THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
March 17, 2025

In the Matter of:	:	
	:	
MELANIE M. MFUME[1],	:	
	:	Board Docket No. 23-BD-002
Respondent.	:	Disc. Docket No. 2019-D101
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 986367)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent Melanie M. Mfume (aka Melanie Murray Johnson) was charged with violating Rules 19-301.1, 19-301.2(a), 19-301.3, 19-301.4(a), 19-301.4(b), 19-301.16(d), 19-308.1(a), 19-308.4(c), and 19-308.4(d) of the Maryland Attorneys' Rules of Professional Conduct ("MD Rules") and Rules 8.1(a), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct ("D.C. Rules") arising from her conduct in representing a client who sought assistance in resolving overdue condominium fees and her conduct during the disciplinary investigations. The Ad Hoc Hearing Committee found that Disciplinary Counsel had only proven the violations of MD Rules 19-301.2(a) (failing to consult with client), 19-301.3 (diligence and promptness), and 19-301.4(a) & (b) (communication and failing to

[1] Respondent recently changed her name due to a marriage. Tr. 598. She is now registered with the D.C. Bar as "Melanie Murray Johnson."

* 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.

timely explain client matter) by clear and convincing evidence. For these violations, the Hearing Committee recommended that Respondent be required to complete 6 hours of CLE and receive a public censure.

Disciplinary Counsel and Respondent do not take exception to the Hearing Committee's factual findings, legal conclusions, or sanction recommendation. The Board, having reviewed the record below and sanctions for comparable misconduct, concurs with the Hearing Committee's factual findings as supported by substantial evidence, *see In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam); its findings of violations of MD Rules 19-301.2(a), 19-301.3, and 19-301.4(a) & (b) as supported by clear and convincing evidence, *see In re Tun*, 195 A.3d 65, 72-73 (D.C. 2018); and its sanction recommendation as being consistent with the Board's and the Court's case law for comparable misconduct. *See* Appended Hearing Committee Report at 52-55.

The sanction imposed in an attorney disciplinary matter must protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam). The sanction must not "foster a tendency toward

inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 924; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

Relying on the sanction factors described in *Martin*, 67 A.3d at 1053, the Hearing Committee considered the nature of the misconduct, the prejudice to the client, the absence of a finding of dishonesty—in addition to Respondent's credible and forthcoming testimony, her acknowledgement of wrongful conduct, and her lack of a prior disciplinary history which the Committee characterized as a "significant mitigating circumstance." Appended Hearing Committee Report at 52. We adopt those findings and agree that a public censure falls within the range of discipline for the same or comparable misconduct where the respondent has no prior disciplinary history. *See In re Shepherd*, 870 A.2d 67, 68, 70 (D.C. 2005) (per curiam) (public censure with CLE requirement for violations of D.C. Rules 1.3(a) and (c), 1.4(a), 1.16(d), and 8.4(d)); *see also In re Avery*, 926 A.2d 719, 720-21 (D.C. 2007) (per curiam) (public censure and CLE requirement for violations of D.C. Rules 1.1(a), 1.3(a), 1.3(c), 1.4(a) & (b), 1.5(c), 1.5(e), and 1.16(d)); *In re Hill*, 619 A.2d 936, 936-67 (D.C. 1993) (per curiam) (appended Board Report) (public censure for neglect of an appointed matter and conduct prejudicial to the administration of justice)).[2]

[2] D.C. Bar Rule XI, § 3 generally permits imposition of three lesser sanctions than disbarment or suspension: censure by the Court (public censure), reprimand by the Board, and informal admonition by Disciplinary Counsel. Rule XI, §§ 3(a)(3), (4), and (5). "Although these lesser sanctions are similar in that they all involve some degree of public disclosure, they nevertheless reflect a descending order of severity

CONCLUSION

For the foregoing reasons, the Board finds that Respondent violated MD Rules 19-301.2(a) (failing to consult with client), 19-301.3 (diligence and promptness), and 19-301.4(a) & (b) (communication and failing to timely explain client matter), and should receive the sanction of a public censure by the Court of Appeals. We further recommend that the Court provide that Respondent shall certify her completion of 6 hours of CLE courses to the Office of Disciplinary Counsel within one year from the date of its order.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Sharon Rice-Hicks
Sharon Rice-Hicks

All members of the Board concur in this Report and Recommendation.

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from public censure to informal admonition." *In re Schlemmer*, 870 A.2d 76, 80 (D.C. 2005).

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

In the Matter of:	:	
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MELANIE M. MFUME[1],	:	
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Respondent.	:	Board Docket No. 23-BD-002
	:	Disc. Docket No. 2019-D101
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 986367)	:	

REPORT AND RECOMMENDATION OF
AD HOC HEARING COMMITTEE

Respondent, Melanie M. Mfume (a.k.a. Melanie Murray Johnson), is charged with violating Rules 19-301.1, 19-301.2(a), 19-301.3, 19-301.4(a), 19-301.4(b); 19-301.16(d), 19-308.1(a), 19-308.4(c), and 19-308.4(d) of the Maryland Attorneys' Rules of Professional Conduct ("MD Rules") and Rules 8.1(a), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct ("D.C. Rules") arising from her representation of Renee Berry, a client who sought assistance in resolving and challenging condominium fees, and arising from her conduct during Maryland Bar Counsel's and Disciplinary Counsel's investigations. Disciplinary Counsel contends that Respondent committed all of the charged Rule violations and should be

[1] Respondent recently changed her name due to a marriage. Tr. 598. She is now registered with the D.C. Bar as "Melanie Murray Johnson."

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suspended for a period of 90 days as a sanction for her misconduct. Respondent contends she did not violate any of the charged Rules and recommends dismissal.

As set forth below, the Ad Hoc Hearing Committee ("Hearing Committee") finds that Disciplinary Counsel has proven the violations of MD Rules 19-301.2(a) (failing to consult with client), 19-301.3 (diligence and promptness) and 19-301.4(a) & (b) (communication and failing to timely explain client's matter) by clear and convincing evidence. Disciplinary Counsel failed to meet its burden of proof for the remaining charges. As an appropriate sanction, the Committee recommends that Respondent be required to complete 6 hours of CLE and receive a public censure.

I. PROCEDURAL HISTORY

On January 13, 2023, Disciplinary Counsel served Respondent through her counsel with a Specification of Charges ("Specification").

The Specification alleges that Respondent, in connection with her representation of Ms. Berry and during the disciplinary investigations, violated the following rules:

- MD Rule 19-301.1, by failing to provide competent representation;
- MD Rule 19-301.2(a), by failing to abide by her client's decisions concerning the objectives of the representation;
- MD Rule 19-301.3, by failing to act with reasonable diligence and promptness;

- MD Rule 19-301.4(a), by failing to keep her client reasonably informed about the status of her matters and to promptly comply with reasonable requests for information;
- MD Rule 19-301.4(b), by failing to timely explain her ability to represent the client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
- MD Rule 19-301.16(d), by failing to take steps to the extent reasonably practicable to protect her client's interests upon termination of the representation;
- MD Rule 19-308.1(a), by knowingly making false statements of material fact to Maryland Bar Counsel;
- MD Rule 19-308.4(c), by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation when representing her client and during Maryland Bar Counsel's investigation;
- MD Rule 19-308.4(d), by engaging in conduct that prejudiced the administration of justice during her representation of her client and during Maryland Bar Counsel's investigation;
- D.C. Rule 8.1(a), by knowingly making a false statement of fact to D.C. Disciplinary Counsel;
- D.C. Rule 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation during Disciplinary Counsel's investigation; and

- D.C. Rule 8.4(d), by engaging in conduct that seriously interfered with the administration of justice.[2]

See Specification, ¶¶ 87-88.

Respondent filed an Answer on February 2, 2023. A hearing was held on September 12, 14, and November 14, 2023, before the Hearing Committee. Disciplinary Counsel was represented by Assistant Disciplinary Counsel Ebtehaj Kalantar, Esquire. Respondent was present and was represented by Hughie D. Hunt, Esquire.

During the hearing, Disciplinary Counsel and Respondent submitted DCX[3] 1 through 109. All of the exhibits were admitted into evidence without objection. Disciplinary Counsel called as witnesses Renee Berry, Frances Wilburn, Esquire, Elizabeth Fisher, Respondent, and Azadeh Matinpour, Esquire. Respondent did not call any witnesses but testified on her own behalf.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification. Tr. 890; *see* Board Rule 11.11. The parties did not present any evidence in mitigation or aggravation of sanction during

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[2] The Specification mistakenly defines D.C. Rule 8.4(d) using language from MD Rule 8.4(d). *See* Specification, ¶ 88(c). Accordingly, we provide the correct language for D.C. Rule 8.4(d).

[3] "DCX" refers to Disciplinary Counsel and Respondent's Joint Exhibits. "Tr." refers to the transcript of the hearing held on September 12, 14, and November 14, 2023.

the sanction phase but indicated they would address these factors, if any, in their post-hearing briefing.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on December 15, 2023 ("ODC Br."), and Respondent filed her Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on January 8, 2024 ("Resp. Br."). Disciplinary Counsel filed its Reply on January 16, 2024 ("ODC Reply").

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of fact are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("clear and convincing evidence" is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the fact sought to be established" (quoting *In re Dortch*, 860 A.2d 346, 358 (D.C. 2004))).

A. Background

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals by motion on February 9, 2009 and assigned bar number 986367. DCX 104 at 1. Respondent is also a member of the Maryland Bar. Tr. 390 (Respondent).

2. Respondent is the sole member of the Law Office of Melanie Murray Mfume, LLC. Tr. 390 (Respondent); *see, e.g.*, DCX 89 at 1.

3. Since 1989, Renee Berry owned a condominium in Gaithersburg, Maryland, for which she was responsible for paying monthly assessments and fees to Potomac Oaks Condominium. Tr. 35 (Berry). Beginning in 2009, Ms. Berry began to fall behind on her monthly assessments. Tr. 35-36 (Berry).[4]

4. The arrearage (amount past due by Ms. Berry) was the subject of a 2010 civil action filed by Potomac Oaks against Ms. Berry, *Council of Unit Owners of Diamond Farms v. Renee R. Berry*, Case Number 0601-0030270-2010 (Md. Cir. Ct. Montgomery Cty.) (the "2010 Case"), which resulted in a settlement agreed to by Ms. Berry. DCX 97 at 1, 6; Tr. 37-39 (Berry).

