealed, so subsection (e)(1) follows subsection (c).

23. On July 26, 2014, Johnson telephoned H.G. to say he had received the check. Tr. 71-72 (H.G.). Johnson and H.G. agreed to meet on Monday, July 28, 2014 at a Wells Fargo bank branch in Maryland. Tr. 72-74, 105-07 (H.G.); Tr. 204, 207 (Johnson).

24. At the hearing in this disciplinary action, Johnson admitted that he was aware that an ALJ was required to approve of any payment of attorneys' fees. Tr. 154-57, 159-160 (Johnson). Despite that knowledge, Johnson never told his client H.G. that District of Columbia law required *the District* to pay H.G.'s reasonable attorneys' fees up to 20% of his recovery, or that Johnson was forbidden to collect any fee from H.G. unless and until an ALJ approved. Tr. 40-42, 77-80 (H.G.); Tr. 214, 259-260 (Johnson). Instead, Johnson led H.G. to believe that Johnson was entitled to immediate payment of one-third of the $58,050.63 under their fee agreement. Tr. 76 (H.G.); DX 54 at 2; DX 73 at 2.

25. At the bank, H.G. exchanged the $58,050.63 check for two cashiers' checks: a $37,700.42 cashier's check for H.G. and a $19,350.21 cashier's check for Johnson, plus $1,000 in cash for H.G.—sums equal to two-thirds and one-third, respectively, of $58,050.63. DX 93; Tr. 74, 76-77, 81, 85-86, 94-95, 113 (H.G.); DX 54 at 2. Here is an image of the $19,350.21 cashier's check payable to "Johnny L. Johnson III, Esq." in reference to his client H.G.:


CASHIER'S CHECK

6711800548

Credit Copy

July 28, 2014

PAY TO THE ORDER OF ***JOHNNY L. JOHNSON III ESQ***
***RE: H.G. (Redacted)

Nineteen thousand three hundred fifty dollars and 21 cents

$19,350.21

PROCESS SAME DAY AS ISSUED

WELLS FARGO BANK, N.A.

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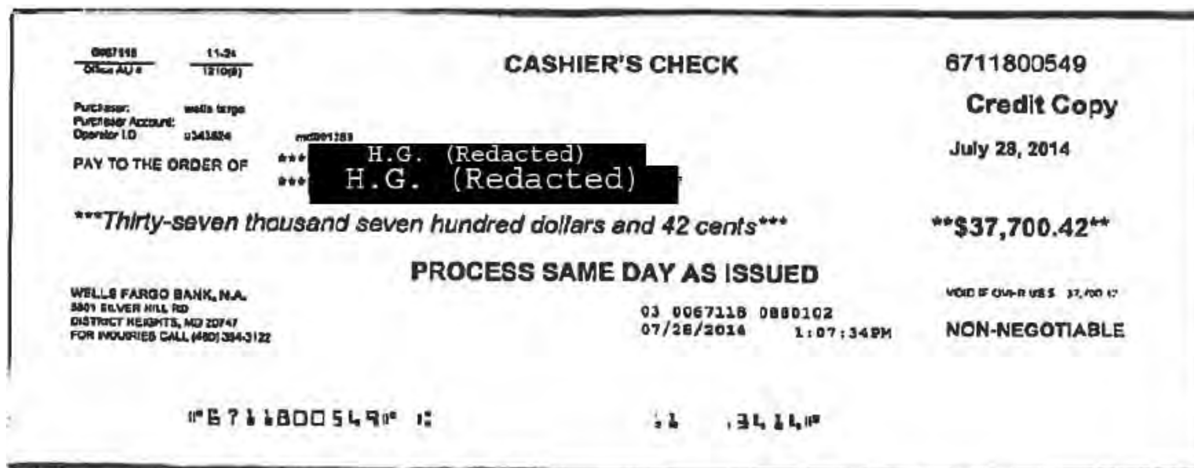
NON-NEGOTIABLE

DX 93 at 44.

And here is an image of the $37,700.42 cashier's check payable to H.G.:



DX 93 at 44.

26. Johnson provided H.G. a memorandum that Johnson had prepared and signed, confirming his receipt of the $19,350.21. DX 54 at 2; Tr. 76 (H.G.); Tr. 205-06, 257-58 (Johnson). Johnson's memorandum stated:

> This office agreed to represent you for an agreed upon fee of 33 1/3% of the settlement amount or award in you[r] matter. Accordingly, this office received a check in the amount of $58,050.63 as a resolution of your case. Although there may be additional funds owed to you in this matter, this office's agreed upon fees out of the settlement is $19,350.21, which represents 33 1/3% of $58,050.63. Thus your share of the $58,050.63 is $[]38,700.42. This is $19,350.21 plus $38,700.42 equals $58,050.63.

DX 54 at 2; Tr. 259-60 (Johnson).

27. The ALJ had not approved this or any other fee for Johnson.

28. Johnson never withdrew, amended, or supplemented his CRB application for review of the ALJ's failure to award attorneys' fees. He never informed the ALJ or CRB that he already had been paid one-third of his client's award.

29. At the Hearing in this disciplinary proceeding, the Hearing Committee heard testimony from an attorney who regularly practices workers' compensation law. That attorney

testified that in most cases his total fee through hearing would be $10,000 or less, and would be paid by the District, not deducted from his client's recovery. Tr. 353, 362-63 (Levi).

I. Johnson Asserts a Lien on H.G.'s Further Recoveries

30. On September 2, 2014, Johnson sent the District of Columbia's workers' compensation administrator a letter asserting a lien on future payments to H.G. and other Johnson clients. DX 60. Johnson did not inform his client H.G. of the letter or of the lien he was asserting against his client. Tr. 82, 85-86, 89-90 (H.G.). Again, there was no "approved attorney's fee," D.C. Code § l-623.27(e)(2), when Johnson asserted this lien on his client's future recoveries.

J. Further Proceedings in H.G.'s Case

31. On December 16, 2014, the CRB issued a Decision and Remand Order in H.G.'s case. DX 66; DX 67. The CRB affirmed the ALJ's decision not to award attorney's fees and *vacated the ALJ's decision to reinstate H.G.'s temporary total disability benefits*. DX 67 at 2, 9. The CRB remanded the case to the ALJ for further proceedings consistent with its Decision and Remand Order. *Id.* at 10.

32. Johnson admits he knew that the CRB's Order was a non-appealable non-final order. Tr. 226 (Johnson). Nonetheless, Johnson filed with the D.C. Court of Appeals a petition for review. DX 68-69; Tr. 227 (Johnson). In the Court of Appeals petition, Johnson again quoted the D.C. Code provision that "a reasonable attorney's fee, not to exceed 20% of the actual benefit secured, . . . shall be paid directly by the Mayor or his or her designee to the attorney . . . ." DX 68 at 3. Johnson requested that the Court of Appeals "correct[]" the CRB's order "to grant [H.G.]'s claim for attorney's fees and costs . . . ." *Id.* at 10. Johnson did not inform the Court that H.G. already had paid him one-third of the previously awarded (and now reversed) award.

33. On February 11, 2015, the Court of Appeals issued an order directing H.G. to show cause why his petition for review should not be dismissed because it was taken from a non-final

order. Johnson did not file a response on behalf of H.G., and the Court on April 23, 2015, dismissed the petition. DX 70; Tr. 227 (Johnson).

34. On July 14, 2015, without holding a further hearing or receiving additional briefs, the ALJ on remand issued a new Compensation Order granting H.G.'s claim for reinstatement of temporary total disability benefits from February 10, 2012 to the present and continuing. DX 71.

K. Johnson's False and Evasive Statements

1. Johnson's Initial Effort to Mislead the ALJ

35. On July 24, 2015, H.G., *pro se*, filed with the ALJ a "request that Attorney Johnnie Louis Johnson, III [be] released from representing me in my worker's compensation claim." DX 74 at 1. H.G. asked the ALJ to "see the attachments to demonstrate how Attorney Johnson distorted [sic] funds that were owed to me in reference to my worker's compensation claim." *Id.*

36. On October 29, 2015, the ALJ issued to Johnson an Order to Show Cause "why this matter should not be referred to the District of Columbia Bar and the Board on Professional Responsibility for investigation." DX 76 at 2. The ALJ wrote that he had "determined that Mr. Johnson has charged and attempted to collect a fee in excess of the statutory limitation without prior approval by [the Administrative Hearings Division]." *Id.*

37. On November 13, 2015, Johnson responded in writing to the Show Cause Order. DX 77. He told the ALJ he "truly believed" the payment to him already "was approved." Specifically, he wrote that he

> truly believed that[,] because the payment [on behalf of the District] was sent . . . to both [H.G.] and Johnnie Louis Johnson III LLC [,] . . . the payment was approved by the Offices of Risk Management and Department of Employment Services for

> [H.G.] and the Law Offices of Johnnie Louis Johnson III LLC and Johnnie Louis Johnson III.

