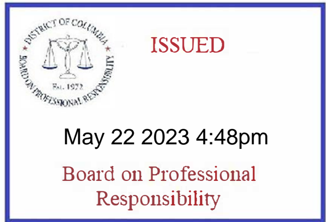

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
SYLVIA J. ROLINSKI,	:	
	:	Board Docket No. 19-BD-067
Respondent.	:	Bar Docket No. 2015-D231
	:	
A Member of the Bar of the District	:	
of Columbia Court of Appeals	:	
(Bar Registration No. 430573)	:	

ORDER OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

This matter arises out of Respondent's conduct in two court-appointed guardianships. Disciplinary Counsel alleged that Respondent committed 62 violations covering four D.C. Rules of Professional Conduct: 1.5(a) (unreasonable fee), 3.3(a)(1) (knowingly making a false statement to a court), 8.4(c) (dishonesty, deceit or misrepresentation), and 8.4(d) (serious interference with the administration of justice). A 32-day hearing ensued (spanning from November 10, 2020 until April 28, 2021) and, following briefing, an Ad Hoc Hearing Committee unanimously recommended that Disciplinary Counsel had proven a violation of Rule 1.5(a) by clear and convincing evidence. A majority further recommended that Disciplinary Counsel had proven a violation of Rule 8.4(c) and a violation of Rule 8.4(d); the dissent, by contrast, would not find a violation of either Rule.

Despite the Committee's disagreement on the charges proven, it unanimously recommended that Respondent receive an Informal Admonition and found that Respondent did not meet her burden of establishing a disability in mitigation under *In re Kersey*, 520 A.2d 321 (D.C. 1987).

Neither party took an exception before the Board. D.C. Bar R. XI, § 9(b) provides that where no exceptions are filed to a Hearing Committee Report, "the Board shall decide the matter on the basis of the Hearing Committee record." *See also In re Chapman*, 284 A.3d 395, 401 (D.C. 2022) ("To be sure, the Board cannot merely rubber-stamp the Hearing Committee Report when no exceptions are filed."). Having fully considered the report, we commend the Committee's thorough and clear Findings of Fact, which we adopt as they are supported by substantial evidence.[1] *In re Krame*, 284 A.3d 745, 752 (D.C. 2022).

We disagree with the Hearing Committee's conclusion that Respondent violated Rule 1.5(a), however. Relying on *In re Bailey*, 283 A.3d 1199 (D.C. 2022), which was decided by the Court of Appeals after the Hearing Committee issued its report, we instead find that the facts found by the Hearing Committee do not

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[1] The Board also finds the following non-substantive changes to citations in the Committee's report: On pg. 4, DX 2 at 76-82 is now DX 2; in FF 71, DX 30 at 28 is now DX 30 at 228 each time; in FF 103, DX 57 at 611 is now DX 58 at 611; on pg. 55 n.14, DX 72 is now DX 75 at 699; on pg. 123, DX 96 is now DX 97; on pg. 141, DCX 58 at 63 is now DX 58 at 612, and DX 58 at 64 is now *Id.* at 613; on pg. 170, DX 222 at 2 is now DX 222 at 2266 each time, and *Id.* at 3 is now *Id.* at 2267; on pg. 173, RX 208 is now RXK 208, RX 210 is now RXK 210, and RX 211 is now RXK 211; on pg. 214, RX 77B at 1766 is now RX 99B at 1766; on pg. 241, DX 70 at 687 is now DX 70 at 662; and on pg. 278, RX 200 at 11 is now RXK 200 at 11.

establish a Rule 1.5(a) violation by clear and convincing evidence. We agree with the Hearing Committee that Respondent did not violate Rule 3.3(a)(1), and we further agree with the Hearing Committee majority that Respondent violated Rules 8.4(c) and 8.4(d). Finally, we agree with the unanimous Hearing Committee that Respondent should receive an Informal Admonition.

II. FINDINGS OF FACT

Having adopted the Hearing Committee's Findings of Fact, we summarize the facts relevant to the legal analysis that follows. We make several additional findings of fact, by clear and convincing evidence, supported by citations to the record. *See* Board Rule 13.7.