5. Over the next several years, Ms. Berry repeatedly fell behind in her payments, with Potomac Oaks then agreeing to a revised payment plan and an extension of time for when the balance would become due. On May 4, 2011, Ms. Berry and Potomac Oaks entered into the initial settlement agreement for the 2010 Case in which Ms. Berry stipulated to a monthly payment plan with full payment due by **July 14, 2013** for approximately $14,000 in her unpaid balance, DCX 85 at 65-67 (Settlement Agreement Stipulation of Payments and Judgment in the Event of Failure to Make Agreed Payments); that settlement was amended on October 10, 2013 for the payment of approximately $12,000 for the unpaid balance and legal

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[4] Ms. Berry graduated from Catholic University Law School in 2004 and received a Master of Laws (LLM) in Dispute Resolution from George Washington Law School in 2012. Tr. 128-29 (Berry). She is not a member of the D.C. Bar or any state bar. Tr. 129-130; *see* DCX 59 at 4; DCX 99 at 74-76 (filing her *pro se* motion to vacate judgment with her signature "JD" and "LL.M").

fees, costs, and pre-judgment interest in a monthly payment plan with the total due in full by **October 31, 2016**, DCX 85 at 69-71 (Amendment to Settlement Agreement Stipulation of Payments and Judgment in the Event of Failure to Make Agreed Payments). Paragraph 4 of the amended agreement provided that if Ms. Berry defaulted on any of the payments, Potomac Oaks could "file a Line requesting that judgment be entered for the unpaid balance due on the account . . . . [Ms. Berry] *consents that the clerk may enter judgment* based on the filing of this Line." DCX 85 at 70 (emphasis added). When Ms. Berry again defaulted on that repayment plan, Potomac Oaks and Ms. Berry entered into a second amended agreement on September 10, 2015, in which she stipulated to a new monthly payment plan with an extension of the total due in full to **September 30, 2017**, and that "all terms and conditions as stated" from the October 10, 2013 settlement agreement still applied. DCX 85 at 73-74 (Second Amendment to Settlement Agreement Stipulation of Payments and Judgment in the Event of Failure to Make Agreed Payments).

6. Under the second amended agreement, Ms. Berry agreed and understood that she was required to pay all of the outstanding balance to Potomac Oaks by September 30, 2017, the "balloon payment date." DCX 85 at 74; Tr. 44, 87 (Berry); Tr. 600, 611 (Respondent).

7. In 2016, however, Ms. Berry remained behind in her assessments and Potomac Oaks threatened to impose a lien on her property. Tr. 44-45 (Berry); DCX 1 at 1-2; DCX 6 at 2. On January 6, 2017, David Ochs, Esquire, counsel for Potomac Oaks and an attorney with the "Law Offices of Phillip B. Ochs, Esquire," sent Ms.

Berry a letter informing her that if she failed to pay unpaid assessments and related charges in the amount of $17,268.55 within 15 days, "full payment of the remaining accelerated assessment will then be due and shall constitute a lien upon your unit. The total amount due will then be $21,612.55." DCX 1 at 1. David Ochs advised Ms. Berry that she had the right to contest the charges within 30 days, by filing a complaint with the Circuit Court for Montgomery County, Maryland. DCX 1 at 2. Attached to the January 6 letter was a schedule of a record of payments made by Ms. Berry that showed the remaining balances that were outstanding, including late fees and assessments. *See* DCX 1 at 4.

B. Ms. Berry Hires Respondent to Dispute Condo Fees and Pursue Settlement.

8. Despite the urgency and 30-day timeline noted in David Ochs's letter, Ms. Berry did not contact Respondent until January 30, 2017, for legal assistance in disputing the unpaid assessments. DCX 3 at 1; *see also* Tr. 51-52, 132-34 (Berry). Before contacting Respondent, Ms. Berry had several email exchanges with Phillip Ochs, Esquire, the named partner of the "Law Offices of Phillip B. Ochs, Esquire," (who also served as counsel for Potomac Oaks and was the main contact for Ms. Berry), who provided additional records establishing the balance that was still outstanding. *See, e.g.*, DCX 3 at 2. Ms. Berry did not forward David Ochs's January 6, 2017 letter to Respondent until February 3, 2017. *See* DCX 4 (apologizing to Respondent "for the delay"). By that date, Ms. Berry had only two days left to contest the charges detailed by Messrs. Ochs.

9. On February 3, 2017, Ms. Berry also provided Respondent with her email communication with Phillip Ochs (hereinafter "Mr. Ochs") from January 27, 2017, that included a schedule of payments due from Ms. Berry. DCX 5. On February 8, 2017, Ms. Berry forwarded Respondent further email communications with Mr. Ochs from January 15, 2017, that detailed her three prior settlement agreements, including the second amended agreement, which had set the September 30, 2017 balloon payment date. DCX 6.

10. On February 8, 2017, Respondent agreed to handle the case in an email message, saying: "I charge a flat fee of $1500 for HOA/COA cases." DCX 7 at 1. Respondent stated that "[i]t is not clear at this time if litigation will be required but if so it will be included in that fee." *Id.* There was otherwise no "formal" agreement. Tr. 57, 124 (Berry).

11. On February 16, 2017, Ms. Berry paid Respondent $1,500 by cashier's check and gave her copies of all three prior settlement agreements. DCX 8 at 1; Tr. 58-59 (Berry); DCX 85 at 10.

12. On March 8, 2017, Respondent informed Mr. Ochs that she was representing Ms. Berry and requested a phone meeting "to make sure that both parties are on the same page." DCX 10. Mr. Ochs, apologizing for his delayed response, did not reply until March 16, 2017. DCX 12 at 1. Mr. Ochs stated that he had not declared a default since he "hoped to work out a new agreement with Ms. Berry." *Id.* He further explained in his message:

> I am glad she has counsel. I will send my additional Exhibits by separate e-mail that will include the schedules which have been

> provided to Ms. Berry. The amounts in the agreements were reviewed and consented to by Ms. Berry. The starting point is a carryover balance from April 2008. . . . I beleive [sic] it was the last agreement that was a result of Ms. Berry meeting for an extended period of time in my office with my prior associate, Mr. Jonathan Harnois. Mr. Harnois would testify that he went over the figures with Ms. Berry, that the figures agreed to were accurate and she signed the agreement that she believed to be fair. . . . If there is a breach I can go back to court under the current case and not have to file separate lawsuits.

DCX 12 at 1 (March 16, 2017 email from Mr. Ochs to Respondent).

13. In that email message, Mr. Ochs explained that Potomac Oaks could reopen the 2010 Case for a breach or initiate a new lawsuit, but at the same time, he also wrote about reinstituting settlement discussions. DCX 12 at 1 (expressing possibility of a new agreement with Ms. Berry); *see also* DCX 23 at 3-4 (April 13, 2017 email from Mr. Ochs to Respondent) ("I would like to settle but we need to talk first."). On March 30, 2017, Mr. Ochs sent Respondent a balance sheet with a balance due of $15,017.89, including the history of prior "write-offs for legal fees and late fees." DCX 17 at 1, 4. He added that "[u]nless we can work out a new payment plan[,] I have to file a request to enter judgment pursuant to the pending case or file a new case." *Id.* at 1; *see* Tr. 70-71 (Berry) (testifying that on April 29, 2017 she received notice Potomac Oaks filed for judgment).

14. On April 10, 2017, Ms. Berry wrote Respondent that she thought she could pay $643 a month for the new payment plan. Tr. 66-67 (Berry); DCX 20 at 1. Respondent wrote back that she was not sure that $643 a month would be enough and encouraged Ms. Berry to continue paying her monthly assessments in the meantime. Tr. 67 (Berry); DCX 22. On April 14, 2017, after consulting with Ms.

Berry, Respondent emailed Mr. Ochs with the proposed new payment plan and other conditions. DCX 23 at 1; Tr. 402-03 (Respondent). Later that day Mr. Ochs agreed and wrote Respondent that he would prepare a modified agreement the next week. DCX 23 at 1.

C. Potomac Oaks Files a New Case During Settlement Negotiations.

15. On April 24, 2017, notwithstanding the settlement discussions, Potomac Oaks filed a new action against Ms. Berry. *Council of Unit Owners of Diamond Farms v. Renee R. Berry*, No. 0601-0007177-2017 (Md. Cir. Ct. Montgomery Cty.) ("2017 Case"). DCX 98 at 1; DCX 99 at 30.

16. A few days later, on April 28, 2017, Mr. Ochs informed Respondent by email that Potomac Oaks had filed the 2017 Case against Ms. Berry, but his office was also redrafting the agreement and he was fine-tuning the language in their "DRAFT" settlement agreement. DCX 25 at 1-7 (attaching draft settlement); DCX 26 at 1-39 (attaching the 2017 Case complaint and summons). Mr. Ochs did not ask Respondent to accept service of the complaint on behalf of Ms. Berry or otherwise indicate that he intended for Ms. Berry to be served. Instead, Mr. Ochs sent Respondent the completed "Dismissal line" for the 2017 Case. DCX 27 at 1-2 (2017 Case Notice of Dismissal). The Notice of Dismissal included a certificate of service dated April 28, 2017. DCX 27 at 2. On April 29, Ms. Berry sent Respondent an email, asking if she had gotten notice of judgment from the court because Ms. Berry had received a letter from Credit Solution Plus advising her that Potomac Oaks had filed for judgment. DCX 28; Tr. 70-71 (Berry). On May 1, Respondent replied

that Mr. Ochs was working on the settlement agreement, but she would check the court's docket. DCX 29.

17. Later that same day, May 1, Respondent forwarded Ms. Berry the line of dismissal for the 2017 Case provided by Mr. Ochs and advised Ms. Berry that the 2017 Case was being dismissed, based on their settlement agreement, and reminded her to keep making her required payments: "Please see attached. He filed a notice of dismissal. Once we get the agreement, you are back on track! Keep making whatever payments you started d [sic] making." DCX 30 at 1; *see* Tr. 540-41 (Respondent). Both Respondent and Ms. Berry mistakenly believed that Potomac Oaks had filed the Notice of Dismissal with the court. Tr. 72-74 (Berry); Tr. 465, 655-56 (Respondent); *see* DCX 31 at 1. As a result, Respondent did not enter an appearance on behalf of Ms. Berry in the 2017 Case. Tr. 117-18 (Berry); Tr. 412, 643 (Respondent); *see* DCX 98.