DX 77 at 8. Johnson did not, however, offer to refund the $19,350.21, despite the ALJ's express finding that he had "charged and attempted to collect a fee . . . without prior approval." *Id.*; DX 76 at 2.

38. Johnson also told the ALJ in writing that "Johnnie Louis Johnson III and the Law Office of Johnnie Louis Johnson III LLC performed substantial legal work for [H.G.] *other than his workers' compensation claim*, including reviewing numerous documents from the Department of Veterans Affairs[] [and] responding to matters regarding his dispute with his insurance company when his insurance was terminated . . . ." DX 77 at 1-2 (emphasis added).

39. This statement was untrue and calculated to mislead the ALJ. Given its context in response to the ALJ's Order to Show Cause, Johnson's statement was intended to suggest that H.G. paid him $19,350.21 in part for "substantial legal work for [H.G.] other than his workers' compensation claim." *Id.* The $19,350.21 payment, however, equaled one-third of H.G.'s workers' compensation recovery. DX 54 at 2. That amount was consistent to the penny with the one-third contingency set forth in Johnson's fee agreement with H.G. for the workers' compensation case. DX 21 at 3. And that amount represented—according to Johnson's own contemporaneous, signed memo—"this office's agreed upon fees out of" the workers' compensation award. DX 54 at 2. Contrary to the false impression that Johnson tried to create in the ALJ, the entire $19,350.21 related to his representation of H.G. for his workers' compensation claim.

40. Johnson's statement to the ALJ also was untrue because he had not, in fact, "performed substantial legal work for [H.G.] other than his workers' compensation claim." DX 77 at 1-2. Johnson referenced two categories of work: (1) "responding to matters regarding his

dispute with his insurance company when his insurance was terminated" and (2) "reviewing numerous documents from the Department of Veterans Affairs." *Id.*

41. Even assuming *arguendo* that the small quantity of Johnson's work on those topics is fairly characterized as "substantial," the work was part and parcel of H.G.'s workers' compensation claim. When Johnson later filed a fee petition seeking additional compensation from the District for his alleged work on H.G.'s workers' compensation claim, he included his time entries for both categories of tasks. DX 81 at 7, 11-12. In addition, the half-page letter that Johnson wrote to the insurer specifically stated that H.G. was "awaiting a decision by an [ALJ] on his workers' compensation disability claim," and that the "insurance premiums were to be paid by the District of Columbia, which is beyond [H.G.]'s control." DX 50 at 1. H.G. never retained Johnson to represent him for any matter other than his workers' compensation claim, nor did Johnson provide H.G. a fee agreement for any other matter. Thus, Johnson had no reason for "reviewing numerous documents" from the Veterans Affairs Department, except in connection with H.G.'s workers' compensation claim.

42. These false statements cannot be explained as anything less than intentional.

2. Johnson's Efforts to Mislead H.G.'s New Counsel

43. In 2015, H.G. had hired a new lawyer experienced in workers' compensation cases, Harold Levi, to replace Johnson as counsel, including for any appeal by the District. Tr. 90 (H.G.); Tr. 328 (Levi); *see also* DX 91 at 7.

44. On July 12, 2016, H.G.'s new attorney Levi e-mailed Johnson:

> [H.G.] received some $58,050.63 of which I understand it, unless I am mistaken, he paid you and you received one third. . . . I need to get from you the . . . amount you received from [H.G.] [and] [y]our engagement agreement with [H.G.].

DX 80 at 1-2. Levi's e-mail to Johnson explained: "I would like to make this work so that [H.G.] is not paying your legal fees and you receive what you are entitled to receive from DC." *Id.* at 2.

Levi needed to confirm the amount of Johnson's fee so that H.G.'s total fee request to the ALJ (for both lawyers) would not exceed the statutory maximum of 20% of total benefits received.

45. That evening, Johnson responded by e-mail:

> [T]his office is currently responding to the erroneous and malicious allegations that this office took over $20,000 or a 35% attorney's fee from [H.G.]. Those allegations are not only untrue but there is no documentation to support these allegations anywhere.

Id. at 4.

46. The foregoing response by Johnson was intentionally evasive and misleading. Levi had asked Johnson a simple question: whether H.G. "paid you and you received one third" of $58,050.63—or $19,350.21. *Id.* at 1-2. The truthful answer would have been: "yes." Johnson dodged Levi's question. *Id.* at 4. Instead of answering forthrightly and accurately, Johnson denied a different "allegation" that Levi had not made: that Johnson "took over $20,000 or a 35% attorney's fee from [H.G.]." *Id.*

47. Johnson also implied that his former client H.G. would be unable to prove that he paid Johnson, writing that "there is no documentation to support these allegations anywhere." *Id.* Johnson's statement was literally true: no documentation existed to support "allegations" (which Levi had not made) that Johnson "took over $20,000." *Id.* Johnson's statement, however, was intentionally evasive and misleading in view of (i) H.G.'s prior payment of $19,350.21 to Johnson, (ii) Levi's clear request that Johnson confirm the amount of that payment, (iii) Johnson's fee agreement with H.G. providing for a one-third contingent fee recovery, and (iv) Johnson's prior, signed memo stating that "this office's agreed upon fees out of the settlement is $19,350.21, which represents 33 1/3% of $58,050.63." DX 54 at 2.

48. Johnson also failed to comply with Levi's request for a copy of Johnson's fee agreement with H.G., which would have confirmed that H.G. had agreed to pay Johnson one-third of any recovery. *Id.*

49. The Hearing Committee finds, based on the facts and circumstances, as well as Johnson's evasive demeanor and testimony during the disciplinary hearing (discussed below), that Johnson was hoping that Levi lacked the background information to recognize the evasive and misleading nature of Johnson's statements, or that Levi would not parse carefully Johnson's statements.

50. In addition to the evasive and misleading statements described above, Johnson's July 12, 2016 response to Levi contained multiple falsehoods. Johnson wrote:

a. "[T]his office represented [H.G.] from the beginning of his workers' compensation claim." DX 80 at 4. In fact, H.G. had proceeded *pro se* for months, and Johnson had resubmitted with only minor changes paperwork that H.G. or his wife had prepared. DX 15-20; DX 29 at 3.; Tr. 28-31, 48 (H.G.).

b. "This office . . . participated at various conferences before the Administrative Law Judge even before the matter was scheduled for a hearing." DX 80 at 4. In fact, Johnson had "participated" in only one pre-hearing conference. *See* DX 81 Exhibit B at 1-9 (listing only one pre-hearing conference held on October 26, 2013).

c. "This office also represented [H.G.] with his appeal before the Compensation Review Board, which ruled in [his] favor." DX 80 at 4. In fact, the CRB had ruled *against* H.G., vacating the ALJ's decision to reinstate H.G.'s temporary total disability benefits. DX 67 at 2, 10.

d. "It was after the Compensation Review Board's ruling for [H.G.] that the check was issued by the Office of Risk Management." DX 80 at 4-5. In fact, the check was paid several months before the CRB's ruling. *Compare* DX 54 at 1 (July 22, 2014 Check), *with* DX 67 (Dec. 16, 2014 CRB Order). When the CRB did rule, it *vacated* the ALJ's ruling pursuant to which the check had been paid. DX 67.

51. Johnson's many misstatements in his July 12, 2016 e-mail to his client's new counsel cannot be attributed to simple inadvertence. Nor are they minor. Separately and together, they served to mislead the reader about the quantity of work Johnson had performed, and the results he had obtained, on behalf of H.G.

52. On July 13, 2016, attorney Levi responded to Johnson:

> Thank you for your response. As previously stated, I await . . . your statement of the amount you did receive from [H.G.] as we are clear on the $58,050 amount he received. Please forward . . . to me today if possible.

DX 80 at 6. Johnson did not respond.

53. On July 15, 2016, attorney Levi again e-mailed Johnson:

> I . . . need the amount of the payment you received and your engagement letter with [H.G.] as I have requested. I have received nothing from you thus far. [H.G.] assures me that without your cooperation and return of his money and pursuit of a proper fee petition against the District, he intends to continue to pursue his claims [against Johnson].

