THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
June 24, 2024

In the Matter of:	:	
	:	
STEVEN VILLARREAL,	:	
	:	Board Docket No. 23-BD-032
Respondent.	:	Disc. Docket No. 2019-D299
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 482284)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

In its Report and Recommendation, the Ad Hoc Hearing Committee ("Committee") found that Respondent violated Rules 1.1(a) and (b) (competence and skill and care) and 1.3(a) (diligence and zeal) of the District of Columbia Rules of Professional Conduct ("Rules") in connection with his representation of a client who sought assistance in an immigration matter. The Committee found that Disciplinary Counsel did not prove a Rule 1.3(c) (reasonable promptness) violation. The Committee recommended a sanction of a thirty-day suspension, fully stayed, in favor of a one-year unsupervised probation period with the condition that Respondent complete eight hours of CLE (at least two hours on ethics) preapproved by Disciplinary Counsel.

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* 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.

Disciplinary Counsel does not take exception to any of the Committee's factual findings or its conclusion that the Rule 1.3(c) charge was not proven, but takes exception to the Committee's recommendation to stay the suspension in favor of probation. Because Respondent did not participate in the hearing[1] and has not shown remorse, Disciplinary Counsel contends he should not be eligible for a stayed suspension. Respondent contends that denying him a stay would be excessively punitive because the Committee already considered his absence at the hearing as a significant aggravating factor – which increased his sanction from an informal admonition to a thirty-day stayed suspension.

At the parties' request, this case was submitted on their briefs and without oral argument.

II. FACTUAL SUMMARY

We concur with each of the Hearing Committee's Findings of Fact ("FF") which are supported by substantial evidence in the record. *See In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam) (defining "substantial evidence" as

[1] After consulting with multiple attorneys, Respondent notified Disciplinary Counsel that it was "financially not feasible" for him to hire counsel, and he did not want to proceed *pro se* so he would "just wait for whatever discipline is handed down." Attachment A, Disciplinary Counsel's Prehearing Statement (Sept. 22, 2023). We recognize that although D.C. Bar R. XI, §8(a) imposes an obligation for attorneys to respond to the Office of Disciplinary Counsel's written inquiries during its investigation, subject to constitutional limitations, and Rules 8.1(b) or 8.4(d) similarly require attorneys to respond to reasonable requests for information, appearing at one's hearing is not mandated by the rules.

"enough evidence for a reasonable mind to find sufficient to support the conclusion reached").

In April 2019, Respondent was retained to assist a client who had a pending order of removal. In 1988, the client had entered the U.S. without inspection, and ten years later in 1998, her mother filed a Form I-130 Petition for Alien Relative, which was denied in 2007. FF 2. On September 17, 2019, Respondent filed a motion to reopen the client's immigration case with the Department of Homeland Security. FF 14. On October 17, 2019, the motion to reopen Respondent had filed was denied by the Immigration Judge, who cited the absence of sufficient documents showing that the assertions in the Form I-130 filed in 1998 by the mother were true and accurate. FF 16. Disciplinary Counsel's expert testified that Respondent should have collected additional documents from his client before filing the motion to reopen. FF 13-15. According to the client, Respondent did not take responsibility for his failure to attach sufficient evidence to support the motion and, instead, asked her to gather more documents and retain him to proceed with another motion. FF 17. Having lost confidence in Respondent's legal representation, the client declined Respondent's proposed action, terminated the representation, and hired successor counsel. FF 17-18.[2]

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[2] The Committee noted that Respondent had submitted a detailed written response to Disciplinary Counsel's inquiry letter and his former client's complaint. *See* HC Rpt. at 13-14, n.4. Respondent asserted in his written response and his formal answer to the charges that he had provided competent legal representation and had asked his client for a copy of the 1998 Form I-130 but was told it was not available. *Id.* (first citing DCX 4; and then citing DCX 7 at 4). The Committee held that while it could

III. LEGAL CONCLUSIONS

As noted earlier, neither party takes exception to the Committee's analysis of the Rule violations. Having considered the record and for the reasons set forth in the Hearing Committee's Report and Recommendation, which is attached hereto and adopted and incorporated by reference, we conclude that Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rules 1.1(a) and (b) (competence and skill and care) and Rule 1.3(a) (diligence and zeal).

We now turn to Disciplinary Counsel's two objections regarding the Committee's sanction analysis. Disciplinary Counsel contends first, that the Committee incorrectly decided that Respondent's conduct was less serious than that of the respondents in *In re Cole* and *In re Bernstein*, and second, that the Committee improperly recommended a stayed suspension when Respondent had not shown remorse and did not participate in the hearing.[3] The Committee explained that an entirely stayed suspension was warranted as an "intermediate" sanction due to Respondent's lack of prior discipline and the fact that the proven misconduct was less serious in nature than prior cases where a thirty-day suspension was imposed:

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not judge the credibility of this claim without Respondent's appearance at the hearing, because other additional necessary documents were omitted when the motion was filed, Respondent's assertion (even if true) would not affect the Committee's conclusion that the Rule 1.1 charges had been proven. *Id.*

[3] We recognize that Respondent was not ordered to appear at the hearing or subpoenaed as a witness. *See* Order, Sept. 25, 2023 (Hearing Committee's scheduling order advising Respondent of hearing dates "if he chooses to participate").