The Probate Division of the Superior Court of the District of Columbia appointed Respondent as a guardian for two adult wards (Ruth Toliver-Woody and James Williams). FF 48, 99. In addition to other guardianship duties, she was required to file periodic reports with the Probate Court and to seek court approval of her compensation. *See, e.g.*, FF 35, 38.

In re Toliver-Woody. Respondent was appointed as Ms. Toliver-Woody's Guardian on January 11, 2005. She was required to file reports every six months (in mid-July and mid-January). FF 35; *see* FF 48-49. Respondent was required to file thirteen reports before the Toliver-Woody guardianship ended in 2011. *See* FF 90; HC Rpt. at 243 n.58. Seven of those reports were filed late (the 2nd, 5th, 6th, 7th, 10th, 12th, and 13th and Final reports).

These late filings prompted the Probate Court to issue seven delinquency notices. If a delinquency has not been cured 14 days after the notice, the matter is automatically set for a summary hearing before a Probate Division senior judge to address the continued delinquency.[2] FF 34. Three summary hearing notices were issued during the Toliver-Woody guardianship: August 1, 2005 (following the delinquency notice concerning the 2nd report); February 1, 2008 (following the delinquency notice concerning the 6th report); and August 3, 2011 (following the delinquency notice concerning the 13th and Final Report). DX 5 at 50, 61, 68-69.

The summary hearing concerning the 2nd report was vacated after Respondent filed the 2nd report on August 11, 2005. FF 50; *see* DX 5 at 67-68. The Probate Division held summary hearings concerning the 6th report (hearing held on March 4, 2008 (continued to March 18, 2008)) and the 13th and Final Report (hearing held on August 26, 2011). Following these two summary hearings, the presiding judges determined that the delinquent reports had been filed by the time of the hearing. FF 56, 91.

The Register of Wills and multiple Division staff members are required to "schedule, prepare for, and conduct the summary hearings," which means "[t]ime, staff, and technology have to be diverted from other important and necessary tasks." FF 34; *see also* FF 35 ("multiple Division staff" are involved "to set and prepare for

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[2] Two senior judges conducted summary hearings up to three times per week. FF 35. During 2005-2015, approximately 50-75 summary hearings were held per week among the two or three summary hearing calendars. Tr. 3860 (Stevens). The majority of those hearings involved late Guardianship Reports. *Id.*

a summary hearing"). Dealing with delinquent filings is not "'burdensome,'" but "'can take up a lot of time'" and time "'is a scarce resource'" in the Probate Division. FF 35. Indeed, it is "'a lot of work—there's not a lot of clerks,'" and "'when people don't file timely,'" it can "'become an overwhelming process [that] does weigh on the system.'" *Id.*

Respondent was supposed to file a "Suggestion of Death" "'forthwith'" after Ms. Toliver-Woody died on June 20, 2011. FF 37, 88. This would inform the Probate Division and interested third parties that the process of addressing the ward's assets must begin. FF 37. Respondent never filed a Suggestion of Death, and instead notified the Probate Court of Ms. Toliver-Woody's death in her 13th and Final Report, which she filed on August 10, 2011, after receiving a delinquency notice and after a Summary Hearing was scheduled. FF 89-91. As a result, the Probate Division was unaware of Ms. Toliver-Woody's death for approximately two months, during which it continued to operate as if she were still alive, which means that deadlines, ticklers, delinquency notices, and summary hearings continued to be set and issued for required filings. FF 37. The information contained in the Guardianship Report informed the Court of Ms. Toliver-Woody's death, so that it could proceed with termination of the guardianship. FF 90.