18. On May 2, Mr. Ochs wrote to Respondent that he would fill in the blanks in the settlement agreement and email it to Respondent. DCX 32 at 1. On May 3, Mr. Ochs attached a copy of the completed agreement in an email to Respondent. DCX 33 at 1 ("If any payments were made they will be credited against the balance. I will check the account on Monday."); DCX 33 at 2-7 (Settlement Agreement Stipulation of Payments and Judgment in the Event of Failure to Make Agreed Payments in Case No. 0601-0007177-2017). Because Respondent was busy with hearings, she did not reply to his message until May 23, 2017. *See* DCX 34 at 1. On May 25, Mr. Ochs confirmed that Ms. Berry made payments in March and

April 2017, resulting in a reduced balance due of $13,711.49. *Id.* Ms. Berry believed that she could continue making monthly assessments due to Mr. Ochs's representations that the 2017 Case was dismissed. *See* Tr. 395-396, 400-03 (Respondent); Tr. 145 (Berry); *see generally* DCX 40 at 1-2; DCX 44 at 1-2; DCX 45 at 1 (continuing discussions between Respondent, Ms. Berry, and Mr. Ochs, about a modified settlement agreement).

19. On June 19, 2017, Respondent wrote to Mr. Ochs to see if he had responded to Ms. Berry's offer to auto debit the monthly payments:

> I am ok with the language of the agreement, however, I am concerned that the payments are escalating incrementally and that there is a $1500 amount due in October. I reviewed my emails and I do not see that your client responded to my client's offer to auto debit the monthly amount from her account in lieu of large payments. Please advise.

DCX 37 at 1. Mr. Ochs replied the same day, suggesting that Respondent send him any proposed changes: "I can extend rearrange the payments but we need a plan to bring to a current balance. Auto deduction is not a counter. mark by hand an [sic] adjust in the increases to extend out and email for my review." *Id*. On June 21, Respondent sent Mr. Ochs a marked-up copy of the settlement agreement with some changes. *See* DCX 41 at 1, 3. On June 22, Mr. Ochs agreed to the edits made by Respondent, and indicated that he would get the current account and adjust the payment schedule, with payments starting in July. DCX 42 at 1-2. Mr. Ochs sent the modified settlement agreement to Respondent on June 28, 2017. DCX 43 at 1-12.

20. The June 28 settlement agreement provided that Ms. Berry was responsible for $14,263.09, which represented the unpaid principal balance due for

the assessments, special assessments, and related charges through June 30, 2017, plus a legal fee of $2,219.62 (15% of balance sued for in the 2017 Case), plus court costs of $101.00; the balloon payment of the entire payment would be due by **October 14, 2019**. DCX 44 at 3. Ms. Berry would also be required to withdraw the complaint she had filed with the Consumer Financial Protection Bureau against Mr. Ochs. DCX 44 at 7; *see* Tr. 483 (Respondent).

21. The following day, on June 29, Respondent sent the agreement to Ms. Berry and wrote that they needed to discuss the settlement agreement "*today* so that we can get this all finalized." DCX 44 at 1 (emphasis added). Ms. Berry emailed back within two hours and said she would call Respondent that day, but the record is unclear as to when they spoke. DCX 45 at 1.

D. Ms. Berry Changes Her Mind Regarding the Agreed-Upon Settlement and Declines to Make Payments Due to Her Lower Summer Salary.

22. On July 7, Ms. Berry wrote Respondent that her "salary is very low in the summer." DCX 46 at 2; *see also* Tr. 77-78 (Berry). Ms. Berry complained that with her lower summer salary, she could not agree to pay the additional $175 for June to September 2017 included in the settlement agreement. DCX 46 at 2; Tr. 78, 83 (Berry). On July 11, Ms. Berry wrote to Respondent that she did not understand how the balance due had grown. DCX 46 at 1; Tr. 78-79 (Berry). When Respondent then asked Ms. Berry if she had consistently made payments that were not given the appropriate credit, Ms. Berry conceded that she had made payments inconsistently due to changes in her income. *See* Tr. 395-96, 400-03, 474 (Respondent); Tr. 79, 145-46, 153 (Berry).

23. At that point, the September 2017 balloon payment date was just two months away and while Ms. Berry knew about the balloon payment date, she hoped Potomac Oaks would not enforce the second amended settlement agreement. Tr. 84 (Berry).

24. Ms. Berry did not pay the full balance by the September 2017 balloon payment date and therefore breached the 2010 Case. Tr. 69-70, 84, 138, 172 (Berry); DCX 6 at 2; DCX 12 at 11; DCX 99 at 151-52. Because Ms. Berry did not sign the settlement agreement negotiated by Respondent, and agreed to by Mr. Ochs, she was in default under the terms of the second amended settlement agreement in the 2010 Case. Tr. 170 (Berry); Tr. 600 (Respondent).

E. Potomac Oaks Files an Amended Complaint and Reopens the 2010 Case Without Notifying Respondent and Ms. Berry Files a *Pro Se* Notice of Intent to Defend.

25. After Ms. Berry's September default and failure to sign the settlement agreement, Potomac Oaks escalated its litigation efforts against Ms. Berry. On October 5, 2017, Mr. Ochs mailed a two-page letter with four attached exhibits to Ms. Berry via certified mail, notifying her that she had defaulted under the second amended settlement agreement and that Potomac Oaks would "proceed to collect the entire balance due as of September 30, 2017[,]" plus interest and attorneys' fees. DCX 99 at 151-52. The letter described Ms. Berry's failure to make the balloon payment as a third default. *See* DCX 99 at 151. The entire balance due as of September 30, 2017, excluding additional pre-judgment interest and additional attorney fees was $15,349.09, and Mr. Ochs attached a Schedule of Assessments and

Payments showing the calculation of the balance as well as a copy of Ms. Berry's account history. *See* DCX 99 at 151-52. The copy of the letter includes a "cc" to Potomac Oaks Condominium and Ms. Murray Mfume, Esquire." *See* DCX 99 at 152. However, Respondent did not receive a copy of the letter; if she had received the letter, it would have been in her client file. *See* Tr. 618-620, 686-88 (Respondent).

26. The following month, on November 7, 2017, Mr. Ochs filed an "Amended Complaint" in the 2010 Case but failed to provide a copy to Respondent or notify her of the filing. DCX 99 at 2, 23; Tr. 472-73 (Respondent). On or about November 9, 2017, the District Court of Maryland for Montgomery County mailed Ms. Berry a notice of a "Merit Trial" scheduled for December 27, 2017. DCX 53 at 4; DCX 85 at 60. Ms. Berry filed a *pro se* "Notice of Intention to Defend." *See* DCX 53 at 2; Tr. 474-75 (Respondent); DCX 85 at 40. As a result, on November 15, 2017, the District Court of Maryland issued another notice mailed to Ms. Berry advising her that the trial had been continued from December 27, 2017, to January 10, 2018. DCX 53 at 2; DCX 85 at 40, 60.

27. At the time, Ms. Berry did not tell Respondent that the 2010 Case had been reopened or otherwise provide her with a copy of the Amended Complaint; Ms. Berry did not share the court notices or request that Respondent enter an appearance. *See* DCX 47 at 1-2; DCX 48 at 1-2; Tr. 412, 470-75, 486 (Respondent). The Hearing Committee credits Respondent's explanation that she did not enter her appearance in the 2010 Case when she initially spoke with Mr. Ochs because when she checked

the court docket, the 2010 Case was inactive. Tr. 412, 495 (Respondent); *see also* Tr. 821-22 (Disciplinary Counsel conceding that during this time, Mr. Ochs did not email a copy of the Amended Complaint for the 2010 Case, and Mr. Ochs did not notify Respondent that the 2010 Case had been reopened).

28. On November 11, 2017, Ms. Berry emailed Respondent (for the first time since July 11, 2017, when she declined to sign the settlement agreement, *see* DCX 47) with the following message, not including any attachments:

> Hi Ms. Mfume:
>
> I received two letters from Phil Ochs. I sent 3 checks for $753. Those should cover the months I missed.
>
> The university only paid me ~ $1000/month from July-September. I'm only a 9-month salaried employee from October to June. I have told Mr. Ochs this several times in the past.
>
> This year was the lowest the university paid so I started a second job so I won't get behind in bills.
>
> R. Berry
>
> Sent from my iPhone

DCX 47 at 1.

On November 19, 2017, Ms. Berry emailed Respondent:

> Ms. Mfume:
>
> Potomac Oaks sought to collect approx $11,000 in January 2016. Now, they want over $16,000. I have no idea how this amount keeps increasing while I am paying.
>
> From January 2017 to date, I have paid $6270 in condo fees.

> The agreement Mr. Ochs sent that I refused to sign asked for the monthly condo fee plus an additional $175. However, I am paying an additional $240-$200.
>
> Why is Potomac Oaks suing me for over $16,000?
>
> Please advise.
>
> R. Berry
>
> Sent from my iPhone

DCX 48 at 1. Ms. Berry did not attach the Amended Complaint in the 2010 Case or the notice she received regarding the trial set for January 10, 2018. *See id.* We do not credit Ms. Berry's testimony that she was unaware of the details of the 2010 Case; the documentary evidence shows that the court notified her that after she filed her *pro se* Notion of Intention to Defend in the 2010 Case, the trial date of November 2017 was postponed at her request to January 10, 2018. *See* DCX 53 at 2, 4; Tr. 474-75 (Respondent); DCX 85 at 40, 60.

29. The following day, on November 20, 2017, Respondent responded to Ms. Berry's email with: "Will follow up this week." DCX 48 at 1. We credit Respondent's testimony that she did follow up with Ms. Berry. Tr. 633 (Respondent) ("I don't have any doubt that I would have followed up with her."). According to Respondent, she either called Ms. Berry or texted her the following week. *See* Tr. 632-34 (Respondent). The record does not include any subsequent message from Ms. Berry suggesting that Respondent did not contact her the following week, but Respondent admittedly did not memorialize the conversation in a letter. *See* Tr. 634

(Respondent). Respondent acknowledged that she did not reach out to Mr. Ochs to inquire why he was contacting her client directly. Tr. 630-31 (Respondent).