> Here, the Hearing Committee is of the view that the Respondent's conduct falls somewhere between these two poles [of an informal admonition and a 30-day suspension]. This matter does not involve any of the fraudulent conduct or other indicia of dishonesty that marked the conduct of respondents in *Cole* and *Bernstein*. Thus, in our view, a 30-day suspension as recommended by Disciplinary Counsel would "foster a tendency toward inconsistent dispositions for comparable conduct." We, therefore, conclude that a period of actual suspension on these facts is not warranted.

HC Rpt. at 21-22 (citations omitted).

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 923-24; *Martin*, 67 A.3d at 1053; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

A. Respondent's Conduct Was Less Serious Than Cases Involving Thirty-Day Suspensions.

We agree with the Committee's conclusion that *In re Cole* involved more serious misconduct than Respondent's lack of competence and diligence in a single

client matter. *See* HC Rpt. at 21. In *Cole*, the respondent defaulted on an important deadline for his immigration client and then engaged in dishonesty by lying to his client. A further differentiating fact (not mentioned by the Committee) is that the respondent in *Cole* committed *six additional* Rule violations beyond Respondent's violations of Rules 1.1(a) and (b) (competence and skill) and 1.3(a) (diligence and zeal). *See In re Cole*, 967 A.2d 1264, 1266-67, 1266 n.5 (D.C. 2009) (violations of Rules 1.1(a) and (b), 1.3(a), (b) (intentional failure to seek lawful objectives) and (c) (failure to act with reasonable promptness), 1.4(a) (failure to keep client reasonably informed about the status of the matter) and (b) (failure to explain the matter to client), 8.4(c) (dishonesty, fraud, deceit or misrepresentation), and 8.4(d) (serious interference with the administration of justice)). When adopting the Board's recommended sanction of a thirty-day suspension, the Court in *Cole* commented that despite the respondent's lack of a past disciplinary history, his "[n]eglect of a client matter, failure to communicate with a client, dissembling or lying to a client, and causing parties and judicial tribunals to engage in unnecessary work because of [his] failures all constitute abhorrent actions." *Id.* at 1267.

In re Bernstein also involved more serious misconduct. The respondent in *Bernstein* violated five Rules: Rules 1.3(a), 1.3(c) (failure to act with reasonable promptness), 1.4(a) (failure to keep a client reasonably informed about the status of a matter), 1.4(b) (failure to explain matter); and 1.16(d) (failure to surrender papers and property of the client upon termination of the representation). 707 A.2d 371, 375-76 (D.C. 1998). The Court noted that for the Rule 1.3(c) violation, the

respondent delayed filing suit against an insurer until almost five years after the hit-and-run accident; for the Rule 1.4(a) violation, the respondent did not inform his clients that he had filed a lawsuit on their behalf until eighteen months later and he never informed them of a very favorable settlement offer; and for the Rule 1.16(d) violation, the respondent improperly withheld the clients' files unless they agreed to a general release from liability. *Id.*

In its brief to the Board, Disciplinary Counsel now cites to *In re Dory*, 528 A.2d 1247 (D.C. 1987) (per curiam) and *In re Wright*, 702 A.2d 1251, 1257 (D.C. 1997) (per curiam) (and appended Board Report) as additional support for its position that thirty-day suspensions have been imposed for comparable misconduct. However, those cases also involve significantly more serious misconduct. *See Dory*, 528 A.2d at 1247-48 (neglect, failing to seek client's lawful objectives, and failing to carry out an employment contract for legal services where the respondent promised to file a motion for new trial or a notice of appeal but failed to do so after taking a $500 fee); *Wright*, 702 A.2d at 1252-54 (appended Board Report) (violations of Rules 1.3(a), 1.3(c), 1.4(a), 1.5(b), 8.4(d) and D.C. Bar R. XI, § 2(b)(3) where the respondent failed to respond to discovery requests of opposing counsel, their motion to compel, or to the court's order to show cause, resulting in dismissal of his client's case and additionally failed to communicate with his client, failed to respond to Disciplinary Counsel's inquiries, and failed to respond to the Board's order to respond to Disciplinary Counsel regarding the allegations of misconduct).

Although Respondent's misconduct was less serious than cases where a thirty-day suspension was imposed, we find that the Hearing Committee did not err in recommending a thirty-day suspension, *fully stayed* in favor of probation, which would mean that Respondent's ability to practice law would not be interrupted so long as he completes eight hours of CLE (at least two hours on ethics) preapproved by Disciplinary Counsel. For Respondent's violations of Rules 1.1(a) and (b) and 1.3(a), a non-suspensory sanction would have been within range for sanctions in comparable cases. *See* HC Rpt. at 21 (citing cases involving Letters of Informal Admonition); *see also In re Schlemmer*, 870 A.2d 76, 76-77, 82 (D.C. 2005) (Board reprimand for Rule 1.3(a) and 1.4(a) violations). The Committee decided, however – and the Board agrees – that Respondent's failure to appear at the hearing "marks an unwillingness to acknowledge error or demonstrate remorse in a manner that distinguishes this case from those instances where an informal admonition sufficed." HC Rpt. at 22. Although this is not a situation where the respondent failed entirely to cooperate during the disciplinary investigation or failed to appear without any explanation, *see, e.g.*, *In re Godette*, 919 A.2d 1157, 1165-67 (D.C. 2007) (the respondent repeatedly failed to respond to Disciplinary Counsel's inquiry letters, a motion a compel, and a Board order to respond), we agree with the Committee that Respondent's failure to appear – even given the reasons he provided – distinguishes this case from those involving informal admonitions, and we further agree that a fully-stayed thirty-day suspension with a CLE requirement is appropriate for the circumstances in this case.