In re Williams. Respondent was appointed as James H. Williams' temporary guardian during a June 3, 2013 hearing. FF 96-97. She was appointed Mr. Williams' permanent guardian during an August 28, 2013 telephone hearing that lasted about ten minutes. Following her appointment, Respondent was required to file a

Guardianship Plan within 90 days. FF 99. The plan serves several purposes, including assuring the court that the guardian has investigated and determined the ward's needs and the care necessary to meet those needs. FF 33. Respondent did not file the Guardianship Plan on time, and the Probate Division issued a delinquency notice on December 2, 2013, and, on December 20, 2013, scheduled a summary hearing for January 31, 2014. FF 104. Respondent filed her Guardianship Plan on December 20, 2013. FF 105. At the summary hearing, Respondent attributed her late filing to a month-long jury trial—filing the Guardianship Plan "'just fell off [her] radar screen.'" FF 106. The ensuing summary hearing Order stated that "'[t]he guardianship reports for this case are due on 2/28 and 8/28 of each year.'" *Id.*

Mr. Williams died on July 23, 2014. FF 108. Respondent filed a Notice of Death on August 20, 2014. FF 109. She did not timely file the 2nd report in August 2014. The Probate Division issued a delinquency notice on October 24, 2014. FF 110. Respondent filed her report on November 12, 2014, and Judge Fischer terminated the *Williams* guardianship on November 26, 2014. FF 111-12.

Motion for Reconsideration. Respondent filed her only Petition for Compensation for her services as Mr. Williams' guardian on December 23, 2014, seeking $33,374 in fees and expenses, supported by an invoice consisting of approximately 500 entries. FF 113. Relevant to the issues before the Board, Respondent's petition sought $270 for three hours purportedly spent attending the August 28, 2013 hearing in the *Williams* matter. FF 113.

On July 28, 2015, Judge Christian issued an order identifying problems with Respondent's Petition for Compensation, allowing only $772.85 of the $33,374 Respondent requested, largely due to vague and insufficiently detailed descriptions of the legal services provided, and applying an across-the-board reduction of eighty-five percent (that was reversed on appeal). DX 75; DX 82; FF 114. Relevant to the issues before the Board, the Order contained a section titled "'Gross Overbilling for Time Spent on Court Hearings Where Ms. Rolinski Appeared Via Telephone is Inappropriate, Unethical, and Will Not be Compensated,'" where Judge Christian noted that Respondent's time entries for hearings on June 3, 2013, August 28, 2013, and October 11, 2013 "'are conspicuously for three hours,'" that Respondent "'should be aware that travel to and from the courthouse is not compensable and therefore, her time entry of three hours is unreasonable, inflated, and should be reduced to the actual time spent on the hearing,'" and that the docket sheet showed that Respondent had participated in the August 28, 2013 and October 11, 2013 hearings by telephone. FF 114.

Respondent was "'shaken to the core'" by Judge Christian's Order and decided to file a Motion for Reconsideration, which was due in 10 days. FF 115, 153; DX 76 at 735. She and her associate undertook an "'all-hands-on-deck'" "'around the clock'" effort to prepare the motion for reconsideration because they "'had so little time and so much data to go through,'" including time sheets, Respondent's calendar, the Guardianship Reports, court records, and notes. FF 153. Respondent timely filed the motion, in which she attempted to respond to Judge

Christian's concerns and better describe the services that she had provided. She also attached a number of documents to her motion, including a statement of the benefits she provided to Mr. Williams and supporting declarations and court documents. The motion with attachments comprised over 80 pages. DCX 76. Although Respondent believed that she was entitled to the fees initially requested, she cut her request by "'thousands of dollars . . . as a courtesy . . . to try to comply with Judge Christian's specific requirements.'" FF 153.

When Respondent filed her Motion for Reconsideration, she did not appreciate that the August 28 hearing was held over the phone, even though that fact was clearly identified in Judge Christian's Order. Her motion sought to justify the time billed for the August 28, 2013 hearing by asserting that Respondent had a particularly long wait for the August 28, 2013 hearing, which allowed the parties to confer. FF 115; DX 76 at 746. That assertion was not true; Respondent had confused the August 28 hearing with other in-person hearings during which counsel did, in fact, confer while they waited for the matter to be called. FF 158-*53*.

Judge Christian denied the Motion for Reconsideration, and Respondent appealed to the Court of Appeals, which affirmed in part, reversed in part, and remanded the case to the Probate Division to grant Respondent's Fee Petition in the amount of $5,152.30. FF 116. Respondent did not realize her misrepresentation regarding the August 28 hearing until she reviewed the hearing transcript when preparing her reply brief in the Court of Appeals. At that time, she realized that the

"3.0 hours" time entry resulted from a data entry error. *See* FF 158-*35*; DX 79 at 859-860; DX 81 at 944 n.12.