30. Despite not being served with the complaint, Ms. Berry learned about the 2017 Case when she was at the courthouse for a separate case related to Ms. Berry's tenant eviction involving her condominium. Tr. 91, 165 (Berry); *see* DCX 56 at 14. On January 4, 2018, Ms. Berry wrote Respondent that she had misplaced her court date for the 2017 Case:

> Ms. Mfume
>
> I misplaced the new court date. When should I appear in court?
>
> Today, I filed for eviction against my tenant living in my condo.
>
> The clerk could not find the date without the case number.
>
> I will send you copies of the checks/payments. In the past, I had to file against the council for the condo association for over charging and collecting for fees not owed. I will ask the Maryland Bar Association to give me a copy of the complaint.
>
> R. Berry
>
> Sent from my iPhone

DCX 49 at 1-2; *see also* Tr. 92-93 (Berry). Respondent sent Ms. Berry two email messages that same day in response, including one letting her know the address of the courthouse and the court date of January 17, 2018. *See* DCX 49 at 1 (January 4, 2018 email at 5:18 p.m. ("Good afternoon! I will check the docket and let you know. We need to schedule a call for next week so I can get up to speed."); DCX 50 at 1 (January 4, 2018 email at 6:17 p.m. providing the court appearance time and location). As of January 2018, Respondent became aware that the 2017 Case was

still active, but she did not enter an appearance. *See* Tr. 117 (Berry); Tr. 472, 635 (Respondent).

31. In regard to her knowledge about the 2017 Case still being active prior to January 2018, Respondent testified as follows:

> [*Respondent*]: . . . . So he's given me the [2017 Case] summons and complaint and the dismissal all on April 28[, 2017, by email]. Prior to April 28, I wasn't aware that anything was filed and that he was sending me the line of dismissal that was being filed.
>
> . . . .
>
> [*Assistant Disciplinary Counsel*]: . . . you didn't recall Mr. Ochs saying that he had filed the 2017 case; correct?
>
> [*Respondent*]: What I recall is in the email. I don't have any independent recollection of him telling me anything directly. He told me that April 20 email that he filed the case.
>
> . . . .
>
> [*Respondent*]: I checked the docket in the 2010 case when Ms. Berry said I want to file a motion to vacate the default judgment. And then I went to check and said okay, it's an affidavit of judgment. I don't -- I don't recall if I did or didn't check the docket. I don't have an email or a notated reference to that. I don't know how I can say that I did or didn't.
>
> . . . .
>
> [*Assistant Disciplinary Counsel*]: Okay. And you don't recall checking -- whether or not you checked the docket in the 2017 case?
>
> [*Respondent*]: Six years later I don't recall if I did. I recall counsel saying I filed it and we're going to dismiss it because we're still working out the agreement. So I didn't have -- maybe that was my fault. I didn't have any reason to trust if he said it was being dismissed and it was, you know, not being dismissed.

Tr. 668-671 (Respondent). The Committee credits Respondent's claim that she thought she had successfully negotiated a settlement agreement for Ms. Berry. *See, e.g.*, Tr. 599 (Respondent). She mistakenly thought the 2017 Case was settled and the Notice of Dismissal was filed. Tr. 540-541 (Respondent). Potomac Oaks never successfully served Ms. Berry at her home address with the 2017 Case complaint and summons, despite repeated efforts in May, October, and November of 2017. DCX 56 at 3, 14, 44. As a result, Mr. Ochs proceeded on the 2010 Case (which had previously been dismissed upon the filing of the settlement), reopening it and filing an Amended Complaint. *See* DCX 99 at 2 ("Plaintiff, unable to obtain service of process in the 2017 case, filed an amended complaint in the 2010 case on November 7, 2017 for unpaid assessments and related charges that had accrued through the month of November 2017."); Tr. 191 (Wilburn).

32. Pursuant to the second amended settlement, Mr. Ochs filed a Line stating that Ms. Berry had not complied with the first and second amended settlement agreements; additionally, Mr. Ochs filed an Amended Complaint for unpaid assessments and related charges due as of November 3, 2017. DCX 99 at 129-130. In the Affidavit in Support of Judgment, Mr. Ochs made a demand for $16,375.09 in unpaid condo assessments, late fees, and related charges, and $2,456.26 in attorney's fees. DCX 99 at 130.

> Under the terms of the Second Amendment to the Settlement Agreement the stipulated balance due and the additional assessments and special assessments that became due were to be paid in full by September 30, 2017. [Ms. Berry] failed to bring the account to a zero balance by September 30, 2017 and has not paid balance due as stated in this Amended Complaint.

DCX 99 at 131.

33. On January 10, 2018, Ms. Berry failed to appear at the hearing on the Amended Complaint in the 2010 Case and the District Court of Maryland entered an Affidavit Judgment in favor of Potomac Oaks for the unpaid condominium assessments plus attorney fees, prejudgment interest, and costs, consistent with the terms of the second amended settlement agreement. DCX 99 at 2; Tr. 95 (Berry); *see* FF 5; Tr. 418 (Respondent). The total amounts awarded by the District Court of Maryland to Potomac Oaks were:

$10,785.09 Judgment Principal

$ 950.00 Pre-Judgment Interest

$ 188.00 Costs

$ .00 Other Amounts

$ 2,500.00 Attorney's Fees

DCX 99 at 16. Post-judgment interest was also to be assessed at the legal rate. *Id*. The Affidavit Judgment notified Ms. Berry that she had until February 9, 2018 to file a motion to vacate judgment. DCX 99 at 16.

34. The Hearing Committee credits Respondent's explanation for why she did not initially enter her appearance or monitor the docket in the 2010 Case:

> [I]f a case is closed, I don't necessarily go back and continue to [check] the docket. If it's an open case and, yeah, I'm checking to see for activity, but my understanding, based on my conversations with [Mr. Ochs], is that we had an agreement. We were just waiting for the draft . . . and because I hadn't entered my appearance in the 2010 case, I didn't know that it had been reopened. She didn't tell me that it had been reopened. She didn't send me a pleading.

Tr. 412 (Respondent). We credit Respondent's testimony that she was not aware that the 2010 Case had been reopened and had thought the 2017 Case was dismissed based on the communication with Mr. Ochs. *See, e.g.*, DCX 32 at 1, DCX 33 at 1; Tr. 412, 474, 541 (Respondent). Ms. Berry filed her own Notice of Intention to Defend but failed to appear on January 10, 2018. DCX 53 at 2 (Notice of new scheduled hearing date of January 10); *see* Tr. 95 (Berry); Tr. 474-75 (Respondent). Ms. Berry did not forward the court notices to Respondent until January 16, 2018. DCX 53 at 1-2; *see* Tr. 475-76 (Respondent).

F. Ms. Berry Informs Respondent of the Affidavit Judgment and the Missed Court Date of January 10, 2018.

35. On January 13, 2018, Ms. Berry emailed Respondent an outline of the condominium fees she paid, using the ledger Mr. Ochs had provided. DCX 51 at 1-6. The payment history showed missed or late payments by Ms. Berry in October and December of 2013; January, February, August, September, October, and December of 2014; January, March to July, September, November, and December of 2015; February, April, June, August, September, November, and December of 2016; and February, March, May, August, September, and October of 2017. DCX 51 at 2-6. Ms. Berry attached a copy of the court Notice of Merit Trial for January 10, 2018 that was mailed to Ms. Berry on November 15, 2017. DCX 53 at 1-2; *see* Tr. 475-76 (Respondent). As noted earlier, the Hearing Committee credits Respondent's claim that she was not made aware earlier that the 2010 Case was reopened. *See* FF 34; Tr. 673 (Respondent). We also credit her claim that if she had

known earlier that the 2010 Case was reopened, she would have "happily" entered her appearance. Tr. 412-13 (Respondent).

36. As noted above, it was not until January 16, 2018 that Ms. Berry sent Respondent and email attaching a copy of the Affidavit Judgment, noting that, "According to these documents, the case was Wednesday, Jan. 10th." DCX 53 at 1-2. She wrote a second email later that evening, asking if Respondent could write a motion to vacate the judgment on her behalf. DCX 54 at 1.

37. On January 22, Ms. Berry attached the case file for the 2017 Case and complained that Potomac Oaks expected her to pay more than $10,000 in late assessments and fees. DCX 56 at 1; Tr. 99-100 (Berry). The following day, Ms. Berry wrote Respondent that because Potomac Oaks forced her to pay fees in the past that she did not owe, she wrote a bar complaint against former counsel for Potomac Oaks, and that she would try to obtain a copy of that complaint from Maryland Bar Counsel. DCX 57 at 1; *see* DCX 85 at 41; Tr. 476, 483 (Respondent).

G. Respondent Declines to File a Motion to Vacate the Affidavit Judgment.

38. Respondent prepared to take action in the 2010 Case once Ms. Berry asked her to file a motion to vacate the "default judgment." Tr. 643-45 (Respondent). On February 8, 2018, Ms. Berry wrote Respondent to ask if she had submitted a motion to vacate and noted that the motion was due the next day, February 9; Ms. Berry attached a motion to vacate that she had drafted although she was not a practicing attorney and she emphasized that she did not want to pay $14,000 because she did not owe it. DCX 61 at 1-2.

39. Respondent did not respond by email to Ms. Berry's emails of January 13, 16, 22, and 23 until *February 9* due to being busy in court for a two-week period. DCX 60; *see* Tr. 413-14, 605-06 (Respondent); *see also* Tr. 519 (Respondent: "I was not doing a good job of checking my emails for that two-week period because I was doing other things that were more in court, and trial preparation, and things like that."). During the hearing, Respondent accepted responsibility for the lapse in communication: "I didn't see those emails for that two-week period, and I take responsibility for that." Tr. 414 (Respondent).

40. Respondent states she responded and corresponded with Ms. Berry via text on February 8, 2018. DCX 85 at 41; *see* Tr. 478-480 (Respondent) (testifying about texts to Ms. Berry concerning motion to vacate). It was not until the morning of February 8 that Ms. Berry forwarded the copies of checks for paid condo fees from 2014-15. DCX 58 at 1. Respondent once again tried to explain to Ms. Berry that paying the condo assessments late and irregularly did not void her commitment to paying for the late fees, interest, attorney's fees, and costs pursuant to the prior settlement agreements she had signed. *See* DCX 85 at 41; Tr. 415, 419-420 (Respondent). In the early hours of February 9, Respondent advised Ms. Berry that she had not yet filed the motion to vacate. *See* DCX 60 at 1 (February 9, 2018 at 7:18 a.m. email message from Respondent to Ms. Berry: "I have been in court so not yet [filed]. Will draft and file today.").