B. Stays and Probation

We note that, on the Board's or Hearing Committee's recommendation, the Court frequently imposes partially-stayed or fully-stayed suspensions, often without much discussion. In *In re Askew*, 96 A.3d 52 (D.C. 2014) (per curiam), however, the Court did address examples of thirty- and ninety-day suspensions that were stayed because the respondent's misconduct was a "deviation" or a single aberration from prior practice or because of substantial mitigating factors.[4]

Most recently, in *In re Dobbie*, 305 A.3d 780, 814, (D.C. 2023), the Court noted that stays are "typically reserved" for instances where a respondent violates the Rules under circumstances that "explain or blunt [his] culpability." In *Dobbie*, the Court decided to fully-stay the Board's recommended six-month suspension of two prosecutors based on their "clean disciplinary slates" and because it found that the Rule violations were "due in large part to the collective action and inaction of members of their office." *Id*.; *see id*. at 815. Here, Respondent similarly has a prior "clean disciplinary slate." He has been a member of the D.C. Bar since 2003, and this is his first discipline matter. FF 1; HC Rpt. at 20. In *Dobbie*, 305 A.2d at 815, the Court cited to *In re Pearson*, 228 A.3d 417, 428 (D.C. 2020) (per curiam) (adopting the Board's recommendation of a ninety-day suspension), as an example of a case in which it declined to impose a stay despite the Hearing Committee's recommendation, but did so due to the fact that the sanction factors were especially

[4] *See Askew*, 96 A.3d at 61 (first citing *In re Mance*, 869 A.2d 339, 342 (D.C. 2005); then citing *In re Baron*, 808 A.2d 497, 498 (D.C. 2002); and then citing *In re Ontell*, 724 A.2d 1204, 1205 (D.C. 1999)).

aggravating and because of the "ongoing nature" of Respondent's misconduct. *See also In re Pearson*, Board Docket No. 15-BD-031, at 34 (BPR May 23, 2018) (Board recommending unstayed suspension due to the seriousness of the respondent's abusive *pro se* litigation tactics, his obstinate attitude, and continued frivolous motions practice before the Hearing Committee and the Board). Here, Respondent's lack of remorse and the prejudice to his client are aggravating factors, but are not so severe as to overshadow in full the mitigating factors. *See* HC Rpt. at 20.

Accordingly, we do not agree with Disciplinary Counsel's interpretation of *Dobbie*, *see* ODC Br. at 4-5, as barring a stay under the circumstances of this case. *See also In re Chapman*, 962 A.2d 922, 927 (D.C. 2009) (per curiam) (Court staying thirty days of a sixty-day suspension in favor of a one-year period of probation even though the respondent "refused to take responsibility or show any remorse for his misconduct" and was "deliberately dishonest in his dealings with [Disciplinary] Counsel"). Although Respondent's participation in the disciplinary process in this matter was wanting, this is also not a situation where a respondent failed entirely to respond to Disciplinary Counsel's inquiry letter or request for documents or ignored completely a Board Order to comply with Disciplinary Counsel's request for a response to the allegations. *See* DCX 7 at 1-5 (Respondent's responsive letter); DCX 7 at 12-157 (Respondent's production of well over 100 pages of documents during the disciplinary investigation).[5]

[5] In light of Disciplinary Counsel's own exhibits and the absence of any allegation of a failure to respond to Disciplinary Counsel, we disagree with Disciplinary

IV. CONCLUSION

For the foregoing reasons, we find that Respondent violated Rules 1.1(a) and (b) and 1.3(a) and should receive the sanction of a thirty-day suspension, stayed in favor of one-year of unsupervised probation with the following conditions:

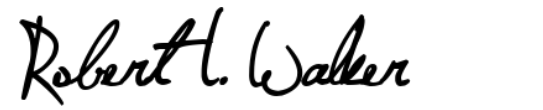
(1) During the first six months of the probationary period, Respondent shall complete eight hours of CLE (with at least two hours on ethics) preapproved by Disciplinary Counsel;

(2) No later than fourteen days after completing the CLE requirement, Respondent shall certify his compliance to Disciplinary Counsel;

(3) Respondent shall not be required to notify clients of the probation; and

(4) Should Respondent violate the terms of his probation, he may be subject to revocation of his probation. *See* Board Rule 18.3.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Robert L. Walker

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

Counsel's suggestion that Respondent has shown "an egregious disregard" of the disciplinary system similar to that of the respondent in *Wright*. *See* ODC Br. at 4.

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
STEVEN VILLARREAL[1],	:	
	:	
Respondent.	:	Board Docket No. 23-BD-032
	:	Disc. Docket No. 2019-D299
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 482284)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Steven Villarreal, is charged with violating Rules 1.1(a) and (b) (competence and skill and care), 1.3(a) (diligence and zeal), and 1.3(c) (failing to act with reasonable promptness) of the District of Columbia Rules of Professional Conduct ("Rules") arising from his representation of Adriana Hernandez, a client who sought assistance in reopening her removal proceedings and adjusting her status under Section 245(i) of the Immigration and Naturalization Act ("INA" or the "Act"). Disciplinary Counsel contends that Respondent committed all of the charged violations and should be suspended for a period of thirty (30) days as a sanction for his misconduct.