III. DISCUSSION

A. Respondent's Motions to Dismiss

Board Rule 7.16 directs the Board to rule on a respondent's motion to dismiss, with the benefit of the Hearing Committee's recommended disposition. *See also In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991). Respondent brought two Motions to Dismiss: The first on lack of adequate notice; the second on *res judicata* and collateral estoppel. The Hearing Committee recommended denial of both, and we agree.

i. ***Adequate Notice.*** Respondent filed a Motion in Limine, and for Dismissal in Part and for Other Relief, in which she argued that many of the factual bases for Disciplinary Counsel's charges were not alleged with the specificity necessary for her to defend herself. The Hearing Committee concluded that Respondent "raised a number of legitimate concerns" in that motion, concerns that the Committee similarly found troubling "throughout this proceeding." HC Rpt. at 158. Indeed, prior to opening statements, the Hearing Committee informed the parties that it

> thinks that the Specification of Charges is not as clear as it might be in some – at least some respects as to what the Disciplinary Counsel, Office of Disciplinary Counsel contends and will contend to be specific instances of knowing false statements to the court or incidents, other incidents of dishonesty.

HC Rpt. at 5 (quoting Tr. 9-10). In response, Disciplinary Counsel filed a Notice of Violative Conduct on December 2, 2020.

As the Hearing Committee recognized, a respondent is entitled to notice of both the charges and the alleged conduct giving rise to those charges. In considering the notice Respondent received, the Hearing Committee properly considered the information contained in the Specification of Charges and subsequent filings (including the Notice of Violative Conduct). The Hearing Committee was sharply critical of Disciplinary Counsel and what it termed its "seemingly careless approach to its notice responsibilities." HC Rpt. at 161. Nonetheless, it concluded that Respondent had a sufficient understanding of the charges against her and had a meaningful opportunity to be heard. It thus recommended that "the Board conclude that Respondent eventually had adequate notice of the charges against her and thus deny her motion to dismiss for lack of adequate notice." *Id.* We agree and deny Respondent's motion to dismiss based on lack of adequate notice.

ii. *Res Judicata and Collateral Estoppel.* Respondent filed a Pretrial Motion to Dismiss all the charges on the basis of *res judicata*, collateral estoppel, and issue preclusion. HC Rpt. at 161. Respondent argued that "the allegations in the Specification of Charges 'were expressly, correctly, and soundly rejected' in an unpublished Memorandum Opinion and Judgment by the Court of Appeals, *In re Williams*, No. 15-PR-1145, Mem. Op. & J (D.C. July 7, 2017)." *Id.* (quoting Resp. Pretrial Motion at 7 (Apr. 1, 2020)). She further argued that Disciplinary Counsel should be bound by the judgment because Disciplinary Counsel is in privity with the District of Columbia, and that "Disciplinary Counsel's interests were adequately

represented in the prior action." *Id.* (citing Resp. Pretrial Motion at 15-18 (internal quotations omitted)).

The Office of the Attorney General (OAG) appeared and argued before the Court of Appeals in *Williams* in support of Judge Christian's Order regarding Respondent's Fee Petition. The Hearing Committee recommended that Respondent's Motion to Dismiss be denied because Disciplinary Counsel was not in privity with the OAG, and because the issues in this disciplinary matter were not "actually litigated" before the Court of Appeals in *Williams*, as that matter involved only whether Judge Christian had abused her discretion when disallowing most of Respondent's Fee Petition. HC Rpt. at 162-65. We agree with the Hearing Committee's recommendation and deny this motion to dismiss.

B. Conclusions of Law

Unlike the Committee's Findings of Fact, which we review for substantial evidence, we review the Committee's conclusions of law (and ultimate facts) *de novo*. *See, e.g.*, *In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam); *In re Bradley*, 70 A.3d 1189, 1194 (D.C. 2013) (per curiam) (Board owes "no deference to the Hearing Committee's determination of 'ultimate facts,' which are really conclusions of law and thus are reviewed *de novo*").