41. On February 8, Ms. Berry sent Respondent a *pro se* motion to vacate the judgment that she had prepared, noting that the motion was due the next day on

February 9. DCX 59 at 1-5. Respondent emailed the next day and again asked Ms. Berry if the spreadsheet attached to Mr. Ochs's complaint was an accurate representation of what Ms. Berry had paid to date. DCX 61 at 1.

42. However, after Respondent reviewed a copy of the judgment and the docket in the 2010 Case, she told Ms. Berry that a notice of Affidavit Judgment was entered, which is not a simple default for failure to appear. Tr. 414-15, 477-79 (Respondent); *see* DCX 97 at 13 (docket entry of January 10, 2018 for "Affidavit Judgment Entered."). Respondent had agreed to file a motion to vacate a default judgment, but once she realized the nature of the judgment, she declined to file a motion to vacate. Tr. 415 (Respondent: "I was like, hold on. This is an affidavit judgment. This is not the same thing as default for failure to appear. And so I said, well, this is a little bit different.").

43. According to Respondent, "[I]t was clear (based on the court notice) that an affidavit judgment had been entered which was based on her settlement agreement, not her failure to appear." DCX 85 at 47. Respondent explained to Ms. Berry that she had no basis to file a motion to vacate an Affidavit Judgment where Ms. Berry had voluntarily stipulated that after receipt of notice of her non-payment and an opportunity to cure, Potomac Oaks was entitled to file a "Line" for a judgment by consent. *See* FF 5; Tr. 415 (Respondent).

44. Even though Respondent did not have a basis to file a motion to vacate the Affidavit Judgment (given the terms of the settlement agreement and Ms. Berry's non-payments), she advised Ms. Berry that, in the alternative, she could file a motion

to revise the amount of the judgment and a motion to consolidate the 2010 Case and the still active 2017 Case. DCX 85 at 41; Tr. 415-16 (Respondent). Respondent repeated her request for Ms. Berry to provide a breakdown of all payments made to Potomac Oaks to support a motion to revise. Tr. 415-16 (Respondent). As Respondent credibly explained to the Attorney Grievance Commission of Maryland:

> I tried my best to explain to her that as an officer of the court that I could not go in and argue that three (3) previous settlement agreements – which were 6 years old, 4 years old and 2 years old (respectively) – were now fraudulent. I explained this to her during our very first substantive conversation which is why we directed our efforts into working out a settlement agreement with Potomac Oaks.

DCX 85 at 48.

45. We credit Respondent's explanation that she advised Ms. Berry that she could not file a motion to vacate the Affidavit Judgment because she did not have a good faith basis to bring such a motion. *See, e.g.*, DCX 71, 76, 77, 82-84. In a series of emails and texts, Respondent explained to Ms. Berry that because it was a consent or Affidavit Judgment, she was unable to dispute the condominium fees or raise viable defenses against Potomac Oaks. *See* DCX 61, 66-77, 80-84; Tr. 115 (Berry). Respondent advised Ms. Berry that moving to vacate the Affidavit Judgment would be in bad faith and that the court might impose sanctions for such a motion. Tr. 417-20 (Respondent).

46. In her report, Disciplinary Counsel's expert speculated that if a motion to vacate had been filed, the court "*may* have set a hearing" so that Ms. Berry could "*possibly* request and attend mediation." DCX 96 at 10 (emphasis added); *see* Tr. 197-203 (Wilburn testifying that Respondent could have challenged

reasonableness of the attorney's fees and that there was sufficient basis to support a motion to vacate).[5] We find this conclusion to be overly speculative for purposes of showing a lack of competence in not pursuing a motion to vacate the consent judgment. The record includes Potomac Oaks's Opposition to Ms. Berry's motion to vacate and Potomac Oaks's request for a hearing, which was denied. *See* DCX 99 at 68. Disciplinary Counsel's expert also conceded during her testimony that mediation is not mandatory and Potomac Oaks would have had to be "open to mediation." Tr. 245 (Wilburn).

47. Disciplinary Counsel's expert admittedly had not reviewed Mr. Ochs's time records and further explained that she was "not giving an opinion as to what the amount of the attorney[']s fees should have been." Tr. 236 (Wilburn). In the Amended Complaint in the 2010 Case, Mr. Ochs had requested $2,456.26 in reasonable attorney's fees "pursuant to the Association's By-laws and Md. Rule 3-741 (15%)." DCX 99 at 130.

48. The Committee credits Respondent's belief that filing a motion to vacate the court's judgment in favor of Potomac Oaks for attorney's fees, interest, and the unpaid assessments, as stipulated to in the settlement agreements, would be only for the purposes of delay—especially given the length of the case, the terms of the settlement agreements, and Ms. Berry's own affirmation of her missed payments, including failing to make the September 2017 balloon payment. *See* Tr. 414-420

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[5] Mr. Ochs had requested attorney fees of $2,456.26 in the Amended Complaint. Tr. 197 (Wilburn). However, the Court awarded him $2,500 in fees. *Id.*

(Respondent); DCX 99 at 151-52 (Third Notice of Default of Second Amendment to Settlement Agreement Stipulation of Payments and Judgment in the Failure to Make Agreed Payments); FF 5. In Respondent's view, filing a motion to vacate an affidavit in this matter would not satisfy Maryland's Rule 1-341 (bad faith). Tr. 524-25 (Respondent). Disciplinary Counsel's expert acknowledged that she had cited case law involving a motion to vacate an *order of default* and not an affidavit or consent judgment, *see* Tr. 251-52, 254-55, 257-58, 262-63 (Wilburn), as well a case involving a motion to vacate a default judgment supported by the defendant's affidavits verifying that they had not been served. Tr. 259-261 (Wilburn). Having filed a Notice of Intention to Defend, Ms. Berry could not claim lack of service or knowledge of the Amended Complaint. *See* Tr. 206 (Wilburn).

49. On cross-examination, Disciplinary Counsel's expert conceded that she had "not formed an opinion as to the amount that should have been in the complaint" and had not calculated what, in her opinion, was the amount owed by Ms. Berry to Potomac Oaks, so she could not dispute the amounts in the judgment. Tr. 205 (Wilburn). When filing a motion to vacate, an attorney is obligated to sign the pleading and certify that she had "read the pleading or paper, and to the best of [her] knowledge, information and belief" believed in the existence of "good grounds to support it and that it is not interposed for improper purposes or delay." Tr. 212-13 (Wilburn); Maryland Rule 1-311(b) (effect of signature); *see* Maryland Rule 1-341 (bad faith).

50. On February 11, 2018, Ms. Berry wrote Respondent that because Respondent declined to submit a motion to vacate, to "please reimburse payment" for a portion of her $1,500 fee by February 16. DCX 85 at 18. Respondent wrote back the following day that no refund was due because she had earned all of the fees. DCX 85 at 17 (Respondent: "Respectfully, you paid for my time which you have more than spent."). In response to Ms. Berry's complaint about having to pay the unpaid assessments, Respondent responded that "[b]ut for the fact that you disappeared," they could have finalized the July 2, 2017 settlement agreement. *Id.* In February of 2018, the representation ended. DCX 85 at 46; *see* Tr. 118, 171 (Berry); Tr. 431-32 (Respondent).

51. Having obtained a judgment in the 2010 Case, on February 27, 2018, Potomac Oaks filed a motion to dismiss the 2017 Case. DCX 99 at 12-14. The prior month, on January 29, 2018, Ms. Berry had filed a *pro se* Notice of Intention to Defend in the 2017 Case, despite the fact that she had not been served. *See* DCX 99 at 13, 22.

52. Potomac Oaks obtained a lien and garnishments against Ms. Berry based on the Case 2010 Affidavit Judgment. DCX 97 at 13-19. By July 2019, Ms. Berry fully paid the amounts owed to Potomac Oaks. *See* DCX 97 at 19.

H. Ms. Berry's Maryland Bar Complaint, Respondent's Response, and Maryland Bar Counsel's Dismissal.

53. Prior to paying the judgment in full, on January 2, 2019, Ms. Berry filed a bar complaint against Respondent with the Attorney Grievance Commission of Maryland ("Maryland Bar Counsel"). DCX 85 at 3-33. Ms. Berry's complaint

alleged that she had hired Respondent to represent her in a dispute with Potomac Oaks and that because Respondent failed to take action, a judgment was entered against her. *Id.* at 6-7. Ms. Berry did not mention her own decision not to sign the proposed negotiated agreement: "[Respondent] tried to negotiate a settlement, but Potomac Oaks filed a Motion for Default Judgment the following year in January 2018." *Id.* at 6. Ms. Berry falsely suggested that Respondent and Mr. Ochs never reached a settlement agreement: "[Respondent] told me that she had a telephone conversation with counsel for Potomac Oaks Condominium, Mr. Ochs, but no agreement was reached." *Id.* at 7. Ms. Berry did not mention her stipulations in the prior three settlement agreements in the 2010 Case, but, instead, wrote in her bar complaint that the judgment in the 2010 Case was based on undisclosed "attorney fees, special assessment fees, insufficient fund fees, and late fees," and she asserted "[t]hey were never paid, because I was never billed or made aware they existed." DCX 85 at 7. In the complaint, Ms. Berry failed to mention her September 2017 balloon payment that had been due. *See* FF 5-7, 23-24.

54. On February 5, 2019, Respondent mailed a detailed response to Maryland Bar Counsel. *See* DCX 85 at 34-80. Respondent noted that her phone carrier did not allow her to access records of communications with Ms. Berry prior to July 29, 2017. *Id.* at 34. Respondent denied any misconduct, claiming that she had no communication with Mr. Ochs after June 2017 and that Ms. Berry did not make her aware of the Amended Complaint in the reopened 2010 Case until January 2018. DCX 85 at 38-40, 49. Respondent not only timely responded to Maryland Bar

Counsel's inquiry letter, but also voluntarily self-reported Ms. Berry's Maryland bar complaint to the Office of Disciplinary Counsel. *See* Tr. 722 (Respondent).