DX 80 at 7. Johnson did not respond.

54. On July 19, 2016, attorney Levi wrote to Johnson by e-mail:

> I have not heard from you regarding [H.G.]. If I do not hear from you shortly, I will file my own petition with the explanation appropriate for the circumstances and detailing the facts as we know them to be. If you say the facts and amounts are different, I need to hear from you.

DX 80 at 9. That same afternoon (July 19, 2016), Johnson finally responded by e-mail:

> [I]f you are alleging the same erroneous allegations that you sent to this office earlier, then you can continue to make the false and erroneous allegations again

> [sic] this office and me. By the way, there is nothing written by [H.G.] that supports your allegation that [H.G.] gave this office or me over $20,000.

DX 80 at 8.

55. Johnson's July 19, 2016 e-mail was intentionally evasive and misleading. He once again avoided confirming the amount H.G. had paid him, or the fact that H.G. had paid him at all. In the e-mail, Johnson also falsely stated that Levi had made an "allegation that [H.G.] gave this office or me over $20,000." *Id.* In fact, Levi had asserted—accurately—that "[H.G.] received some $58,050.63 of which . . . he paid you and you received one third." DX 80 at 1-2. Johnson's misstatement of Levi's e-mail, and his denial of the "straw man" allegation that Levi had not made, were calculated to evade and mislead.

56. Johnson's July 19, 2016 statement that "nothing written by [H.G.] . . . supports your allegation that [H.G.] gave this office or me over $20,000" may have been literally true (aside from the fact that Levi had made no such "allegation"). The Hearing Committee finds that the unmistakable intention of Johnson's statement was to mislead Levi into believing that no documentary evidence would support H.G.'s (accurate) claim to have paid Johnson. Of course, it was Johnson's ethical duty to maintain and provide H.G. with accurate records of such payments when he took a fee and when successor counsel requested the information on behalf of the client. Tr. 330-31, 333-35 (Levy); *see* D.C. Rules of Prof'l Conduct R. 1.5(c) ("Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter, and if there is a recovery, showing the remittance to the client and the method of its determination."); D.C. Rules of Prof'l Conduct R. 1.15(c) ("[A] lawyer shall

promptly deliver to the client . . . any funds . . . that the client . . . is entitled to receive and, upon request by the client . . . shall promptly render a full accounting regarding such property.”).[6]

57. Johnson’s July 19, 2016 e-mail also sought credit for “fil[ing] [an] appeal [on behalf of H.G.] before the District of Columbia Court of Appeals on January 15, 2015.” DX 80 at 8. That “appeal,” however, was a procedurally improper, ten-page “petition,” DX 68, and Johnson had not even responded to the Court of Appeals’ order to show cause why the petition should not be dismissed. DX 70.

58. On July 26, 2016, Levi e-mailed Johnson:

> I do not know what was your fee arrangement—whether it was lawful or not. I do not know how much money you took from the $58,050 that was paid and that should have been paid by DC—but only upon a fee petition. [T]hat’s why I asked for you to provide me the information. . . . I do not know whether you are asking for more than you should get from DC—so I cannot understand how the numbers work . . . . Please explain your math.

DX 80 at 31. Johnson did not respond to Levi’s e-mail or provide the requested information.

3. Johnson’s False Fee Petition

59. On July 16, 2016, Johnson submitted to the ALJ a Petition for Attorney’s Fees and Costs, which included a “Statement of Account for [H.G.] for Legal Services Provided from the Period of June 12, 2012 through November 2015, by Johnnie Louis Johnson III and the Law Offices of Johnnie Louis Johnson III LLC.” DX 81 at 1, 6. Johnson did not serve a copy of his fee petition on H.G., H.G.’s new counsel Levi, or the District’s counsel. *Id.*; Tr. 94 (H.G.); Tr. 241-43 (Johnson); Tr. 335, 338 (Levi).

60. Johnson’s fee petition purported to list the number of minutes he had devoted to performing various tasks on behalf of H.G. in each month from June 2012 through November

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[6] Disciplinary Counsel did not allege violations of the applicable Rules in the Specification of Charges. *See* Specification ¶ 44.

2015. In total, Johnson claimed to have devoted more than 80 hours to representing H.G. DX 81 at 7-15. Using $500 as his hourly rate, Johnson in the fee petition sought $40,324.66 from the District as the "Total Amount Due Billed [sic] for the Period from June 2012 to November 2015." *Id.* at 15. If the District had paid Johnson the amount requested in his fee petition, his total recovery (from the District and directly from H.G.) would have been $59,674.87—approximately 103% of his client's recovery.

61. Johnson in the fee petition made a series of untrue representations about his work for H.G. in an effort to obtain money from the District.

62. ***Review of PTSD Records***. Johnson falsely told the ALJ in his fee petition that in September 2012 he spent 13 hours (for which he sought $6,500 from the District) on the following tasks:

a. "Reviewed [H.G.]'s Post Traumatic Stress Disorder Pre-Operative Medical Records and Medical Evaluations" (5 hours);

b. "Reviewed [H.G.]'s Residential Post-Traumatic Stress Disorder Agreement" (5 hours); and

c. "Reviewed [H.G.]'s Residential Post Traumatic Stress" (3 hours).

DX 81 at 13. The "Residential PTSD Agreement" (signed by H.G. in July 2012) that Johnson claimed to have spent five hours reviewing is only two pages long, and it can be read in less than two minutes. DX 24 at 14-15. The document is free of legalese and appears to be a standard Veterans Administration form listing basic rules for a residential treatment facility, such as: "Visitors are allowed from 12 p.m. to 6 p.m. on Saturdays, Sundays and federally designated holidays." *Id.* at 15. The document has no obvious significance to the case for which Johnson represented H.G. The three hours claimed for reviewing "Residential Post Traumatic Stress"

appears to relate to the same document. It cannot be true that Johnson's spent a total of eight hours reviewing this document or that he was entitled to $4,000 for doing so.

63. The post-traumatic stress disorder "records" that Johnson claimed to have spent at least five hours "review[ing]" consist of a 13-page questionnaire that H.G. had completed. *Id.* at 1-13. It cannot be true that Johnson spent at least five hours reviewing this document or that he was entitled to collect a fee of $2,500 for doing so.

64. ***Motion to Dismiss in June 2012***. Johnson falsely told the ALJ in his fee petition that in "June 2012" he devoted a total of six hours (360 minutes) to "Review[ing] Correspondence from the Office of the Attorney General Regarding its Motion to Dismiss," "Prepar[ing] Responses to Correspondence from the Office of the Attorney General Regarding a Motion to Dismiss," and "Prepar[ing] Memorandum in Opposition to Office of the Attorney General's Motion to Dismiss." DX 81 at 7. In fact, there was no pending motion to dismiss in June 2012. The Attorney General's motion to dismiss already had been *granted* without prejudice before H.G. ever contacted Johnson. DX 20 at 17. Johnson sought to collect $3,000 ($500 per hour for six hours) from the District on the basis of tasks that Johnson did not perform. Tr. 172-73 (Johnson).

65. ***Discovery Requests***. Johnson told the ALJ in his fee petition that in September 2012 he devoted a total of ten hours (600 minutes) to preparing document requests and interrogatories on behalf of H.G., and he sought payment from the District of $5,000 for that task. DX 81 at 8. The discovery requests he served, however, appear to be standard form workers' compensation requests with little adaptation to H.G.'s particular circumstances. DX 32; *see* Tr. 181-84 (Johnson) (comparing DX 32 interrogatories with another client's (DX 89)).

66. ***Application for Formal Hearing***. Johnson told the ALJ in his fee petition that in July 2012 he spent 60 minutes (and sought $500 for) working on an "Application for Formal

Hearing of Claimant [H.G.'s] Workers' Compensation Claim." DX 81 at 7. In fact, Johnson submitted a form previously prepared by H.G. *pro se*, and to which Johnson added only two sentences (one of which included a request for attorney's fees):

> [1] I request a hearing so that I can present medically accepted evidence that will clearly demonstrate that the decision which denied my benefits was not in issued [sic] in accordance with the evidence presented to the Office of Risk Management and it should, therefore, be overruled in its entirety. [2] In addition, I wish to obtain all of my benefits that have been denied to me, as well as my attorney's fees and costs.

DX 29 at 3.