The Committee unanimously found that Respondent violated Rule 1.5(a) by charging an unreasonable fee due to a typographical error on the billing entry for the August 28 hearing. HC Rpt. at 210-12. A majority also found that Respondent's false explanation of a time entry in her Motion for Reconsideration was recklessly

dishonest in violation of Rule 8.4(c) (charge 53).[3] *Id.* at 228. Finally, that same majority found that Respondent violated Rule 8.4(d) by submitting 11 delinquent filings, which it concluded seriously interfered with the administration of justice (charges 57, 58, 60, 61, and 62). *Id.* at 263-65.

i. Disciplinary Counsel Did Not Prove that Respondent Violated Rule 1.5(a) Because the One Proven Overcharge Resulted from a Data Entry Error, Not Negligence.

Rule 1.5(a) provides that "[a] lawyer's fee shall be reasonable." The Hearing Committee concluded that Respondent charged an unreasonable fee when she charged 3.0 hours for the August 28 hearing, when she should have charged only 0.3 hours. Relying on *Cleaver-Bascombe*'s statement that "charging any fee for work that has not been performed is *per se* unreasonable," the Hearing Committee concluded that Respondent charged an unreasonable fee because she charged for three hours, when her time at the hearing was three-tenths of an hour. *In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006). Noting that neither the text of Rule 1.5(a), nor the discussion in *Cleaver-Bascombe*, required Disciplinary Counsel to prove *any* "intent or other mental element," the Hearing Committee concluded that the data entry error for the time entry constituted at best a "technical" violation of Rule 1.5(a). HC Rpt. at 211-12.

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[3] Disciplinary Counsel filed a Notice of Violative Conduct on December 2, 2020, which the Committee attached as an exhibit to the Hearing Committee Report and which included the Committee's numbering of each allegation of misconduct as "charges."

A week after the Hearing Committee issued its Report and Recommendation, the Court of Appeals found a violation of Rule 1.5(a) in a different case because the respondent's overbilling, which included repeated double-billing and multiple erroneous charges, suggested "that he was, at the very least, negligent." *Bailey*, 283 A.3d at 1208 (rejecting the argument that Rule 1.5(a) prohibited only intentional overcharges). Indeed, in *Bailey*, Disciplinary Counsel had "sought to prove only that the overbilling was 'unreasonable' or negligent so as to constitute a violation of Rule 1.5(a)." *Id.* at 1208 n.4. Having the benefit of *Bailey*, which the Hearing Committee did not have, and understanding *Bailey* to hold that less-than-negligent overcharges do not violate Rule 1.5(a), we find no Rule 1.5(a) violation because the Committee found that the single instance of over-billing was the result of a data entry error, not negligence.[4]

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[4] We recognize that Disciplinary Counsel alleged numerous additional overcharges, but the Hearing Committee concluded that these had not been proven violations by clear and convincing evidence. Similarly, we are mindful that in reviewing the reduction of the *Williams* fee petition, the Court of Appeals concluded that Judge Christian did not abuse her discretion in disallowing fees related to vague time entries and entries that were for "noncompensable work" under the Guardianship Act. DX 82 at 963; HC Rpt. at 162. However, Disciplinary Counsel has never argued that Judge Christian's fee reduction or the Court of Appeals' partial affirmance conclusively establish a Rule 1.5(a) violation. In *In re Pye*, Board Docket No. 09-D-077, at 19-20 (BPR Jan. 26, 2012), we declined to adopt a conclusion that each time a probate court disallows a portion of a fee petition as unreasonable, a Rule 1.5(a) violation necessarily follows. As the Hearing Committee correctly noted—in contrast to the probate court's review of the fee petition—here, the burden of proof is not on Respondent, the standard of proof to establish a rule violation is clear and convincing evidence, and the probate court did not take testimony and "did not therefore have the opportunity we have had to assess the credibility of

ii. Disciplinary Counsel Proved by Clear and Convincing Evidence that Respondent's Motion for Reconsideration Contained a Recklessly False Statement Regarding the Length of the August 28, Hearing.