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[1] The Specification of Charges has a typographical error in spelling Respondent's last name as "Villareal" instead of "Villarreal."

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

As set forth below, the Ad Hoc Hearing Committee (the "Hearing Committee" or "Committee") finds that Disciplinary Counsel has proven the violations of Rules 1.1(a) and (b), and 1.3(a) by clear and convincing evidence and recommends that Respondent be suspended for 30 days and that the Court stay the 30-day suspension, in favor of one year of unsupervised probation with the condition that Respondent complete 8 hours of CLE, including a minimum of 2 hours on ethics, that are pre-approved by Disciplinary Counsel.

I. PROCEDURAL HISTORY

On August 7, 2023, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). Respondent filed an Answer on August 22, 2023, but did not otherwise participate in these disciplinary proceedings, declining to appear at the hearing conducted or to file a post-hearing brief.

The Specification alleges that Respondent, in connection with his representation of Ms. Hernandez, violated the following rules:

- Rules 1.1(a) and (b), by failing to provide competent representation to his client and failing to serve his client with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters;
- Rule 1.3(a), by failing to represent his client zealously and diligently within the bounds of the law; and
- Rule 1.3(c), by failing to act with reasonable promptness in representing his client.

Specification ¶ 16.

A hearing was held on December 5, 2023, before the Hearing Committee. Disciplinary Counsel was represented at the hearing by Assistant Disciplinary Counsel Caroll G. Donayre, Esquire. Respondent was not present during the hearing. At the start of the hearing, Disciplinary Counsel noted that Respondent had emailed her office on September 13, 2023, indicating that he did not intend to participate in the disciplinary process. Tr. 7. [2]

During the hearing, Disciplinary Counsel submitted DCX 1 through 12. All of Disciplinary Counsel's exhibits were admitted into evidence. Tr. 58. Disciplinary Counsel called as witnesses: Adriana Hernandez, Respondent's client, and Thomas Tousley, Esquire, as an expert witness.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the ethical violations set forth in the Specification of Charges. Tr. 61; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel indicated that it was offering no evidence in aggravation and would be making its sanction recommendation in its post-hearing briefing. Tr. 61.

Disciplinary Counsel submitted its Post-Hearing Brief on January 8, 2024. As previously noted, Respondent did not submit a post-hearing brief.

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[2] "DCX" refers to Disciplinary Counsel's exhibits. "Tr." refers to the transcript of the hearing held on December 5, 2023.

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 facts sought to be established").

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on July 11, 2003, and assigned Bar number 482284. DCX 1.

2. Adriana Hernandez entered the U.S. without inspection in 1988. DCX 10 at 19, 135. Her mother filed a Form I-130, Petition for Alien Relative, on July 6, 1998, that was denied on February 20, 2007. DCX 12 at 3; DCX 10 at 136; *see* Tr. 44 (Tousley).

3. On September 8, 1998, an Immigration Judge entered an in-absentia order of removal against Hernandez. DCX 10 at 135; Tr. 35-36 (Tousley).

4. On or about April 13, 2019, Hernandez retained Respondent to assist her in her immigration matter. Hernandez sought to reopen the removal proceedings and ultimately adjust her status under Section 245(i) of the Act.[3] Tr. 17-18 (Hernandez); DCX 7 at 1, 3; *see* Tr. 40-44 (Tousley).

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[3] Section 245(i) of the Act allows certain individuals to apply to adjust their immigration status if they entered without inspection, overstayed, or worked without

5. Competent handling of this matter required Respondent to obtain the required documentation from the client and submit it along with the motion to reopen. Tr. 44-49 (Tousley); *see* DCX 10 at 149.

6. Section 245(a) of the INA provides generally that to adjust status, an alien must have been inspected and admitted or paroled into the United States by an immigration officer, DCX 12 at 4-5; Tr. 41-42 (Tousley), which is to say that the alien must have entered the country lawfully.

7. Section 245(i) of the INA provides certain undocumented immigrants an opportunity to adjust to lawful permanent resident status and receive a green card from within the United States if they meet the requirements of the law, including a demonstration that they are eligible to be "grandfathered" in under the requirements of the previous iteration of the section, which has now been modified. DCX 12 at 5-6; Tr. 42-44 (Tousley).

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authorization. *See generally* INA § 245(i)(1); 8 U.S.C. § 1255(i)(1). That law requires an alien seeking to adjust status to provide documentary evidence establishing that she: (l) is physically present in the United States; (2) entered the United States without inspection; and (3) is a beneficiary of an immigrant visa petition, such as a Form I-130, or labor certification filed on or before April 30, 2001. *See* DCX 10 at 136; Tr. 42-43 (Tousley). In addition, for applicants such as Hernandez whose petition was filed after January 14, 1998, under a "grandfather" clause the alien must show that her application for a benefit was "approvable when filed," (i.e. complete and legally valid) and that she was physically present in the United States on December 21, 2000. *See* 8 C.F.R. § 1245.10(a)(l), (a)(3); DCX 10 at 136-37; Tr. 43-44 (Tousley). As set forth more fully in Findings of Fact (hereinafter "FF") 5-8, such an application requires an alien to document her entitlement to the adjustment sought.