55. In her response, Respondent presented a 13-page timeline of her communications, describing—at times verbatim—approximately 100 emails she exchanged with Mr. Ochs and Ms. Berry. DCX 85 at 34-46; Tr. 676-77 (Respondent). Respondent summarized emails and file contents that were in her possession detailing her discussions with Ms. Berry and Mr. Ochs. DCX 85 at 34-50. In her detailed summary of events provided to Maryland Bar Counsel, among other email summaries, Respondent summarized (1) the July 7, 2017 email communication during which Ms. Berry indicated that she no longer could agree to the settlement Respondent had negotiated and that Respondent called Ms. Berry and left a message on August 10, 2017, (2) Ms. Berry's November 11, 2017 email referring to the two letters received from Mr. Ochs, *see* FF 28, and (3) Ms. Berry's January 13, 16, 22, and 23, 2018 email messages. DCX 85 at 39-41.

56. As noted earlier, the Hearing Committee credited Respondent's testimony that she unintentionally missed emails from Ms. Berry sent from January 13 – February 5, 2018, when she was handling court proceedings and did not respond to Ms. Berry immediately. Tr. 413 (Respondent). Respondent admitted the same to Maryland Bar Counsel in her response. *See* DCX 85 at 40 ("[T]here were about 2 weeks of emails from Ms. Berry that I didn't see (due to court schedule) until her follow up email to me on February 9, 2018.").

57. On March 14, 2019, Maryland Bar Counsel sent a letter to Ms. Berry to notify her that having reviewed her complaint and Respondent's response, the office had determined that "there is an insufficient basis to demonstrate misconduct or that the overall circumstances do not warrant an investigation" so the file was closed. DCX 86 at 2. The letter indicated that Ms. Berry had been provided an opportunity to submit comments to Respondent's detailed written response and attached records, but Ms. Berry had not responded. *See id.* In dismissing the complaint or closing the file, Maryland Bar Counsel explained that their office's jurisdiction was "generally limited to reviewing conduct that may be in violation of the Maryland Attorneys' Rules of Professional Conduct." *Id.*

I. The Office of Disciplinary Counsel's Investigation.

58. Despite having no obligation to do so, on February 7, 2019, Respondent voluntarily mailed Ms. Berry's Maryland bar complaint and Respondent's February 5, 2019 written response to the Office of Disciplinary Counsel. DCX 85 at 1-80; *see also* DCX 85 at 81 (postage dated February 7, 2019). On April 10, 2019, Respondent forwarded Maryland Bar Counsel's dismissal letter to Disciplinary Counsel. DCX 86 at 1-3. On May 2, 2019, Disciplinary Counsel sent its initial inquiry letter notifying Respondent of its investigation, and subsequently issued a subpoena for Ms. Berry's client files. DCX 87 at 1-4; DCX 88 at 1-3. On July 8, 2019, Respondent

hand delivered a thumb drive containing specified documents[6] from Ms. Berry's client file. *See* DCX 89 at 1 (July 8, 2019 letter from Respondent to Disciplinary Counsel, indicating that she did not include exhibits already provided to Disciplinary Counsel in her prior February 11, 2019 mailing of Ms. Berry's complaint and her response letter and attached exhibits).

59. On September 27, 2019, Disciplinary Counsel wrote to Respondent that its investigation remained ongoing and that it was requesting "*all* communications, including electronic communications from *any device*, generated in connection with your representation of Renee Berry" as well as "all communications . . . with opposing counsel in this matter, Phillip Ochs." DCX 91 at 1 (emphasis in the original). In particular, Disciplinary Counsel was seeking text messages and emails during November 12, 2017 to January 12, 2018. *Id*. On October 7, 2019, Respondent faxed a letter to Disciplinary Counsel indicating that she had tried to reach

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[6] Respondent identified the following additional documents as being included in the thumb drive:

- Attorney notes from calls with Ms. Berry and Mr. Ochs
- Attorney notes from review of liens in land records and docket history for all cases
- 2010 lien
- Attorney spreadsheets for history of assessments
- January 2017 notice of lien from Mr. Ochs with ledger
- Complaint for April 2017 collection case
- April 2017 stipulation agreement between Ms. Berry and HOA
- Email (as detailed in the February 5, 2019 attorney response letter to AGC)

DCX 89 at 1.

Disciplinary Counsel by leaving a phone message and that she no longer had the text messages referenced in her February 5, 2019 response to Maryland Bar Counesl because they were deleted after Maryland dismissed the matter, and that she had no records of any additional emails to provide. DCX 92 at 2-3. On October 23, 2019, Disciplinary Counsel wrote Respondent that it (1) was enclosing emails between Respondent and Ms. Berry that had not yet been provided by Respondent to refresh her recollection regarding communications between November 12, 2017 and January 12, 2018, and (2) would allow her additional time to provide the "case names, jurisdictions, and case numbers of court matters" that Respondent had been handling when she had a two-week delay in responding to Ms. Berry's emails. DCX 93 at 1. On October 28, 2019, Respondent faxed Disciplinary Counsel a letter indicating that it had sent her email messages that she believed she had already provided. *See* DCX 94 at 2 (Respondent: "You attached emails from November 2017 and January 2018 that I had previously forwarded to you. . . . All email correspondence that exists was submitted to you with my July 8, 2019 response to you."). Respondent had provided Disciplinary Counsel with emails dating from January 30, 2017 to February 16, 2018, including *more than 170* individual email messages that Respondent had sent concerning Ms. Berry's case. *See* DCX 90 at 1-5 ("Date sent").

60. Respondent's thumb drive, however, did not include the following five emails: (1) Ms. Berry's November 19, 2017 email to Respondent, (2) Respondent's next-day reply to Ms. Berry, (3) Ms. Berry's January 4, 2018 email to Respondent,

(4) Respondent's same-day reply on January 4, 2018, and (5) Respondent's second follow-up email sent on January 4, 2018. *See* FF 28-30 (summarizing the content of these messages). The Hearing Committee credits Respondent's testimony that this omission and misstatement to Disciplinary Counsel was inadvertent; having reviewed the extensive email communications provided in this case, we give greater weight and consideration to the exceedingly large number of emails provided and the fact that several other email messages were more inculpatory and more significant. *See*, *e.g.*, FF 18-19, 39-40. Respondent provided more incriminating messages in her disclosures to Maryland Bar Counsel, and the Committee does not find that their omission was intentional. *See* DCX 85 at 39-40; DCX 48-50; *see also* DCX 105-09.

61. Accordingly, we credit Respondent's testimony that she inadvertently omitted two emails from Ms. Berry (November 19, 2017, and January 4, 2018) in her initial production of records to Disciplinary Counsel and her three responsive emails sent to Ms. Berry (November 20, 2017, and two on January 4, 2018). *See* Tr. 498-505 (Respondent). Respondent produced several other emails and file contents that were in her possession detailing her discussions with Ms. Berry and Mr. Ochs. DCX 85 at 34-50; Tr. 498-505 (Respondent). Respondent admittedly did not provide to either Maryland Bar Counsel or Disciplinary Counsel a copy of Mr. Ochs's October 5, 2017 letter, which was sent to Ms. Berry by certified mail. Tr. 620, 688 (Respondent). However, the Committee credits Respondent's testimony concerning her not ever receiving a copy of the letter. *See* FF 25. Disciplinary

Counsel did not call Mr. Ochs as a witness nor elicit testimony from Ms. Berry suggesting that she ever provided Respondent with a copy of Mr. Ochs's letter. The Committee concludes that the production of documents by Respondent in both investigations was remarkably extensive and Respondent did not act dishonestly in either the Maryland or D.C. disciplinary investigations.

III. CONCLUSIONS OF LAW

Respondent asserts that she did not commit any of the alleged Rule violations and, if any of the violations were proven, the mitigating circumstances warrant that no sanction be imposed. *See* Resp. Br. at 13-14. As discussed below, we find that Disciplinary Counsel has proven some of the charged MD Rule violations, but not the charges involving a lack of competence, failing to protect her client's interests upon termination of the representation, or prejudicing or seriously interfering with the administration of justice. Additionally, Disciplinary Counsel has not proven by clear and convincing evidence that Respondent engaged in dishonesty or knowingly made false statements during the Maryland Bar Counsel's and Disciplinary Counsel's investigations.

A. Disciplinary Counsel Proved by Clear and Convincing Evidence that Respondent Violated MD Rules 19-301.2(a) and 19-301.3.

MD Rule 19-301.2(a) provides that:

> [A]n attorney shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. An attorney may take such action on behalf of the client as is impliedly authorized to carry out the representation. An attorney shall abide by a client's decision whether to settle a matter.

In order to abide by a client's decision concerning the objectives of the representation, a lawyer "must give the client honest updates regarding the status of his or her case." *Att'y Grievance Comm'n v. Shapiro*, 108 A.3d 394, 402 (Md. 2015). *See, e.g.*, *Att'y Grievance Comm'n v. Edwards*, 202 A.3d 1200, 1231-32 (Md. 2019) (finding a MD Rule 19-301.2(a) violation where inter alia the respondent failed to notify her client that her claim was barred by the statute of limitations).

MD Rule 19-301.3 provides that "[a]n attorney shall act with reasonable diligence and promptness in representing a client." "An attorney must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf[, but a]n attorney is not bound, however, to press for every advantage that might be realized for a client." MD Rule 19-301.3, cmt. [1].

Disciplinary Counsel contends that Respondent violated both Rules when she failed to consult with her client sufficiently and did not act with reasonable diligence and promptness in failing to immediately forward the 2017 complaint and summons to Ms. Berry and failing to continue to check the docket for the 2010 and 2017 Cases "in a timely fashion." ODC Br. at 29, 33. We agree with Disciplinary Counsel that Respondent did not act with sufficient diligence and promptness in her representation of Ms. Berry. Had Respondent confirmed the filing of the Notice of Dismissal prior to advising Ms. Berry that the case was dismissed, she would have properly advised Ms. Berry of the risks in not continuing to make her monthly payments and the September 2017 balloon payment, and Ms. Berry would have

better understood the importance and urgency in continuing the settlement negotiations.

It is true that Respondent received an email from opposing counsel that indicated that it had a dismissal attached, but the document attached was a draft that was not filed with the court. Respondent simply forwarded the email to Ms. Berry without opening the attachment and advised her that the case had been dismissed; Respondent did not ask opposing counsel if the dismissal notice had been filed, did not ask for a filed copy that had been stamped by the court, did not check the docket, and did not call the clerk's office to determine if the dismissal had been filed. Respondent did not take appropriate steps to confirm that what she was advising her client, a matter of significant gravity, was correct. And, in fact, it was incorrect, and it was left uncorrected. This conduct falls far short of acting with diligence and zeal to advance Ms. Berry's interests.