Rule 8.4(c) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty," which includes "not only fraudulent, deceitful or misrepresentative conduct, but also 'conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.'" *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (per curiam) (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam)). Statements made in reckless disregard of the truth violate Rule 8.4(c). *In re Ukwu*, 926 A.2d 1106, 1113-14 (D.C. 2007); *see also Samad*, 51 A.3d at 496; *Cleaver-Bascombe*, 892 A.2d at 404; *In re Rosen*, 570 A.2d 728, 729 (D.C. 1989) (per curiam). 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).

There is no dispute that Respondent's statement was false. We agree with the Hearing Committee that there is a thin line between negligence and recklessness here, and we further agree that Respondent's conduct landed on the reckless side of the line. Judge Christian devoted a section of her Order to overbilling for time spent

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Respondent's testimony regarding the charges that have evolved into this proceeding." HC Rpt. at 168-69.

attending hearings, and pointed out in that section that the August 28 hearing was held over the phone. We agree with the Hearing Committee majority that

> Respondent's failure to step back and ask herself whether she had any actual basis for saying that she had attended the hearing in person and had spent three hours on it conflicts, in the majority's view, with any notion of responsible reconstruction of time spent on a task many days or weeks or, in this instance, 16 months earlier – especially when Judge Christian had noted in her Order that the Probate Division's *Williams* docket showed that Respondent had participated in the August 28, 2013 hearing by telephone.

HC Rpt. at 228; *see In re Boykins*, 999 A.2d 166, 171-72 (D.C. 2010) (finding reckless dishonesty where the respondent falsely represented to Disciplinary Counsel that medical provider bills had been paid, without attempting to verify his memory of events from more than four years prior, and despite the fact that he had recently received notice of non-payment from one of the providers). Respondent violated Rule 8.4(c).[5]

iii. Disciplinary Counsel Proved by Clear and Convincing Evidence that Respondent's Pattern of Late Filings Violated Rule 8.4(d).

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 she should have; (ii) Respondent's

[5] Rule 3.3(a)(1) is violated only by a *knowing* misstatement to the court, and we agree with the Hearing Committee that Disciplinary Counsel did not provide by clear and convincing evidence that this statement violated Rule 3.3(a)(1). HC Rpt. at 228-229.

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 at least 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). Rule 8.4(d) can be 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). The Court of Appeals has acknowledged, with respect to the "more than a *de minimis* way" threshold, that "[t]his point is a matter of degree." *In re Yelverton*, 105 A.3d 413, 427 (D.C. 2014). Establishing an interference with the administration of justice does not require proof that the attorney's action or inaction "cause[d] the court to malfunction or make an incorrect decision." *Hopkins*, 677 A.2d at 60. "[A]n attorney's improper conduct can be prejudicial to the administration of justice not only by bearing directly on the judicial decision-making function, but also by bearing directly on the judicial process in general." *Id*.

The Hearing Committee majority concluded that Respondent made 11 delinquent filings which, in their entirety, caused "some person or component in the judicial process to take material corrective or other measures that would not otherwise have been necessary," HC Rpt. at 263-64:

- the 2nd, 5th, 6th, 7th, 10th, 12th, and 13th and Final Guardianship Reports in *Toliver-Woody*;
- the Suggestion of Death in *Toliver-Woody*;
- the Suggestion of Death in *Williams*;
- the Guardianship Plan in *Williams*; and
- the 2nd Guardianship Report in *Williams*

HC Rpt. at 263. In arriving at this conclusion, the majority specifically referenced Probate Division Director Stevens' testimony about the importance of timely filing the Guardianship Plan, Guardianship Reports, and the Notice of Death, and the effects of failures to do so. *Id.* at 264.