8. In particular, to qualify for relief under Section 245(i), an alien in the position of Hernandez must establish: (1) that a visa petition (Form I-130) was properly filed on her behalf before April 30, 2001; (2) that the Form I-130 was approvable when filed; and (3) that she was physically present in the United States on December 21, 2000. DCX 12 at 5; Tr. 43-44 (Tousley); *see* FF 4 n.3. The prior denial of a Form I-130 petition does not preclude a finding that it was approvable when filed for the purposes of Section 245(i). DCX 12 at 6; FF 2; *see* 8 C.F.R. § 1245.10(a)(3).

9. Hernandez sought legal counsel to assist her in demonstrating that she qualified for relief under Section 245(i). *See* DCX 7 at 1, 3. Hernandez's mother was a lawful permanent resident, and on July 6, 1998, she had filed a Form I-130 petition on Hernandez's behalf. Hernandez entered the United States in 1988 and remained in the country. DCX 10 at 135-36, 171; DCX 12 at 3-4.

10. Respondent charged Hernandez $1,000 to file the motion to reopen the in-absentia order of removal with the Immigration Court, $2,500 to prepare and file the adjustment forms (I-485, I-485A, and attachments), and $110 for filing fees. DCX 7 at 2; DCX 11 at 2; Tr. 22 (Hernandez); Tr. 37-38 (Tousley).

11. Hernandez paid Respondent $3,610 by checks dated August 22 and 27, 2019. DCX 5 at 4; Tr. 22 (Hernandez).

12. On September 17, 2019, Respondent entered his appearance as counsel for Hernandez in her immigration case. DCX 10 at 150-51; Tr. 39 (Tousley).

13. Respondent did not request the appropriate documentation from Hernandez to document her eligibility under Section 245(i) prior to filing the motion to reopen. Respondent did not attach evidence of Hernandez's mother's citizenship or lawful permanent resident status, evidence of the mother-daughter relationship, or a copy of the actual Form I-130 filed by her mother. Respondent also did not request evidence from Hernandez to demonstrate her physical presence in the United States on the required date. DCX 10 at 136-37; Tr. 18-19 (Hernandez); Tr. 44-46 (Tousley); *see* FF 8; *see also* FF 4 n.3. Respondent knew that a motion to reopen had to demonstrate that the I-130 was approvable when filed. *See* Tr. 45-46 (Tousley). Respondent understood what the standard of review entailed, as he had included it in his pleading: "A motion to reopen should be granted if the movant establishes prima facie eligibility for relief, i.e., a realistic chance that she will be able to establish eligibility." DCX 7 at 40 (internal quotations omitted).

14. On September 17, 2019, Respondent filed a motion to reopen Hernandez's immigration case with the Department of Homeland Security. DCX 7 at 38-44; DCX 10 at 135, 153.

15. Respondent attached only one exhibit regarding this Form I-130 to the motion to reopen, the Receipt Notice for the Form I-130 her mother had filed for the benefit of Hernandez. Tr. 44-45 (Tousley); DCX 12 at 6; *see* DCX 10 at 155-56, 163, 171. According to Disciplinary Counsel's expert, Respondent should have collected the actual 1-130 packet prior to filing the motion to reopen (not simply the Receipt Notice). Tr. 45 (Tousley). Respondent should have also asked Hernandez

for a birth certificate or other documentation to prove Hernandez's relationship with her mother and documentation to show that Hernandez was in the United States on or around December 21, 2000. Tr. 46-47 (Tousley).

16. On October 17, 2019, the Immigration Judge denied the motion to reopen because Respondent failed to substantiate that the Form I-130 filed on Hernandez's behalf in 1998 was approvable when filed, as Respondent failed to submit sufficient evidence that all the assertions in the Form I-130 were true and accurate at the time of filing. Additionally, the Judge found that Respondent failed to submit any evidence that Hernandez was physically present in the United States on December 21, 2000. Thus, the Judge determined that Hernandez did not establish prima facie eligibility for the relief she sought. DCX 10 at 135-37; Tr. 40-41, 46 (Tousley); Tr. 19-20 (Hernandez). As a result of Respondent's failure to request and collect these documents from Hernandez, which Respondent knew were essential, the motion to reopen was denied. *See* Tr. 49 (Tousley).

17. After Hernandez received the denial of her motion to reopen, within weeks after it had been submitted by Respondent, she contacted Respondent for an explanation. Tr. 19-20 (Hernandez). Respondent did not take responsibility for his failures in the handling of this case and did not take the time to explain the reason the court denied the motion. Tr. 20 (Hernandez). Instead, he belatedly asked Hernandez to gather more documents and to retain him again to proceed with another motion. Tr. 20-21 (Hernandez). Hernandez did not feel comfortable with Respondent because she could not understand why he had not originally requested

these documents before filing the motion, and she ended the representation. Tr. 20-21 (Hernandez).

18. Hernandez retained successor counsel after discharging Respondent and is currently awaiting her green card. Tr. 24-25 (Hernandez); *see also* Tr. 26 (Hernandez).

III. CONCLUSIONS OF LAW

A. Disciplinary Counsel Proved that Respondent Violated Rule 1.1(a) (Competence) and Rule 1.1(b) (Skill and Care).

Disciplinary Counsel has alleged as a single charge that Respondent acted in a manner that violated Rules 1.1(a) and 1.1(b). Specification ¶ 16(a). For the reasons set forth below, we find that Disciplinary Counsel has established a violation by clear and convincing evidence.