B. Disciplinary Counsel Proved by Clear and Convincing Evidence That Respondent Violated MD Rules 19-301.4(a) and (b).

MD Rule 19-301.4(a) provides, in pertinent part, that an attorney shall "keep the client reasonably informed about the status of the matter" and "promptly comply with reasonable requests for information." *See Att'y Grievance Comm'n v. Barnett*, 102 A.3d 310, 317 (Md. 2014) (finding MD Rule 19-301.4 violation where the respondent did not inform the client of a hearing date).

MD Rule 19-301.4(b) provides that "[a]n attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." In *Attorney Grievance Commission v. Powers*, 164

A.3d 138, 151 (Md. 2017), the Court of Appeals of Maryland found a violation of MD Rule 1.4(b) when the respondent failed to tell the client that he needed to produce his tax returns to the opposing party and when "he failed to communicate with his client in a way that his client could understand." A violation of MD Rule 1.4 "turns on the substance, not [the] regularity, of communication; thus, frequent attorney-client communication does not necessarily negate a violation." *Att'y Grievance Comm'n v. Lang*, 191 A.3d 474, 503 (Md. 2018) (citing *Att'y Grievance Comm'n v Rand*, 128 A.3d 107, 123 (Md. 2015)). An attorney also has an obligation to advise a client of the viability of her defenses. *See, e.g.*, *Att'y Grievance Comm'n v. Smith*, 177 A.3d 640, 662, 675 (Md. 2018) (the respondent violated MD Rule 19-301.4(b) when he failed to adequately discuss the viability of the client's legal theories).

We agree with Disciplinary Counsel that Respondent "failed to communicate crucial information to Ms. Berry when she neglected to forward a copy of the 2017 Case filings." ODC Br. at 31. Respondent admittedly only conveyed the information that Mr. Ochs had sent her a line of dismissal. While Respondent did provide dates for the 2017 Case when later asked by Ms. Berry, we find that Respondent failed to keep Ms. Berry reasonably informed about the status of the 2017 Case.

The communication regarding Ms. Berry's second amended settlement obligations in the 2010 Case was also inadequate. Because Ms. Berry did not have the funds to make the required September 2017 balloon payment, Respondent should have been in more regular contact with Ms. Berry given that (1) she had not signed

the proposed settlement (which would have postponed the balloon payment due date), and (2) her continued practice of making inconsistent payments to Potomac Oaks in breach of the payment plans stipulated to by Ms. Berry in each settlement agreement.

Although we realize that a two-week period of not responding to a client's email messages is not by itself a reason to face discipline charges, Respondent should have realized that Potomac Oaks would be escalating its litigation once Ms. Berry declined to sign the negotiated settlement that would have extended her payment plan. Regardless of how it appears a matter may turn out, the duty of communication is present, and here, the communication from Respondent to Ms. Berry fell far short of what the Rules require both in terms of substance and timeliness.

C. Disciplinary Counsel Did Not Prove that Respondent Violated MD Rule 19-301.1.

MD Rule 19-301.1 "requires an attorney to provide competent representation to his/her client by applying the appropriate knowledge, skill, thoroughness, and preparation to the client's issues." *Att'y Grievance Comm'n v. Shakir*, 46 A.3d 1162, 1167 (Md. 2012) (per curiam); *see also Att'y Grievance Comm'n v. Framm*, 144 A.3d 827, 842 (Md. 2016) ("The essence of competent representation under [MD Rule] 1.1 is adequate preparation and thoroughness in pursuing the matter." (citation omitted)).

Competent representation includes advising a client when the likelihood of success is limited. An attorney violates MD Rule 19-301.1 by "undertaking

representation of [a client]" where the "likelihood of success with [the client's] claim was limited." *Att'y Grievance Comm'n v. Sutton*, 906 A.2d 335, 342 (Md. 2006). Failing to explain this limited likelihood of success demonstrates a lack of competence. *See Att'y Grievance Comm'n v. White*, 136 A.3d 819, 833 (Md. 2016).

Before the Hearing Committee, Disciplinary Counsel contends that Respondent did not act competently because she (1) failed to forward the 2017 Case complaint and summons to Ms. Berry, (2) incorrectly assumed that the 2017 Case was dismissed, (3) failed to enter an appearance in the 2017 Case, (4) should have known about the litigation in the 2010 Case, (5) failed to appear at the January 10, 2018 hearing in the 2010 Case, and (6) failed to file a motion to vacate the January 10, 2018 judgment. ODC Br. at 26-28. However, Disciplinary Counsel's expert was asked to address only the issue of the motion to vacate the Affidavit Judgment, both at the hearing and in her report. *See* Tr. 186-270 (Wilburn); DCX 96 at 2 ("I was asked to opine on whether Respondent should have or could have filed a Motion to Vacate the Judgment entered into the 2010 Case on January 10, 2018 (the "Judgment") based on information provided by ODC."). The other conduct is better addressed for violations related to the lack of diligence and zeal and failure to communicate, as described above.

As noted in our factual findings, we have credited Respondent's explanation for why she could not, in good faith, file a motion to vacate the Affidavit Judgment. The consent judgment was based on a prior settlement agreement entered into by Ms. Berry with Potomac Oaks. While Disciplinary Counsel's expert testified that

Respondent could have challenged the attorney fees, we decline to find a lack of competence violation in not challenging a fee that was permitted by court rule and the settlement agreement. Although we found Disciplinary Counsel's expert to be credible, we believe her opinion regarding the viability of a motion to vacate was more relevant to motions to vacate a default judgment and not the circumstances of the Affidavit Judgment relevant here.

Here, Disciplinary Counsel did not provide or elicit clear and convincing evidence to support a finding that Respondent lacked competence in violation of MD Rule 19-301.1. It was clear from Respondent's testimony that Respondent at all times understood the process and how to navigate both the litigation and the settlement discussions.

D. Disciplinary Counsel Did Not Prove that Respondent Violated MD Rule 19-301.16(d).

MD Rule 19-301.16(d) is violated when an attorney fails to return unearned fees and papers. *Att'y Grievance Comm'n v. Moore,* 135 A.3d 390, 399 (Md. 2016).

MD Rule 19-301.16(d) provides that:

> Upon termination of representation, an attorney shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of another attorney, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The attorney may retain papers relating to the client to the extent permitted by other law.

It is undisputed that the representation ended in February 2018, and that Respondent declined to refund any of the $1,500 advance fee to Ms. Berry because

Respondent asserted that the entire fee had "more than" been earned during the approximately one-year representation. FF 50.

We note that Disciplinary Counsel does not allege that a refund was due to her client, nor does Disciplinary Counsel allege that Respondent failed to return her client's file. Instead, Disciplinary Counsel alleges that Respondent failed to protect Ms. Berry's interests by agreeing to file the motion to vacate "at the last minute," and later deciding not to file it and discontinuing the representation. ODC Br. at 34. As explained in our factual findings, we credited Respondent's testimony that she explained to Ms. Berry why she could not in good faith file a motion to vacate the Affidavit Judgment. Here, the record does not support any finding of a violation of MD Rule 19-301.16(d).

E. Disciplinary Counsel Did Not Prove that Respondent Knowingly Made False Statements to Maryland Bar Counsel and/or D.C. Disciplinary Counsel, in Violation of MD Rule 19-308.1(a) or D.C. Rule 8.1(a), or that Respondent Engaged in Dishonesty, in Violation of MD Rule 19-308.4(c) and D.C. Rule 8.4(c).

MD Rule 19-308.1(a) provides that an attorney in connection with a disciplinary matter shall not "knowingly make a false statement of material fact." Attorneys violate MD Rule 19-308.1(a) where they "act[ ] dishonestly and deceitfully by knowingly making false statements to Bar Counsel." *Att'y Grievance Comm'n v. Harris*, 939 A.2d 732, 745 (Md. 2008); *see also Att'y Grievance Comm'n v. Donnelly*, 310 A.3d 1110, 1127 (Md. 2024) (finding violation of MD Rule 19-308.1(a) where the respondent made false statements both orally and in writing under oath before Maryland Bar Counsel and the hearing judge).

One difference with D.C. Rule 8.1(a) is that, although it largely has the same language, the D.C. Rule describes "false statement[s] of fact," without a requirement that the fact be material. D.C. Rule 8.1; *see id.*, cmt. [1] (The "[l]ack of materiality does not excuse a knowingly false statement of fact."). "Knowingly" is defined as "actual knowledge of the fact in question" which "may be inferred from circumstances." D.C. Rule 1.0(f).

MD Rule 19-308.4(c) provides that "[i]t is professional misconduct for an attorney to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." To prove a violation of MD Rule 19-308.4(c), Disciplinary Counsel must establish something more than negligent misconduct. "It is well settled that this [c]ourt will *not* find a violation . . . when the attorney's misconduct is the product of 'negligent rather than intentional misconduct.'" *Att'y Grievance Comm'n v. DiCicco*, 802 A.2d 1014, 1026 (Md. 2002) (emphasis added) (quoting *Att'y Grievance Comm'n v. Awuah*, 697 A.2d 446, 454 (Md. 1997)). D.C. Rule 8.4(c) similarly states that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." One difference with D.C. Rule 8.4(c), as interpreted by the Board and the D.C. Court of Appeals, is that a violation may be established by sufficient proof of recklessness. *See In re Romansky*, 825 A.2d 311, 317 (D.C. 2003). To prove recklessness, Disciplinary Counsel must prove by clear and convincing evidence that the respondent "consciously disregarded the risk" created by his actions. *Id.* The entire context of the respondent's

actions, including their credibility at the hearing, is relevant to a determination of intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-97 (D.C. 2019) (per curiam).

Disciplinary Counsel contends that Respondent violated MD Rules 19-308.1(a) and 19-308.4(c), and the D.C. comparable rules, when she allegedly made false statements and omissions in her communications with Maryland Bar Counsel and Disciplinary Counsel. ODC Br. at 35-37.