67. ***Work After H.G. Fired Johnson***. Johnson in his fee petition sought compensation for 510 minutes ($4,250) of services allegedly rendered on behalf of H.G. after July 24, 2015, the date H.G. terminated Johnson as his counsel. DX 81 at 14-15; *see* DX 74 at 1 (letter to ALJ releasing Respondent from the representation, dated July 22, 2015 and received July 24, 2015). Johnson's fee petition did not inform the ALJ that his alleged tasks after that date were not performed on behalf of H.G. DX 81.[7]

68. At his disciplinary hearing, Johnson admitted that he had kept no contemporaneous time records of his work for H.G., and that he had prepared the July 2016 fee petition based on his claimed "recollection" of tasks going back more than four years. Tr. 246 (Johnson). He did not, however, disclose to the ALJ in his fee petition or elsewhere that his purported tasks had been recreated from "recollection" years after the fact. To the contrary, Johnson's fee petition implied

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[7] In addition to these particularly egregious examples, Johnston sought other recoveries that were highly questionable. For example, Johnston told the ALJ in his fee petition that he spent four hours (for which he sought $2,000) reviewing a 9-page Compensation Order, DX 81 at 12, and a full hour (for which he sought $500) "[r]eview[ing] the Office of the Attorney General's Motion to Compel" discovery—DX 81 at 9—a motion that is only eight sentences (including its three-sentence footnote), and it fit on a single page (including the case caption). DX 38. It is highly unlikely that these claims were accurate.

that he had recorded with precision and contemporaneously the amounts of time he spent working on H.G.'s case. For example, it stated that he spent "3 Minutes" talking to H.G. in March 2013, "5 Minutes" talking to H.G. in April 2013, and "4 Minutes" talking to H.G. in May 2013. *Id.* at 10.

69. These self-serving statements were so obviously far from true that even the most generous conclusion is that Mr. Johnson intentionally reconstructed these hours with reckless disregard for whether they were accurate in the hope that they would result in a payment to which he was not entitled.

70. On February 17, 2017, the ALJ denied Johnson's fee petition on the ground that it was untimely. DX 86.

4. Johnson's Efforts to Mislead Disciplinary Counsel

71. On March 23, 2016, the ALJ referred Johnson's conduct to Disciplinary Counsel. DX 6 at 9. The ALJ's referral letter stated that Johnson "collected $20,350.21 from [H.G.] out of the funds awarded for Petitioner's Workers' Compensation claim, which was 35% of the award amount." *Id.* (In fact, the amount was $19,350.21. DX 93 at 44.) On May 20, 2016, Disciplinary Counsel sought Johnson's response. DX 6 at 6.

72. On May 31, 2016, Johnson responded to Disciplinary Counsel, denying that "I collected $20,350.21 from" H.G. *Id.* at 4. Johnson did not disclose that he had collected $19,350.21. *Id.*

73. Johnson acknowledged that he had "received a check . . . on behalf of the District of Columbia Government," but stated that the "check did not indicate that it was an award of temporary disability benefits in [H.G.]'s Workers' Compensation claim." DX 6 at 3. That statement was false. Again, the check stub sent to Johnson and brought by him to Wells Fargo bank specifically referenced H.G.'s name, claim number, the date of his accident, the ALJ's order, and the date of the back payments it covered:

Claim No	D/A	Claimant	From	Thru	Invoice Reference/Comments	Remittance
0468-WC-11-0500031	10/07/2010	H.G. (redacted)	02/11/2012	06/28/2014	Order granted H.G. (redacted) claim for rel	*****$58,050.63

DX 93 at 3.

74. On June 28, 2016, Disciplinary Counsel wrote to Johnson that, "[a]ccording to an undated memorandum that you provided to [H.G.] (copy enclosed), you stated that your fees for the $58,050.63 compensation settlement would be $19,350.21. Please confirm that this is the amount that [H.G.] paid you for your fees." DX 7 at 1. Disciplinary counsel also asked: "Please state whether you filed a petition or submitted anything in writing seeking approval of the legal fees you charged and received from [H.G.] for representing him in his claim for disability compensation benefits." *Id.*

75. On July 20, 2016, Johnson responded to Disciplinary Counsel. Despite Disciplinary Counsel's specific request, Johnson's response did not "confirm that [$19,350.21] is the amount that [H.G.] paid you for your fees." DX 8; DX 7 at 1. In an effort to mislead Disciplinary Counsel, Johnson instead wrote that the check on behalf of the District of Columbia "was not deposited into this office's business account and I did not collect the $20,350.21 alleged by" the ALJ. DX 8 at 2. Johnson further asserted that "[t]he funds that [H.G.] provided to this office were not a fee for legal representation, as defined in District of Columbia Code § 1-623.27." *Id.*

76. This latter statement was false. H.G. paid Johnson $19,350.21 as a one-third contingent fee for legal representation in H.G.'s workers' compensation case against the District. This is clear from H.G.'s testimony (which the Hearing Committee finds credible), Johnson's fee agreement with H.G., Johnson's contemporaneous, signed memo, and the amount of the check.

77. On August 8, 2016, Disciplinary Counsel wrote to Johnson:

> I have reviewed your response of July 20, 2016. You did not respond to the inquiry in my June 28, 2016 letter, in which I asked you to confirm that you received $19,350.21 from [H.G.] from the settlement check, and you received the fees in cash. Please respond to this inquiry.

DX 9 at 1. Disciplinary counsel also subpoenaed records from Johnson. *Id.*

78. On August 19, 2016, Johnson sent Disciplinary Counsel a letter in which he did not answer Disciplinary Counsel's question. DX 10. He produced some records in response to the subpoena. *Id.*

79. On August 26, 2016, Disciplinary Counsel wrote to Johnson concerning the fee petition he had submitted to the ALJ: "Please state the basis on which you prepared your Statement of Account, and if you have any supporting documents, please provide them as requested in the subpoena." DX 12 at 1. She also renewed for a third time her request that Johnson "confirm that you received $19,350.21 from [H.G.] from the settlement check, and you received the fees in cash." *Id.*

80. Johnson did not respond to Disciplinary Counsel's August 26, 2016 letter, or to another follow-up letter she sent on October 4, 2016. DX 13.

81. On December 27, 2016, Disciplinary Counsel served a Specification of Charges on Johnson. DX 3.

5. Johnson's False Statements to the Hearing Committee

82. Before this disciplinary proceeding, Johnson implicitly admitted that he had received *some* unspecified payment from H.G. For instance, in responding to the ALJ's Order to Show Cause, he sought to justify his receipt of the money by stating that he "truly believed that because the payment [on behalf of the District] was sent . . . to both [H.G.] and Johnnie Louis Johnson III LLC that the payment was approved by the Offices of Risk management and

Department of Employment Services." DX 77 at 8. And he wrote to Disciplinary Counsel that "it was [H.G.] who requested that he cash the check at this bank and that *he would disburse the funds to this office and me* and to himself." DX 6 at 4 (emphasis added).

83. In this proceeding, however, Johnson changed his story. For the first time, he falsely claimed that H.G. never paid him *any* money. In his Answer (submitted *pro se*), Johnson wrote:

a. "Johnnie Louis Johnson III . . . did not receive attorney's fees from [H.G.]." DX 4 (Answer) at ¶ 42.

b. "Johnnie Louis Johnson III and the Law Offices of Johnnie Louis Johnson III LLC deny that Johnnie Louis Johnson III took $19,350.21 or one-third (1/3) of the check amount for himself." *Id.* at ¶ 14.

He also wrote:

c. "Johnnie Louis Johnson III and the Law Offices of Johnnie Louis Johnson III LLC deny that they prepared a memorandum to [H.G.]." *Id.* at ¶ 13.

84. Testifying under oath at his disciplinary hearing, Johnson made further false and misleading statements:

> [DISCIPLINARY COUNSEL]. When the check was cashed, you received—or $19,350.21 was provided to you either by depositing into accounts or you directing it be deposited into accounts that you held at Wells Fargo?
>
> [JOHNSON]. No.
>
> [DISCIPLINARY COUNSEL]. You didn't receive any portion of this check—
>
> [JOHNSON]. There's no check—none of that, no—I don't have any $19,350.21 or $20,000 deposited in any of my accounts at Wells Fargo.
>
> [DISCIPLINARY COUNSEL]. Well, then how much did you receive.
>
> [JOHNSON]. Well, I didn't receive $20,000.