Rule 1.1(a) requires a lawyer to "provide competent representation to a client." The Rule further clarifies, and the Court has determined, that competent representation requires the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Rule 1.1(a); s*ee In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (appended Board Report) (a lawyer who has the requisite skill and knowledge, but who does not apply it for a particular client, violates obligations under Rule 1.1(a)). The Comments to Rule 1.1 state that competent representation includes "adequate preparation, and continuing attention to the needs of the representation to assure that there is no neglect of such needs." Rule 1.1, cmt. [5].

In *In re Evans*, the Board further explained that:

> To prove a violation [of Rule 1.1(a)], [Disciplinary] Counsel must not only show that the attorney failed to apply his or her skill and knowledge, but that this failure constituted a serious deficiency in the representation. . . . The determination of what constitutes a "serious deficiency" is fact specific.

902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board Report) (internal citations omitted). To prove a "serious deficiency," Disciplinary Counsel must prove that the conduct "prejudices or could have prejudiced a client and the error was caused by a lack of competence. . . . Mere careless errors do not rise to the level of incompetence." *Id.* at 70 (appended Board Report); *see also In re Yelverton*, 105 A.3d 413, 422 (D.C. 2014).

Rule 1.1(b) mandates that a lawyer "shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." Rule 1.1(b) is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report). The "serious deficiency" requirement that controls allegations of misconduct under Rule 1.1(a) applies equally to Rule 1.1(b). *See Yelverton*, 105 A.3d at 421-22.

To prove violations of Rule 1.1, a hearing committee often hears expert testimony. A hearing committee, however, may find a violation of the standard of care without expert testimony when an attorney's "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *In re Nwadike*, Bar Docket No. 371-00, at 28 (BPR July 30, 2004)

(inter alia, at the time of the deadline for a plaintiff's attorney to file a D.C. Super. Ct. Civil R. 26(b)(4) expert witness statement and by the close of discovery, the attorney not only failed to fulfill the attorney's court-ordered discovery obligations regarding essential expert opinion but also had not yet even obtained an opinion and was unaware of whether or not the attorney had proof to sustain the plaintiff's claim), *recommendation adopted*, 905 A.2d 221 (D.C. 2006); *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00, at 13 (BPR Dec. 27, 2002) (noting, in a case where the respondent attorney failed to file an immigration appeal after the client paid the initial fee for the appeal, that Disciplinary Counsel need not "necessarily produce evidence of practices of other attorneys in order to establish a Rule 1.1(b) violation"), *recommendation adopted in relevant part*, 840 A.2d 657 (D.C. 2004) (remanding to the Board for further consideration of the appropriate sanction).

The competency, skill, and care of an attorney under Rules 1.1(a) and (b) must be evaluated in terms of the representation required and provided in the particular matter at issue:

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Rule 1.1, cmt. [5].

Hernandez retained Respondent to take the appropriate legal steps to secure a successful adjustment of her status. FF 4. Successful representation in this matter required, at a minimum, proof of certain legally required conditions of eligibility, FF 6-9, which proof was typically demonstrated through documentary evidence. FF 5.

Respondent agreed to represent Hernandez, who sought to reopen her immigration matter and adjust her status and was paid for his work. FF 4, 10-11. He entered an appearance as counsel, FF 12, and filed a motion to reopen the immigration proceedings that attached only a single exhibit relevant to the merits of the Form I-130 filed in 1998. FF 14-15. Prior to filing the motion to reopen, Respondent failed to request other documentation from Hernandez that would have demonstrated her eligibility for the adjustment in status. FF 13. Only after Hernandez's motion to reopen was denied, did Respondent seek additional documentation that would have been relevant to the initial motion. FF 17.

The Committee received expert testimony that Respondent's actions in inadequately preparing Hernandez's motion to reopen "fell below that of a competent attorney" because Respondent "did not ask [Hernandez] for sufficient documents to support the motion to reopen, which resulted in the denial of the motion by the immigration judge." Tr. 48-49 (Tousley); *see also* FF 5; DCX 12 (expert opinion report). This, standing alone, would be sufficient to convince us that Disciplinary Counsel has proven a violation by clear and convincing evidence.

Even in the absence of expert testimony, however, we would have no hesitancy in concluding that Respondent's conduct violated the requirements of competency, care, and skill embodied in Rules 1.1(a) and 1.1(b). His motion to reopen lacked the "thoroughness[] and preparation reasonably necessary" for a successful motion. Rule 1.1(a); *see Drew*, 693 A.2d at 1132 (appended Board Report). His actions therefore constituted a "serious deficiency" which actually prejudiced Hernandez, by causing the denial of her motion to reopen. The failure was no "mere careless[ness]" but rather the product of a failure to conduct the bare minimum of necessary inquiry. *Evans*, 902 A.2d at 69-70; *see Yelverton*, 105 A.3d at 422.

Indeed, if, as the Comments to Rule 1.1 make clear, competency "includes inquiry into and analysis of the factual and legal elements of the problem" and "adequate preparation," Rule 1.1, cmt. [5], then Respondent's post-denial request for additional documentation to support a further motion for reconsideration is tantamount to an acknowledgment that his initial preparation was inadequate.[4]

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[4] Though Respondent did not appear at the hearing, he did submit an answer to Hernandez's initial complaint. In his response, Respondent characterized his actions as reflecting competent legal practice. *See* DCX 7; *see also* DCX 4 (formal Answer to the Specification of Charges, adopting earlier response to the complaint). Respondent contended that he had, in fact, sought a copy of the Form I-130 filed by Hernandez's mother, but it was not available. DCX 7 at 4.