We agree with the Hearing Committee majority. There is no question that Respondent's conduct (1) was improper (she failed to make timely filings), and (2) bore on identifiable cases (the *Toliver-Woody* and *Williams* probate cases). Whether the misconduct had a more than *de minimis* effect on the administration of justice, however, is a closer question. Not every late filing, or even several late filings, necessarily interfere with the administration of justice in more than a *de minimis* way. But here there is a pattern of lateness. Respondent was late on seven of the thirteen Guardianship Reports filed in *Toliver-Woody*, was late in filing the Suggestion of Death (or notifying the Court of the ward's passing) in both cases, was late in filing the Guardianship Plan in *Williams*, and was late in filing one of the two *Williams* Guardianship Reports. Her late filings led to three summary hearings (a fourth hearing was cancelled), requiring the Probate Division staff to prepare for three hearings necessitated solely by Respondent's failure to meet her deadlines. We recognize that Respondent is not unique in her failure to file reports on time, and that many other Probate Division practitioners fail to meet their court-imposed deadlines. We further recognize that, as the dissent noted, Respondent's 11 dilatory

filings were spread over an almost ten-year period.[6] But neither of these factors diminishes Respondent's misconduct and the resulting steps the Division had to take.

IV. SANCTION

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).

[6] The dissenting member distinguished the administrative burden of late filings that resulted in the issuance of delinquency notices and those that resulted in a summary hearing and concluded that her late filings did not seriously interfere with the administration of justice given the limited number of summary hearings and the fact that the summary hearing system was developed to address the high number of late filings in the probate system. In the view of the dissenting member, Respondent's few late filings did not burden that system. *See* Separate Statement at 10-13, 17-20.

We agree with the Hearing Committee that an Informal Admonition, the least severe form of discipline,[7] is consistent with the sanctions imposed in cases involving comparable misconduct. The Hearing Committee extensively discussed comparable cases involving the failure to make timely filings. HC Rpt. at 271-73.

The Hearing Committee then considered whether Respondent's single instance of reckless dishonesty warranted a more severe sanction, and concluded that it did not, when considered in light of Respondent's extraordinary record of public service, her medical problems during the relevant period,[8] the absence of any prior disciplinary record, and her continuing practice of law during the disciplinary proceeding. *Id.* at 273-75. We agree. Respondent's single recklessly false statement, made under the unique time pressure created by the deadline for filing the motion for reconsideration, is not sufficiently aggravating to impose a more serious sanction. To be sure, Respondent should have been more careful, as the court's

[7] D.C. Bar Rule XI, § 3 permits the imposition of three non-suspensory sanctions, in descending severity: censure by the court (public censure), reprimand by the Board, and informal admonition by Disciplinary Counsel. Rule XI, § 3(3), (4), and (5). *See In re Schlemmer*, 870 A.2d 76, 80 (D.C. 2005).

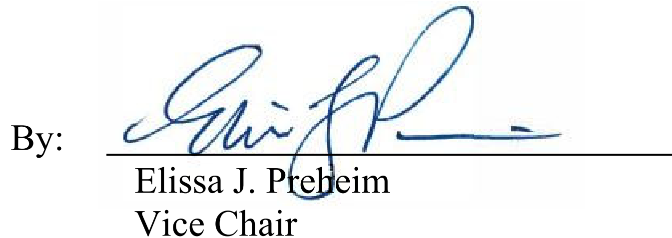
[8] The Hearing Committee concluded that Respondent did not carry her burden of proving *Kersey* mitigation. Respondent did not take exception to that conclusion, and we agree that she did not meet her burden, for the reasons set forth by the Hearing Committee. Even though Respondent was not entitled to *Kersey* mitigation, the Hearing Committee was correct to consider her medical condition, along with other mitigating factors, in recommending a sanction. *In re Herbst*, 931 A.2d 1016, 1017 n.1 (D.C. 2007) (per curiam) ("In recommending a sanction, the Board is to consider mitigating . . . circumstances independently of any *Kersey* disability; specifically, the evidence of personal stress and respondent's diagnosis of ADHD were mitigating factors that had to be considered.").

Order stated that the August 28 hearing was by phone (and thus, her "waiting time" explanation could not have been true). While she was reckless in making this one misrepresentation, the record shows an effort to ensure that accuracy of the information in the motion for reconsideration. The failure of that effort does not warrant a greater sanction.

V. CONCLUSION

For the reasons stated above, we find that Respondent violated Rules 8.4(c) and 8.4(d) and direct Disciplinary Counsel to informally admonish Respondent.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Elissa J. Preheim
Vice Chair

All members of the Board concur in this Order except Ms. Pittman, Mr. Walker, and Ms. Blumenthal, who are recused.