> [DISCIPLINARY COUNSEL]. That's not my question. How much did you receive from the $58,050.63 check?
>
> [JOHNSON]. I do not recall. I do not recall. . . . .
>
> [DISCIPLINARY COUNSEL]. Do you recall receiving some money?
>
> [JOHNSON]. No, I do not.
>
> [DISCIPLINARY COUNSEL]. Is it your contention that you didn't receive any of the funds?
>
> [JOHNSON]. It's my contention I did not receive any of the funds that you allege I received or [H.G.] allege that I received or [the ALJ] alleged I received, [the ALJ], in his letter. . . . .
>
> [DISCIPLINARY COUNSEL]. Well, just so I'm clear, Mr. Johnson, are you saying you didn't get a penny of the $58,000 check?
>
> [JOHNSON]. I didn't get a penny—no, I didn't get a penny of it.
>
> [DISCIPLINARY COUNSEL]. Did you get any money?
>
> [JOHNSON]. I don't recall getting any money from that. You cannot find any money in my account at Wells Fargo or any other place that I got money from [H.G.]. If, in fact, you do, I'd like to see it. . . .

Tr. 207-210 (Johnson).

> [DISCIPLINARY COUNSEL]. And am I correct that until today, you've never contended that you didn't get any money from [H.G.] at the bank? This is the first time you've made that assertion to [the ALJ] or to Disciplinary Counsel, that you didn't receive any funds?
>
> [JOHNSON]. That's not correct. . . . I refer you to . . . the answer to . . . specification of charges . . . .

Tr. 238-39 (Johnson).

> [COMMITTEE MEMBER HIRSH]. You did not receive the money at all. It's not a matter of receiving it as attorneys' fees.
>
> [JOHNSON]. No, I did not.
>
> [COMMITTEE MEMBER HIRSH]. You did not receive the money at all?
>
> [JOHNSON]. No. No.

> [COMMITTEE MEMBER HIRSH]. And you're not maintaining you did receive the money for some other purpose?
>
> [JOHNSON]. No.

Tr. 255 (Johnson).

85. When a Hearing Committee member questioned Johnson with his prior written statement that "proceeds were distributed by [H.G.] to The Law Offices of Johnnie Louis Johnson, III, LLC," Johnson repeatedly insisted "[t]hat was a typo," "that's a typo," "that was a typo," "it was a typo," and "that is a typo." Tr. 260-62 (Johnson).

86. Clear and convincing contradictory evidence establishes that Johnson's sworn testimony was false: specifically, (i) the one-third contingent fee term in Johnson's fee agreement, (ii) the cashier's check in Johnson's name in an amount equal to one-third of his client's recovery, (iii) Johnson's contemporaneous, signed memorandum to his client confirming his receipt of exactly that amount, (iv) Johnson's prior written statements to the ALJ and Disciplinary Counsel implicitly conceding that he had received money from H.G., and (v) H.G.'s own consistent and sincere testimony before the Hearing Committee. In addition, Johnson changed his story yet again at the hearing, as discussed next. Johnson's evasive demeanor and shifting explanations would have cast doubt on his credibility even absent the overwhelming documentary record that his testimony was false.

87. After a Hearing Committee member stated that he "can't figure out any way to read [Johnson's prior statements] besides [H.G.] gave you some money," Tr. 261, Johnson again changed his story, this time contending (falsely) that H.G. gave him some amount of money, but less than $19,000, and not as a legal fee:

> [COMMITTEE MEMBER HIRSH]. Now, are you telling us that you told [the ALJ] three times in this document that you received money from [H.G.] and it wasn't true? I'm trying to figure out—I'm trying to understand, because this is giving me some difficulty.

> [JOHNSON]. No, I'm not saying that.
>
> [COMMITTEE MEMBER HIRSH]. So what are you saying?
>
> [JOHNSON]. I'm saying that the funds were disbursed, but they were not disbursed by me.
>
> [COMMITTEE MEMBER HIRSH]. But some of the funds were disbursed to you?
>
> [JOHNSON]. By [H.G.]?
>
> [COMMITTEE MEMBER HIRSH]. Yes.
>
> [JOHNSON]. Yes, but not as attorneys' fees.
>
> [COMMITTEE MEMBER HIRSH]. How much was disbursed to you?
>
> [JOHNSON]. I don't know exactly, but it wasn't $20,340—it wasn't $20,000.
>
> [COMMITTEE MEMBER HIRSH]. And what was the money disbursed to you for?
>
> [JOHNSON]. I don't know what they were disbursed for. [H.G.] did the disbursing.
>
> [COMMITTEE MEMBER HIRSH] . . . Are we talking $5, $5000, $19,000?
>
> [JOHNSON]. It was less than that. He did disburse the money to the—
>
> [COMMITTEE MEMBER HIRSH]. How much less?
>
> [JOHNSON]. I don't recall how much. He did the disbursing.
>
> [COMMITTEE MEMBER HIRSH]. $10,000?
>
> [JOHNSON]. Could have been.

Tr. 264-65 (Johnson). Johnson never attempted to explain why an unemployed client whom Johnson describes as desperately needing money would have voluntarily chosen to give a lawyer he barely knew thousands of dollars (equal to one-third of his recovery), unless it was as payment of an attorneys' fee (which it plainly was).

88. Johnson's partial reversal of his story regarding the disbursement of the cashed check undermines the credibility of all of his testimony, which, as noted, is contradicted by overwhelming documentary evidence.

89. At the time Johnson testified falsely before the Hearing Committee, Wells Fargo Bank had not yet produced in response to Disciplinary Counsel's subpoena the $19,350.21 cashier's check payable to "Johnny L. Johnson III Esq." DX 93 at 44. Wells Fargo Bank produced that and other bank records after the hearing, and Disciplinary Counsel filed a motion to supplement the record. The Hearing Committee granted that motion and gave Johnson an opportunity to address this new evidence. In his November 27, 2017 written submission, Johnson wrote that the Wells Fargo records "do not support . . . Disciplinary Counsel's erroneous allegations that it was Respondent Johnnie (L.) Johnson III who actually cashed the check and who actually deposited certain funds from the settlement check into his four (4) Wells Fargo Bank accounts." Johnson also wrote that the documents are "not relevant to this matter but clearly reflect an all-out attempt and effort, by the Disciplinary Counsel, to intimidate, harass, humiliate, embarrass and otherwise place Respondent Johnnie (L.) Johnson III in fear of certain matters . . . ."

90. Even without the supplemental exhibit DX 93 (cashier's check), the Hearing Committee would have found that Johnson lied under oath about his receipt of the funds, in view of his signed memorandum and all of the other credible evidence.

L. Johnson's Arguments about Typographical Errors

91. Throughout this disciplinary proceeding, Johnson has devoted an enormous number of words to accusing Disciplinary Counsel of improper animus against him, and to seeking dismissal of this disciplinary proceeding, on the basis of the minor typographical errors that Disciplinary Counsel corrected after the original Specification of Charges. For instance, in his post-hearing brief, he devoted several pages to the typographical error in his middle initial, and

wrote that "[t]here is a serious and fundamental dispute as to whom this named Respondent is referring in this matter."

92. In fact, no such dispute exists. Johnson appeared at his hearing, admitted his Bar number is 235614, admitted that he had been served with the original and amended Specifications of Charges, and admitted that he represented H.G. in his workers' compensation case. He further admitted that he was the person who engaged in the activities and communications reflected in the documentary record.

93. Johnson also wrote in his Answer that "[t]he Senior Assistant Disciplinary Counsel has designated this section [of the Amended Specification of Charges] as well as the previous section as 14" (in other words, a typographical error in which consecutive paragraphs were inadvertently numbered using the same number), and "this designation is nefarious and designed to trick Johnnie Louis Johnson III and the Law office of Johnnie Louis Johnson III LLC into admitting a matter where there is no proof whatsoever." Answer at ¶ 15 n.3. "[T]he Senior Assistant Disciplinary Counsel has chosen to attempt to deceive . . . Johnnie Louis Johnson III and the Law Office of Johnnie Louis Johnson III LLC with trickery and cunning . . . ." *Id.* at ¶ 16 n.4. It is not clear what Johnson means when he refers to a "nefarious designation." We see no evidence in the record that the Senior Assistant Disciplinary Counsel attempted to deceive Johnson.