Because Respondent chose not to appear, the Committee was unable to evaluate the credibility of his contention. Moreover, Respondent's Answer speaks only to the availability (or lack thereof) of a Form I-130 petition. However, the Committee heard evidence that other documents would also be appropriately appended to a motion to reopen, including evidence of the mother's citizenship or

Accordingly, for the reasons set forth above, we find that Disciplinary Counsel has established a violation of Rules 1.1(a) and 1.1(b) by clear and convincing evidence.

B. Disciplinary Counsel Proved that Respondent Violated Rule 1.3(a) (Diligence and Zeal).

Disciplinary Counsel has alleged that Respondent acted in a manner that violated Rule 1.3(a). Specification ¶ 16(b). For the reasons set forth below, we find that Disciplinary Counsel has established the violation by clear and convincing evidence.

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." Comment 1 to the Rule provides:

> This duty requires the lawyer to pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and to take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client.

"Neglect has been defined as 'indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of

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lawful permanent resident status, evidence of the mother-daughter relationship, and evidence from Hernandez to demonstrate her physical presence in the United States on the required date. FF 13 (citing, *inter alia*, DCX 10 at 136-37; Tr. 18-19 (Hernandez), Tr. 44-45 (Tousley)).

Accordingly, even were we to accept Respondent's contention and credit it, we would not find this evidence persuasive on the overall issue, and we would not alter our conclusion that Disciplinary Counsel had established a violation by clear and convincing evidence.

the responsibilities owed to the client.'" *In re Wright*, 702 A.2d 1251, 1255 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Reback*, 487 A.2d 235, 238 (D.C. 1985) (per curiam), *adopted in relevant part*, *In re Reback* (*Reback II*), 513 A.2d 226 (D.C. 1986) (en banc)).

Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Board Docket No. 10-BD-073, at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam).

Our summary of the facts relating to the allegations of a violation of Rule 1.1 are equally applicable to this alleged violation of Rule 1.3. Despite being retained in April 2019, Respondent failed to secure the necessary documentation for Hernandez's motion to reopen before filing it on September 17, 2019. FF 4, 15. The regulations governing the procedure for motions to reopen require that "A motion to reopen proceedings shall state the new facts that will be proven at a hearing . . . and shall be supported by affidavits and other evidentiary material." 8 C.F.R. § 1003.23(b)(3). However, from April to September 2019, Respondent did not request essential documents that he knew were essential for a viable motion to reopen. FF 13, 15-16.

Our case law sometimes suggests that a violation of Rule 1.3(a)'s requirements for diligence and zeal requires a failure to act over an extended period of time. *E.g.*, *Lewis* 689 A.2d at 564 (failure "for a significant time"); *Wright*, 702

A.2d at 1255 (a "consistent failure"). Here, though Respondent's failure was brief, it was unitary and complete at the time he acted, and his failure to zealously and diligently prepare Hernandez's motion to reopen prejudiced Hernandez in a manner that was entire and whole at the time of Respondent's actions. His failure to collect and attach the required documentation shows his lack of "commitment and dedication" to Hernandez's interests.

Thus, though he acted only in a singular filing of the motion to reopen, we conclude that Respondent's conduct constituted a failure to "take [the] action necessary to further [Hernandez's] interest. *Bradley*, Board Docket No. 10-BD-073, at 17. His knowing failure to request and then include the essential documents needed to file a viable motion to reopen, *see* FF 13, 15, makes it clear that he was "indifferen[t to] . . . or [in] conscious disregard of the responsibilities owed to [his] client." *Wright*, 702 A.2d at 1255. And thus, we conclude that Respondent's failure to investigate and prepare the motion to reopen reflected a lack of zeal and diligence inconsistent with the requirements of Rule 1.3(a).

Accordingly, for the reasons set forth above, we find that Disciplinary Counsel has established the violation of Rule 1.3(a) by clear and convincing evidence.

C. Disciplinary Counsel Did Not Prove that Respondent Violated 1.3(c) (Reasonable Promptness).

Disciplinary Counsel has alleged that Respondent acted in a manner that violated Rule 1.3(c). Specification ¶ 16(c). For the reasons set forth below, we find

that Disciplinary Counsel has not established the violation by clear and convincing evidence.

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." "Perhaps no professional shortcoming is more widely resented by clients than procrastination," and "in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed." Rule 1.3, cmt. [8]. The Court has held that failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). *See, e.g.*, *In re Speights*, 173 A.3d 96, 101 (D.C. 2017) (per curiam). Comment [8] to Rule 1.3 provides that "[e]ven when the client's interests are not affected in substance . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness," making such delay a "serious violation."

Respondent was retained by Hernandez in April 2019 and was paid fees by Hernandez in August 2019. FF 4, 11. He entered an appearance on her behalf on September 17, 2019. FF 12. He filed a motion to reopen that same day, FF 14, and a decision was rendered by the court in October 2019. FF 16.