We do not find that Respondent made a knowingly false statement of fact to Maryland Bar Counsel or Disciplinary Counsel. Disciplinary Counsel made much of the process following the bar complaint submitted to Maryland, but the Committee found Respondent to have been very forthcoming and cooperative with both Maryland Bar Counsel and the Office of Disciplinary Counsel. *See* FF 54-55, 58-61. Respondent volunteered the Maryland bar complaint to Disciplinary Counsel without an obligation to do so; she provided detailed responses to requests for documents and files, and the files she provided were not all exculpatory. *See* FF 58-61. Indeed, the limited number of email messages that were not initially included in extensive production did not implicate Respondent in any wrongdoing beyond her subsequent admission that she overlooked email messages. Having considered her demeanor while testifying, the Committee finds that any failure to provide the email messages identified by Disciplinary Counsel was entirely inadvertent and we credited her testimony that she did not receive a copy of Mr. Ochs's letter that had been sent by certified mail to Ms. Berry. The Committee finds that Respondent's cooperation during both disciplinary investigations was indeed exemplary, and she

provided documents in a timely manner. By contrast, Ms. Berry's omissions and false statements in her Maryland bar complaint give us pause and were intended to give Maryland Bar counsel a false impression of the representation. When Respondent filed her detailed response and documentary evidence and Maryland Bar Counsel gave Ms. Berry an opportunity to respond, she did not.[7]

F. Disciplinary Counsel Did Not Prove that Respondent Violated MD Rule 19-308.4(d) (Prejudice to the Administration of Justice) or D.C. Rule 8.4(d) (Serious Interference with the Administration of Justice).

MD Rule 19-308.4(d) provides that "[i]t is professional misconduct for an attorney to . . . engage in conduct that is prejudicial to the administration of justice." The Rule has been violated "when conduct impacts negatively the public's perception or efficacy of the courts or legal profession." *Att'y Grievance Comm'n v. Barnett*, 102 A.3d 310, 318 (Md. 2014) (citation omitted). "Failure to attend hearings, pursue [the] client's objectives, and . . . abide by the [o]rders of the . . . [c]ourt all represent conduct that is prejudicial to the administration of justice." *Att'y Grievance Comm'n v. Storch*, 124 A.3d 204, 208 (Md. 2015); *see also, e.g.*, *Att'y Grievance Comm'n v. Barton*, 110 A.3d 668, 698-99 (Md. 2015); *Att'y Grievance Comm'n v. Dominguez*, 47 A.3d 975, 985 (Md. 2012). Misconduct that violates MD Rule 19-308.4(c) may also violate MD Rule 19-308.4(d). *See Att'y Grievance Comm'n v. Worsham*, 105 A.3d 515, 529-530 (Md. 2014).

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[7] Ms. Berry has made previous complaints against counsel for Potomac Oaks, *see* FF 30, 37 (bar complaint); FF 20 (Consumer Financial Protection Bureau complaint).

D.C. Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e*., it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). D.C. Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

Disciplinary Counsel contends that Respondent violated D.C. Rule 8.4(d) by being dishonest with Disciplinary Counsel, causing it to "expend[] more time and resources to compel Respondent to provide omitted documents and to produce complete and honest answers." ODC Br. at 38. As explained above, we find that Disciplinary Counsel did *not* establish that Respondent acted dishonestly during either the Maryland or D.C. investigations.

Here, Respondent responded to both the Maryland and D.C. disciplinary investigations. Additionally, we have found that her responses were not dishonest. Accordingly, Respondent did not prejudice the administration of justice in the

Maryland investigation or seriously interfere with the administration of justice in the D.C. investigation.

IV. RECOMMENDED SANCTION

Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a 90-day suspension. ODC Br. at 38. Respondent has requested that the Hearing Committee recommend a dismissal, or if a Rule violation is found, no imposition of discipline due to the following mitigating circumstances: no prior discipline, no aggravating circumstances, her cooperation and self-reporting of the alleged misconduct, and the delay resulting in a violation of due process. *See* Resp. Br. at 13-14. For the reasons described below, we recommend the sanction of a public censure with a six-hour CLE requirement.

A. Standard of Review

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

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent's failure to enter an appearance in the 2017 Case did not ultimately impact Ms. Berry because Potomac Oaks did eventually file a Notice of Dismissal after being unsuccessful in serving Ms. Berry with the complaint. However, the misconduct in not continuing to communicate with Mr. Ochs and Ms. Berry once it became obvious that the case was not settling was a problem we have

identified. As a busy solo practitioner, Respondent put the onus of communication and staying in contact too much on her client in this instance.

In the Committee's opinion, the misconduct also lies in the record of missed opportunities to maintain contact with Mr. Ochs. We especially find it remiss that she failed to follow through in communicating with Ms. Berry after Mr. Ochs's email notifying her about Ms. Berry's default in not making the September payment required under the 2015 settlement agreement.

2. Prejudice to the Client

Clearly, Ms. Berry was already in a difficult position before she retained Respondent. She was continually falling behind in the payments of amounts due on her condominium and the assessments. Ms. Berry admittedly had difficulty making payments in the summer months due to her lower income during that time period. The court ended up reducing the amount sought by Potomac Oaks by almost $4,000, despite her failure to appear at the hearing after filing a Notice of Intention to Defend. However, because Respondent did not fulfill her obligations to her client regarding diligence and zeal and communication, we find that Ms. Berry was prejudiced.

3. Dishonesty

As noted earlier, we have found that Respondent did not engage in dishonesty during Maryland Bar Counsel's and D.C. Disciplinary Counsel's investigations. We found her to be a credible witness and forthcoming in her testimony at the hearing.

4. Violations of Other Disciplinary Rules

Respondent violated four MD Rules: Rule 19-301.2(a) (failing to consult with client), 19-301.3 (diligence and promptness), and 19-301.4(a) & (b) (communication and failing to timely explain client's matter) connected with the same misconduct in not proactively checking the courts' dockets and failing to respond to her client for two weeks.

5. Previous Disciplinary History

Respondent does not have prior disciplinary history. This is a significant mitigating circumstance.

6. Acknowledgement of Wrongful Conduct

Respondent has admitted that she missed important emails from Ms. Berry and did not respond in a timely fashion. *See* FF 39, 56. Respondent also regrets not realizing earlier that the 2017 Case was still pending. She has acknowledged her wrongful conduct during the hearing.

7. Other Circumstances in Aggravation and Mitigation

The Committee does not find additional factors in aggravation and mitigation.

C. Sanctions Imposed for Comparable Misconduct

Upon examining other discipline cases involving the same or comparable misconduct where the respondent has no prior discipline, we conclude that a public censure falls within the range of discipline for similar cases. In *In re Shepherd*, 870 A.2d 67, 68 (D.C. 2005) (per curiam), the respondent violated D.C. Rules 1.3(a) and (c) (failing to represent client zealously and failing to act with reasonable promptness), 1.4(a) (failing to keep client reasonably informed), 1.16(d) (failing to

take timely steps to protect client's interests upon termination of representation), and 8.4(d) (serious interference with the administration of justice) in connection with his representation of clients in a civil suit, during which he failed to appear at an initial conference, failed to advise his clients of the status of the case, prejudiced his clients because the case was dismissed when he failed to appear, and improperly transferred the case to another attorney without the clients' knowledge or consent. On appeal, the Court adopted the Committee's and Board's recommendation of a public censure along with an ethics CLE requirement. 870 A.2d at 70.

We do not believe a sanction greater than a public censure is warranted. This is Respondent's first discipline matter, and the proven misconduct essentially involved a neglect-type violation. Similar to the *Shepherd* case, a public censure and a CLE requirement was imposed in *In re Hill*, 619 A.2d 936, 936-37 (D.C. 1993) (per curiam) (appended Board Report) (neglect of an appointed legal matter and conduct prejudicial to the administration of justice) and in *In re Avery*, 926 A.2d 719 (D.C. 2007) (per curiam) (violations of D.C. Rules 1.1(a), 1.3(a), 1.3(c), 1.4(a), 1.4(b), 1.5(c), 1.5(e), and 1.16(d)).

In a case involving much more serious and extensive misconduct, *In re Sumner*, 665 A.2d 986 (D.C. 1995) (per curiam) (appended Board Report) (no exception filed), the Court adopted the Hearing Committee's and the Board's recommendation of a thirty-day suspension where the respondent violated six Rules of Professional Conduct: Rules 1.1(a) and (b) (competence and representation generally provided by lawyers in similar matters), 1.4(a) (failure to keep client

reasonably informed), 1.16(d) (failure to return papers and to refund fees upon termination of representation), 1.5(b) (failure to set forth basis for fee in writing), and 4.1(a) (false statement of material fact of a third person). In *Sumner*, the Board noted that but for the Rule 1.16(d) and 4.1(a) violation, the recommended sanction for such a "first neglect-type violation" would not warrant a period of suspension. 665 A.2d at 987. The respondent agreed to handle a criminal appeal, despite his inexperience, for a flat fee of $500 to $600, but then failed to seek an extension of time for failing to file a new trial motion in order to review the trial transcript, failed to file his client's appellate brief, ignored orders to do so by the Court of Appeals, never responded to his client's inquiries about the status of the representation, did not give the client's files to successor counsel or refund the fee despite having done no work on the case, and misrepresented that he had ordered the trial transcripts when he had not. *Id.* at 987-89. *Sumner* is an example of the Court imposing a suspension for neglect of criminal appeals aggravated by related misconduct. *See also, e.g.*, *In re Mance*, 869 A.2d 339, 340, 342 (D.C. 2005) (per curiam) (30-day suspension, fully stayed during one-period of unsupervised probation for intentional neglect of an appeal and failure to pursue client's reduction of sentence, failing to communicate with client and disregarding inquiries and directives from the Court).

The misconduct in *Sumner* was much more serious than that involved in this matter; and we note that Disciplinary Counsel's recommended sanction of a 90-day suspension, *see* ODC Br. at 38, was based on the Committee also finding of

violations of MD Rules 19-301.1, 19-301.16(d), 19-308.1(a), 19-308.4(c), and 19-308.4(d) and D.C. Rules 8.1(a), 8.4(c), and 8.4(d), which we found were not proven.

Accordingly, we recommend that Respondent be sanctioned with a public censure and be required to take 6 hours of CLE.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated MD Rules 19-301.2(a) (failing to consult with client), 19-301.3 (diligence and promptness), and 19-301.4(a) and (b) (communication and failing to timely explain client's matter), and should receive the sanction of a public censure and a 6-hour CLE requirement.

AD HOC HEARING COMMITTEE

Erik T Koons

Erik T. Koons, Chair

Cecilia DC Monahan

Cecilia Carter Monahan, Public Member

Parker Thoeni

Parker Thoeni, Attorney Member