94. Johnson's responses to minor typographical errors typifies his approach to Disciplinary Counsel's investigation and this proceeding. It is conceivable, for example, that Mr. Johnson was merely sloppy in presenting his client with a confusing retention agreement or merely reckless in overstating time in a fee petition, reconstructed long after the fact. But it is not possible on the evidence to attribute anything less than intent to the consistent efforts Johnson made (largely *after* the discovery of this wrongful conduct was brought to his attention) to

obfuscate rather than acknowledge his wrongdoing. Johnson has never made any expression of contrition for his conduct. Instead, he has sought repeatedly to hide his wrongdoing—often by deception, or, as in this case, misdirection.

III. LEGAL CONCLUSIONS

The Hearing Committee concludes by clear and convincing evidence that Johnson violated Rule 1.4(b), Rule 1.5(a), Rule 3.3(a)(1), Rule 8.1(b), Rule 8.4(c), and Rule 8.4(d) of the Rules of Professional Conduct of the District of Columbia. Clear and convincing evidence means "more than a preponderance of the evidence; [it] mean[s] 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) (quotations and citations omitted).

A. Respondent's Motions to Dismiss

The Hearing Committee is not authorized to rule on a motion to dismiss, but instead should include a recommended disposition of the motion in its report to the Board, after hearing all of the evidence. *See* Board Rule 7.16(a); *In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991). Once a Contact Member has approved a petition, "the underlying purposes of the Board require that we proceed directly to a hearing on the merits rather than being detoured into questions of pleading and form." *In re Stanton*, 470 A.2d 281, 285 (D.C. 1983) (per curiam) (appended Board Report). Pursuant to Board Rule 7.16(a), we address Respondent's motions to dismiss. The Hearing Committee recommends that the Board deny each of the motions to dismiss for the reasons discussed herein:

<u>Respondent's June 9, 2017 Motion to Dismiss and Motion for Order to Show Cause</u> was lodged with the Board Office, but was not accepted for filing. Respondent's motion was based on inaccuracies contained in the original Specification of Charges. During the June 9, 2017 telephonic pre-hearing conference, Senior Assistant Disciplinary Counsel Porter acknowledged the typographical errors and agreed to file a corrected Specification of Charges that would be

personally served on Respondent. Pre-hearing Tr. 5-7 (June 9, 2017). Respondent asserted his right to file an Amended Answer. *Id.* at 12. Since Respondent's June 9, 2017 motion to dismiss was lodged and not filed, and relates to an original Specification that was subsequently replaced by the Corrected Specification on June 12, 2017, the grounds on which Respondent seeks redress are irrelevant and his June 9, 2017 motion is moot. Thus, we recommend that the Board dismiss Respondent's June 9, 2017 Motion to Dismiss and Motion for Order to Show Cause as moot.

Respondent's July 6, 2017 Motion to Dismiss and Motion for Order to Show Cause Respondent's Answer to the corrected Specification of Charges included a "motion to dismiss this matter with prejudice and [a] motion for an Order to Show Cause against the Senior Assistant Disciplinary Counsel[.]" Answer to the Corrected Specification of Charges at 22. Respondent argued that the case should be dismissed because inaccuracies in the initial Specification of Charges resulted from willful misstatements made by the Senior Assistant Disciplinary Counsel indicating her animus towards Respondent in prosecuting this matter, and as such, dismissal was the only appropriate remedy.

Disciplinary Counsel acknowledged and corrected the typographical errors. We have seen no evidence of improper animus toward Respondent. In addition, Respondent articulates no legal cognizable basis for dismissal. We thus recommend that the Board deny Respondent's motion to dismiss.

Respondent's July 28, 2017 Motion to Dismiss with Prejudice. Respondent requested dismissal of the Corrected Specification of Charges with Prejudice because Disciplinary Counsel subpoenaed Respondent to testify in Disciplinary Counsel's case in chief. He argued that he ("Johnnie Louis Johnson III and the Law Offices of Johnnie Louis Johnson III") was counsel to Respondent (identified as "Johnnie (L.) Johnson III"), and that it would be "unduly burdensome

and oppressive" to require Johnnie (L.) Johnson III's attorney to testify in Disciplinary Counsel's case. He also argued that there must have been insufficient evidence to charge him, if his testimony is required in Disciplinary Counsel's case in chief.

We recommend that the Board deny this motion because Disciplinary Counsel may call a respondent (even if he chooses to represent himself *pro se*) to testify in its case in chief. *See In re Barber*, 128 A.3d 637, 640 (D.C. 2015) (per curiam) (a respondent may be required to appear as a witness in a disciplinary proceeding). Also, the fact that Disciplinary Counsel decided to rely in part on Respondent's testimony to prove its case by "clear and convincing" evidence does not mean that Disciplinary Counsel lacked the "probable cause" necessary to bring charges under Board Rule 7.1. The original Specification of Charges was reviewed and approved by a Contact Member. Nothing in the disciplinary system's procedural rules allows a respondent to challenge that approval. *See* D.C. Bar R. XI, § 5(d); Board Rules 2.12, 2.13, 2.14.

Respondent's October 17, 2017, Motion to Dismiss with Prejudice. Respondent's motion for an order permitting him to file a Surreply Brief in response to Disciplinary Counsel's Reply Brief included a renewed request for dismissal of the charges with prejudice on the merits. He also argued that the charges should be dismissed because Disciplinary Counsel failed to act on Respondent's complaint about the Administrative Law Judge who referred this matter to the Office of Disciplinary Counsel.

We recommend that the Board deny this motion. D.C. Bar R. XI, § 6(a)(2) grants Disciplinary Counsel the power "[t]o investigate all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction of this Court which may come to the attention of Disciplinary Counsel . . . from any source whatsoever, where the apparent facts, if true, may

warrant discipline." Disciplinary Counsel's handling of another complaint has no bearing on its case against Respondent.

B. Rule Violations

1. Johnson Violated Rule 1.4(b) By Failing to Keep H.G. Informed

Rule 1.4(b) provides that a "lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Rule 1.4 imposes a duty on the lawyer to "initiate and maintain the consultative and decision-making process" even in the absence of specific requests for information from a client. D.C. Rules of Prof'l Conduct R. 1.4, cmt. [2]. Thus, in addition to responding to client inquiries, a lawyer must initiate communications when necessary. *See In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003). "A lawyer may not withhold information to serve the lawyer's own interest or convenience." D.C. Rules of Prof'l Conduct R. 1.4, cmt. [5].

Johnson unreasonably failed to inform his client H.G. of the legal rules governing H.G.'s entitlement to attorneys' fees, and in particular the requirement that "a reasonable attorney's fee[] . . . not . . . exceed 20% of the actual benefit secured" (D.C. Code § l-623.27(b)(2)), that such fee "shall be paid directly by the Mayor or his or her designee" (*id.*), and that "[i]n all cases, fees for attorneys representing [a] claimant shall be approved" by an ALJ (D.C. Code § l-623.27(e)(1)). If Johnson had explained these matters to H.G., then H.G. could have made an informed decision not to pay Johnson the $19,350.21 unless and until an ALJ approved the fee. Johnson also failed to inform his client that Johnson had asserted a lien on his further recoveries, and the Hearing Committee concludes that Johnson withheld this information to serve his own interest in obtaining an unapproved $19,350.21 fee.

2. Johnson Violated Rule 1.5(a) by Charging Unreasonable Fees

"A lawyer's fee shall be reasonable." D.C. Rules of Prof'l Conduct R. 1.5(a). "Any fee that is prohibited . . . by law is *per se* unreasonable." D.C. Rules of Prof'l Conduct R. 1.5(f); *see In re Bernstein*, 774 A.2d 309, 313-15 (D.C. 2001) (disciplining attorney for keeping $9,000 fee based on a one-third contingent fee agreement when tribunal had awarded the attorney only $6,000 in fees).

Johnson's collection of an attorney's' fee from a client in a public employee workers' compensation case when no ALJ had approved the fee was unlawful (D.C. Code § l-623.27(e)(1)) and, therefore, *per se* unreasonable. *See* D.C. Rules of Prof'l Conduct R. 1.5(f). Johnson admittedly knew about these code provisions, but collected the unlawful fee anyway.

Even if Johnson's fee were not *per se* unreasonable, it still was unreasonable under the circumstances. In view of the small quantity of work performed, and the rates normally permitted in these types of cases (*e.g.*, up to $240 per hour for attorneys with 20 or more years of experience in workers' compensation law, DX 88, not to exceed "20% of the actual benefit secured," D.C. Code § l-623.27(b)(2)), Johnson's effort to collect a more than $40,000 fee from the District, and his collection of $19,350.21 from H.G., were not reasonable.