Though, as we have described elsewhere, Respondent's filing was inadequate to the point of being a violation of the Rules, we cannot say that his conduct violated the requirement for promptness. Quite to the contrary, here Respondent acted quickly – if anything, too quickly. In addition, Hernandez did not testify that she

had suffered any of the harms (e.g. anxiety or loss of confidence from delay) that are the gravamen of complaints for lack of promptness.

Accordingly, for the reasons set forth above, we find that Disciplinary Counsel has not established the violation of Rule 1.3(c) by clear and convincing evidence. We therefore decline to accept this charge of misconduct.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a 30-day suspension. For the reasons described below, we recommend that Respondent be suspended for 30 days and that the Court stay the 30-day suspension, in favor of one year of unsupervised probation with the condition that Respondent complete 8 hours of CLE, including a minimum of 2 hours on ethics, that are pre-approved by Disciplinary Counsel.

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." *Reback II*, 513 A.2d at 231 (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 misconduct was serious. His failure to prepare adequately and to request the necessary evidence to support Hernandez's motion to reopen impacted a matter of great personal importance to his client.

2. Prejudice to the Client

Respondent's misconduct prejudiced his client. Her motion to reopen was denied and she was obliged to retain successor counsel to remedy the errors made by Respondent. FF 16-18.

3. Dishonesty

There are no allegations of dishonesty.

4. Violations of Other Disciplinary Rules

Other than the Rules specified by Disciplinary Counsel there is no evidence Respondent violated any other disciplinary rules.

5. Previous Disciplinary History

Respondent has no prior disciplinary history.

6. Acknowledgement of Wrongful Conduct

Respondent answered Hernandez's complaint by asserting that she had failed to provide him with adequate documentation. Thereafter he has chosen not to participate in these proceedings and has neither acknowledged wrongful conduct nor expressed remorse.

7. Other Circumstances in Aggravation and Mitigation

There is no other evidence of aggravating or mitigating factors.

C. Sanctions Imposed for Comparable Misconduct

Generally, the Court has imposed discipline of a 30-day suspension for conduct that appears more serious than that of Respondent, with informal admonitions for conduct that, in the Committee's view, is less serious.

For example, in *In re Cole*, 967 A.2d 1264 (D.C. 2009), a case relied upon by Disciplinary Counsel for its recommendation, Cole was suspended for 30 days after having both defaulted on a deadline for his client during an immigration proceeding and then lying about that failure to his client. Similarly, in *In re Bernstein*, 707 A.2d 371 (D.C. 1998), Bernstein was suspended for 30-days. He first filed suit on behalf of his client without the client's authorization and then failed to transmit a settlement offer to his client because of a personal crisis. In the end, his neglect led to the dismissal of his client's action.

By contrast, Disciplinary Counsel has frequently issued informal admonitions to lawyers who have defaulted on their obligations to their clients in ways similar (more or less) to the manner in which Respondent neglected to zealously represent Hernandez. *See In re Colbert*, Disc. Docket No. 2018-D176 (Letter of Informal Admonition Aug. 23, 2019); *In re Driskell*, Disc. Docket No. 2016-D031 (Letter of Informal Admonition Sept. 22, 2016); *In re Edwards*, Disc. Docket Nos. 2012-D007 & 2012-D209 (Letter of Informal Admonition Dec. 22, 2016); *In re Brown*, Bar Docket No. 2011-D100 (Letter of Informal Admonition May 14, 2012). In each of these instances, however, the respondent-attorney acknowledged wrongdoing and cooperated with Disciplinary Counsel's investigation.

Here, the Hearing Committee is of the view that the Respondent's conduct falls somewhere between these two poles. This matter does not involve any of the fraudulent conduct or other indicia of dishonesty that marked the conduct of respondents in *Cole* and *Bernstein*. Thus, in our view, a 30-day suspension as

recommended by Disciplinary Counsel would "foster a tendency toward inconsistent dispositions for comparable conduct." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *Berryman*, 764 A.2d at 766. We, therefore, conclude that a period of actual suspension on these facts is not warranted.

A reason, according to Disciplinary Counsel, to order a 30-day suspension is the fact that although Respondent filed an answer, he did not participate in the hearing. This failure is significant. Even though he could not afford an attorney, he could have appeared at the hearing *pro se* and he was provided information on how to apply for appointment of counsel upon a showing of financial need.

Indeed, Respondent's failure to appear before the Hearing Committee or engage with Disciplinary Counsel marks an unwillingness to acknowledge error or demonstrate remorse in a manner that distinguishes this case from those instances where an informal admonition sufficed. Though Respondent has no prior record of discipline, his disregard for the process at hand is troubling.

For these reasons, the Committee is of the view that an intermediate sanction is appropriate. We therefore recommend that Respondent be suspended for 30 days and that the Court stay the 30-day suspension, in favor of one year of unsupervised probation with the condition that Respondent complete 8 hours of CLE, including a minimum of 2 hours on ethics, that are pre-approved by Disciplinary Counsel. We further recommend that Respondent not be required to report his probation to his current clients. *See* D.C. Bar R. XI, § 3(a)(7).

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.1(a) and (b) and 1.3(a) and should receive the sanction of a 30-day suspension, stayed upon the condition of one-year of unsupervised probation and the completion of required CLE classes as articulated above.

AD HOC HEARING COMMITTEE

Paul Rosenzweig

Paul Rosenzweig, Chair

Carolyn Haynesworth Murrell

Carolyn Haynesworth-Murrell, Public Member

Chris Leonardo

Christopher T. Leonardo, Attorney Member