In addition, Johnson violated Rule 1.5(a) by seeking compensation (in his fee petition) for services that he had not performed, or that had taken substantially less time that he claimed. *See In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006) ("charging *any* fee for work that has not been performed is *per se* unreasonable").

3. Johnson Violated Rule 3.3(a)(1) Through False Statements to a Tribunal

Rule 3.3(a)(1) provides:

> A lawyer shall not knowingly: . . . [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made

to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6.

D.C. Rules of Prof'l Conduct R. 3.3(a)(1). "There may be circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation." *Id.*, cmt. [2]. Filing a knowingly inflated bill with a tribunal violates Rule 3.3(a)(l). *See Cleaver-Bascombe*, 892 A.2d at 403 (filing inaccurate voucher with the court violated Rule 3.3(a)(l)); *In re McClure*, Board Docket No. 13-BD-018, at 24 (BPR Dec. 31, 2015) (filing inaccurate bill with the court based on estimates rather than contemporaneous time records violated Rule 3.3(a)(l)), *recommendation adopted*, 144 A.3d 570, 572-73 (D.C. 2016) (per curiam).

Johnson knowingly made the following false or deceptively incomplete statements, each of which constitutes a violation of Rule 3.3(a)(1):

a. He told the Court of Appeals in his "Petition" that the CRB's order needed to be "corrected to grant [H.G.]'s claim for attorney's fees and costs," DX 68 at 10, without disclosing that H.G. already had paid him one-third of his award.

b. He told the ALJ—in defense of his receipt of approximately $20,000 from H.G., and in response to an Order to Show Cause—that he had "performed substantial legal work for [H.G.] other than his workers' compensation claim." DX 77 at 1-2.

c. He presented his Fee Petition to the ALJ as an accurate record of his work without informing the ALJ that he had recreated it, years after the fact, from "recollection." Tr. 246 (Johnson).

4. Johnson Violated Rule 8.4(c) By Engaging in Dishonesty, Fraud, Deceit, and Misrepresentation.

Under Rule 8.4(c), "[i]t is professional misconduct for a lawyer to . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." D.C. Rules of Prof'l Conduct R. 8.4(c). "[D]ishonesty" under Rule 8.4(c) includes not only fraudulent, deceitful or misrepresentative

conduct, but more generally "'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) (alteration in original) (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." *In re Reback*, 487 A.2d 235, 239-40 (D.C. 1985) (per curiam) (quoting *Andolsun v. Berlitz Schools of Languages of America, Inc.*, 196 A.2d 926, 927 (D.C. 1964)), *aff'd in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc) (citation omitted); *see also Cleaver-Bascombe*, 892 A.2d at 404 ("[A]n attorney who recklessly maintains inadequate time records, and consciously disregards the risk that she may overcharge a client . . . engages in dishonesty within the meaning of Rule 8.4(c).").

Johnson's misstatements to the tribunals in the foregoing section—each of which was motivated by a wrongful effort to keep or obtain money to which Johnson was not entitled—also constitutes an instance of professional misconduct under Rule 8.4(c).

In addition, Johnson's misstatements concerning the amount of time he devoted to tasks was made in at least conscious disregard of his obligations, and those constitute dishonesty to the ALJ. He told the ALJ in his Fee Petition that he:

1. devoted more than 80 hours to representing H.G, DX 81 at 7-15;
2. devoted eight hours in September 2012 to reviewing a simple, two-page document, *id.* at 8;
3. devoted five hours in September 2012 to reviewing a 13-page document, *id.*;
4. devoted ten hours in September 2012 to preparing document requests and interrogatories on behalf of H.G, *id.*;

5. devoted six hours in June 2012 to "Review[ing] Correspondence from the Office of the Attorney General Regarding its Motion to Dismiss," "Prepar[ing] Responses to Correspondence from the Office of the Attorney General Regarding a Motion to Dismiss," and "Prepar[ing] Memorandum in Opposition to Office of the Attorney General's Motion to Dismiss," *id.* at 7; and,
6. devoted 60 minutes in July 2012 to an "Application for Formal Hearing of Claimant [H.G.'s] Workers' Compensation Claim," *id.*

These statements were not only false, their falsity would have been obvious had Johnson made any attempt to see if they were true before relying on them in an effort to obtain even more fees above those he already had exacted from his client H.G.

Johnson engaged in still further instances of professional misconduct under Rule 8.4(c) when, for the same purpose, he falsely told H.G.'s new counsel Levi:

a. "[T]his office represented [H.G.] from the beginning of his workers' compensation claim," DX 80 at 4;
b. "This office . . . participated at various conferences before the Administrative Law Judge even before the matter was scheduled for a hearing," *id.*;
c. "This office also represented [H.G.] with his appeal before the Compensation Review Board, which ruled in [his] favor," *id.*; and
d. "It was after the Compensation Review Board's ruling for [H.G.] that the check was issued by the Office of Risk Management," *id.* at 4-5.

Johnson engaged in professional misconduct under Rule 8.4(c) when he falsely told Disciplinary Counsel that:

a. he had "received a check . . . on behalf of the District of Columbia Government but that check did not indicate that it was an award of temporary disability benefits in [H.G.]'s Workers' Compensation claim," DX 6 at 3; and

b. "[t]he funds that [H.G.] provided to this office were not a fee for legal representation, as defined in District of Columbia Code § 1-623.27." DX 8 at 2.

In addition, he evinced "a lack of honesty, probity, or integrity" and a "lack of fairness and straightforwardness," *Hager*, 812 A.2d at 916, in evading legitimate questions by H.G.'s new counsel and Disciplinary Counsel:

a. by dodging attorney Levi's question (on behalf of H.G.) whether H.G. "paid you and you received one third" of $58,050.63. DX 80 at 1-2, 4. Levi needed this information for a planned additional fee petition on behalf of H.G. DX 80 at 1-2. Johnson had a duty to cooperate with his client's new counsel. *See* D.C. Rules of Prof'l Conduct R. 1.16(d) ("In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled . . . .").

b. by misleadingly telling Levi "there is no documentation to support these allegations [that Johnson was paid over $20,000] anywhere," DX 80 at 4, when documentation in his own files and at Wells Fargo proved Johnson had paid him $19,350.21;

c. by misleadingly denying in a letter to Disciplinary Counsel that "I collected $20,350.21 from" H.G., DX 6 at 4;

d. by dodging Disciplinary Counsel's specific request to "confirm that [$19,350.21] is the amount that [H.G.] paid you for your fees," DX 7 at 1; DX 8; and

e. by misleadingly telling Disciplinary Counsel that the check on behalf of the District of Columbia "was not deposited into this office's business account and I did not collect the $20,350.21 alleged by" the ALJ. DX 8 at 2.

5. Johnson Violated Rule 8.1(b) By Trying to Deceive Disciplinary Counsel

Under Rule 8.1(b),

> a lawyer in connection with a . . . disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for information from a[] . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

D.C. Rules of Prof'l Conduct R. 8.1(b). "[I]t is a separate professional offense for a lawyer knowingly to make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct." *Id.*, cmt. [1].

Johnson's misstatements and evasive responses to Disciplinary Counsel (described in the foregoing section) constituted "a separate professional offense" under Rule 8.1(b).

6. Johnson Violated Rule 8.4(d) By Seriously Interfering with the Administration of Justice

Under Rule 8.4(d), "[i]t is professional misconduct for a lawyer to . . . [e]ngage in conduct that seriously interferes with the administration of justice." D.C. Rules of Prof'l Conduct R. 8.4(d). For a Rule 8.4(d) violation, there must be

> clear and convincing evidence that: (1) the lawyer's conduct was improper; (2) the conduct bore directly on the judicial process in an identifiable case; and (3) the conduct tainted the judicial process in more than a *de minimis* way, namely that it must "potentially impact upon the process to a serious and adverse degree."

In re White, 11 A.3d 1226, 1247 (D.C. 2011) (per curiam) (appended Board Report) (quoting *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996)). For conduct to be "improper" under the first element, it must "violate[] a specific statute, court rule or procedure, or other disciplinary rule," or

the lawyer, "considering all the circumstances in a given situation," must reasonably expect it to cause "serious interference with the administration of justice." *Hopkins*, 677 A.2d at 61.

Johnson's conduct was improper, the conduct bore directly on the judicial process in H.G.'s workers' compensation case, and the conduct tainted that process to a serious and adverse degree. Johnson's conduct effectively required H.G. to hire new counsel, with the additional costs and burdens such transition necessarily entails; it caused his client distress; it required the ALJ to devote time and attention to the matter of Johnson's unauthorized receipt of a one-third contingent fee from his client; and it required the ALJ to consider (and other parties to oppose) a fee petition that was inflated by inaccurate descriptions of Johnson's purported tasks. Taken together, these harms tainted the proceeding in a more than *de minimis* way.

IV. DISBARMENT AND RESTITUTION ARE WARRANTED

In determining the discipline or sanction to impose, the Court of Appeals has considered the following factors: (1) the nature and seriousness of the misconduct; (2) the prejudice to the client; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other ethical rules; (5) whether the lawyer has prior discipline; (6) whether the lawyer acknowledges and is genuinely remorseful about his wrongful conduct; and (7) any other circumstances in mitigation or aggravation of the misconduct. *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013). The Court also considers "'the moral fitness of the attorney'" and the "'need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012) (internal quotation marks omitted)). Finally, the sanction must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *In re Hutchinson*, 534 A.2d 919, 923-24 (D.C. 1987) (en banc); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In view of these factors, disbarment and restitution are warranted.

A. Disbarment

Johnson's wrongdoing was egregious and pervasive, and it involved flagrant dishonesty, "a continuing and pervasive indifference to the obligations of honesty in the judicial system . . . ." *In re Pennington*, 921 A.2d 135, 141 (D.C. 2007) (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)). He abused his superior knowledge and position of trust to take $19,350.21 from a client. He had no legitimate legal claim to that money under D.C. Code provisions that Johnson admittedly knew and understood. He intentionally kept his client in the dark. He intentionally lied to his client's new counsel, to the ALJ, and to Disciplinary Counsel. When he had a duty to be forthright, he was evasive. All of the foregoing wrongdoing was motivated by his own financial self-interest, and his interest in covering up his own prior dishonesty and Rule violations. He seriously harmed his client by keeping $19,350.21 that rightly belonged to the client, and by undermining his client's trust in the administration of justice and in the legal profession. His wrongdoing produced serious interference in his client's workers' compensation case. His dishonesty continued throughout this disciplinary proceeding. Johnson's wrongdoing reflects negatively and seriously on his fitness to practice.

In short, Johnson's misconduct was serious (factor 1), it harmed his client (factor 2), it involved dishonesty (factor 3), and it violated multiple ethical rules (factor 4). *See Martin*, 67 A.3d at 1053. The absence of prior discipline (factor 5) is a mitigating circumstance. *See id.* His complete lack of remorse (factor 6) is an aggravating circumstance. *See id.*

As to "other circumstances in mitigation or aggravation" (factor 7), *id.*, the aggravating factors dominate. Johnson has not suggested that anything other than selfishness motivated his actions. He has not argued that he had any personal or emotional problems, or chemical dependency. Although one former client of Johnson testified that he was satisfied with Johnson's

services, the Committee does not have a sufficient evidentiary basis to conclude that he has a reputation for good (or bad) character or honesty. It is possible, at least at the outset, to attribute some of the conduct (such as Johnson's use of a confusing retention agreement with various statements of fees, and misstatements about what he had done in the case) to confusion on his part, rather than a calculated scheme at the outset to take unlawful fees from H.G. However, by the time Johnson met with H.G. to take those fees, and in his continual efforts to deny and to conceal that these events took place, nothing in the record mitigates Johnson's wrongdoing.

On the other hand, the aggravating factors are numerous. Johnson exploited the trust of a vulnerable victim, an unemployed, disabled former bus driver whom Johnson concedes "indicated that he didn't have any money . . . ." Tr. 18 (Johnson Opening Stmt.). Johnson's misconduct was not one isolated instance, but formed a pattern. He did not make full and free disclosure to Disciplinary Counsel, or show a cooperative attitude toward these proceedings. To the contrary, he sought to obstruct the investigation and this proceeding. He sought to mislead the Hearing Committee. He testified falsely under oath. *See Cleaver-Bascombe*, 892 A.2d at 413 (false testimony to Hearing Committee "is a significant aggravating factor"). He has never made an effort to repay his former client or to rectify the consequences of his misconduct. To the contrary, he sought to obfuscate the amount he received from the client. Johnson had substantial experience in the practice of law, so he should have known better.

Disciplinary Counsel argues that Johnson's misconduct is comparable to that of *In re Cleaver-Bascombe*, where the respondent was disbarred for seeking to receive public funds by submitting a deliberately false fee request for services that were not provided, in violation of Rules 1.5(a), 3.3(a)(1), 8.4(c), and 8.4(d), and for aggravating her misconduct by testifying falsely before the hearing committee. 986 A.2d 1191, 1192, 1200 (D.C. 2010) (per curiam). Similarly, in *In re*

McClure, the respondent was disbarred for his misconduct arising from the "mishandling of a medical malpractice case and his subsequent dishonest and contemptuous actions when trying to obtain attorneys' fees in that case after [he and co-counsel] were terminated by their clients and replaced by successor counsel who subsequently settled the matter[,]" in violation of Rules 1.1(a) and (b), 1.5(a), 3.3(a), 3.4(c) and 8.4(c) and (d). Board Docket No. 13-BD-018, at 1, 34, *recommendation adopted*, 144 A.3d at 571. Comparisons to these cases are apt. Johnson's misconduct is similar to *McClure*, where the respondent filed a fee demand with the Court that was "false and inflated" for his personal gain, "and he continued to rely on its purported accuracy, including during [the] disciplinary proceedings." *Id.* at 33. We agree with Disciplinary Counsel that, under all the circumstances, disbarment is warranted.

B. Fitness

Even absent the underlying wrongdoing, which warrants disbarment, the Committee has a serious doubt about Johnson's fitness to practice, in view of the poor choices he made in connection with his *pro se* defense throughout this disciplinary proceeding. The Court established the standard for the imposition of a fitness requirement in *Cater*, 887 A.2d at 6. The Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id.* 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).

Clients would be ill-served by an attorney who neglects to respond substantively to matters of real concern in favor of evasions, untruths, and wrongfully accusing opposing counsel of

"animus," "nefarious . . . trick[s]," and "attempt[ing] to deceive" on the basis of minor and ultimately inconsequential typographical errors. Johnson's rambling and repetitive written submissions in this proceeding resembled a vexatious non-lawyer's *pro se* court submissions more than the submissions of a competent attorney. Thus, in the event that the Court imposes a period of suspension (rather than disbarment), we recommend that Johnson be required to show his fitness to practice prior to reinstatement.

C. Restitution

In all events, Johnson should be ordered to pay restitution to H.G. in the amount of $19,350.21, plus interest accrued on that amount since July 28, 2014, as a condition of reinstatement. Johnson was forbidden to receive that amount because it had not been approved pursuant to D.C. Code § l-623.27(e)(1). In addition, H.G. as the prevailing party in a public employee workers' compensation case was entitled to payment of his attorneys' fees "by the Mayor or his or her designee," D.C. Code § l-623.27(b)(2), and not as a subtraction from his $58,050.63 award. The $19,350.21 properly belonged to H.G., not Johnson. Restitution of the $19,350.21 plus interest will restore H.G. to the position he would have occupied absent his lawyer's wrongdoing. This result is not unfair to Johnson, not only because he engaged in serious wrongdoing that harmed his client, but also because Johnson's legal work on H.G.'s behalf was minimal and because Johnson could and should have timely petitioned the ALJ for payment of a reasonable attorneys' fee by the District.

V. CONCLUSION

For the foregoing reasons, the Hearing Committee finds that Johnson violated Rules 1.4(b), 1.5(a), 3.3(a)(1), 8.4(c), 8.1(b), and 8.4(d), and recommends that he be disbarred. The Hearing Committee further recommends that, as a condition of reinstatement, Johnson should be required to make restitution to H.G. in the amount of $19,350.21. The Hearing Committee also recommends that the restitution should include interest at the legal rate. In the event that the D.C. Bar Clients' Security Fund pays any amount to H.G. based on Johnson's misconduct, Johnson should make restitution to CSF. The Hearing Committee recommends that Johnson not be eligible for reinstatement until he makes such restitution. Johnson's attention is directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Charles Davant, IV
Chair

Sara Blumenthal
Public Member

Merril Hirsh
Attorney Member