THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
September 17, 2024

In the Matter of:	:	
	:	
WILLIAM S. STANCIL,	:	
	:	Board Docket No. 23-BD-014
Respondent.	:	Disc. Docket Nos. 2022-D073 &
	:	2022-D142
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 370895)	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

The Hearing Committee found by clear and convincing evidence that Respondent William S. Stancil violated District of Columbia Rules of Professional Conduct ("Rules") 1.1(a) & (b) (competence, skill and care), 3.1 (frivolous claim), and 8.4(d) (serious interference with the administration of justice), arising from his representation of two clients in the Superior Court of the District of Columbia. Respondent filed an Answer to the Specification of Charges at the outset of the matter, but has otherwise not participated in these proceedings. The Hearing Committee recommended that Respondent be suspended for 90 days, with fitness.

Disciplinary Counsel had also charged that Respondent violated Rule 1.6(a)(1) (knowingly disclosing a confidence or secret). However, Disciplinary Counsel did not adduce evidence in support of this allegation at the hearing, and abandoned it in post-hearing briefing. The Hearing Committee found that this charge was not sustained.

* 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.

We agree with the Hearing Committee's reasoning and recommendation. We adopt its Report, which is attached hereto and incorporated by reference. We briefly summarize the facts and issues below.[1]

Count I: Latoya Smith/Rodney Gaylor Domestic Relations Matter

On December 22, 2016, Latoya Smith and Rodney Gaylor obtained a decree of divorce. The decree contained provisions relating to custody and visitation of their minor children. Ms. Smith and Mr. Gaylor continued to disagree about those issues. On February 8, 2017, the court issued an order clarifying the custody and visitation issues. However, the parties continued to disagree about these issues.

Ms. Smith retained Respondent, who filed a series of motions that were substantively meritless and procedurally improper. Despite the court's order, Respondent advised Ms. Smith to deny court-ordered visitation rights to Mr. Gaylor. As the Superior Court stated to Ms. Smith at a December 16, 2021, hearing, "[y]ou deprived [Mr. Gaylor] of custodial time that you admit was his." DCX 26 at 20.[2] To which Ms. Smith responded, "I was following my counsel." *Id.* at 22.

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[1] The factual summary refers to facts not included in the Hearing Committee Report. These additional findings of fact are supported by clear and convincing evidence. Board Rule 13.7; *see In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam); *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam).

[2] "DCX" refers to Disciplinary Counsel's exhibits; "FF" refers to the Hearing Committee's Findings of Fact; "Tr." refers to the transcript of the hearing on September 20, 2023.

Count II: The Eviction Matter

The second matter concerns a house in Southeast Washington owned by the Smith family and administered by their daughter Jacqueline Williamson, who had a power of attorney from the Smiths. Tr. 139, 141-43. The Smiths' other daughter, Barbara Pittman, lived in the house as a tenant. Tr. 142. Ms. Pittman sued her parents, claiming that she owned the house. Tr. 141-42. The Superior Court held that the Smiths were the owners. Tr. 142. The Smiths, acting through Ms. Williamson, then evicted Ms. Pittman. Tr. 142-45.

Respondent filed a suit on behalf of Ms. Pittman, against Ms. Williamson, claiming compensatory and punitive damages for an alleged wrongful self-help eviction "'without going through the D.C. Landlord-Tenant Court. '" FF 31 (quoting DCX 55 at 32); DCX 55 at 33. This allegation was false: The eviction had been carried out by the U.S. Marshals Service on a writ of restitution, based on a Superior Court judgment obtained by Ms. Williamson after a jury trial, which judgment had been affirmed by the D.C. Court of Appeals. Respondent claimed that he was making the allegation that the eviction was wrongful based on what Ms. Pittman had told him, that he was under time pressure so did not investigate his client's claim, and that he could not check the relevant court records because the court was closed due to the pandemic. In fact, the information about the eviction and the earlier litigation was available on-line without the need to go to the courthouse and more than two weeks had elapsed between the time Respondent was retained and his filing the meritless complaint.

The court entered judgment against Ms. Pittman and ordered her to pay attorney fees to Ms. Williamson.

For Respondent's violations of Rules 1.1(a) & (b) (competence, skill and care), 3.1 (frivolous claim), and 8.4(d) (serious interference with the administration of justice), and for the reasons set forth in the Hearing Committee Report, the Board recommends that Respondent be suspended for 90 days, with the requirement to prove fitness to practice prior to reinstatement. The Board further recommends that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Michael E. Tigar
Michael E. Tigar

All members of the Board concur in this Report and Recommendation, except Ms. Cassidy, who did not participate.

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:	:	
	:	
WILLIAM S. STANCIL,	:	
	:	
Respondent.	:	Board Docket No. 23-BD-014
	:	Disc. Docket Nos. 2022-D073 &
A Member of the Bar of the	:	2022-D142
District of Columbia Court of Appeals	:	
(Bar Registration No. 370895)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, William S. Stancil, is charged with violating District of Columbia Rules of Professional Conduct ("Rules") 1.1(a) & (b) (competence, skill, and care), 1.6(a) (knowingly revealing a confidence or secret), 3.1 (frivolous claim), and 8.4(d) (serious interference with the administration of justice) in Count I, and Rules 1.1(a) & (b), 3.1, and 8.4(d) in Count II, arising from his representation of two clients in the Superior Court of the District of Columbia. Disciplinary Counsel contends that Respondent committed all of the charged violations (except for Rule 1.6(a)), and should be suspended for at least six months, with fitness, as a sanction for his misconduct. Respondent filed an Answer at the outset of this action, but has otherwise not participated in these proceedings.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven by clear and convincing evidence that Respondent has violated Rules

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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.

1.1(a), 1.1(b), 3.1, and 8.4(d) in both Counts I and II. The Committee further recommends that Respondent be suspended for 90 days, with fitness.

I. PROCEDURAL HISTORY

On March 1, 2023, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"), and Respondent filed his purported Answer on March 16. Disciplinary Counsel filed a Motion in response, however, to direct Respondent to admit or deny the allegations in the Specification. *See* Disciplinary Counsel's Motion to Direct Respondent to Admit or Deny Allegations (filed March 24, 2023). The Hearing Committee granted this Motion and ordered Respondent to clarify whether "the Committee shall treat his responses as a denial of all numbered allegations" and, if it should not treat his responses as such, to "specify which numbered allegations he agrees with or lacks knowledge or information sufficient to form a belief." Order, April 11, 2023.

Respondent did not file a response, nor did he participate in the pre-hearing conference. Disciplinary Counsel thereby filed a Motion to limit Respondent's presentation at the hearing under Board Rule 7.7, which was granted without prejudice (though Respondent ultimately did not participate at the hearing). Order, June 15, 2023.

A hearing was held on September 20, 2023 before this Committee, consisting of Daniel Portnov, Esquire (Chair), Thomas Alderson (Public Member), and Philip

C. Andonian, Esquire (Attorney Member).[1] Disciplinary Counsel was represented by Assistant Disciplinary Counsel Jason R. Horrell, Esquire; Respondent was not present, nor was counsel present on his behalf. Disciplinary Counsel called Johnnie Bond, Jr., Esquire, Dorene Haney, Esquire, and Azadeh Matinpour, Esquire as witnesses. Exhibits DCX 1-66[2] were also admitted into evidence. Tr. 124 (DCX 6-25, 27-29); Tr. 192 (DCX 36-52, 53-63); Tr. 231 (DCX 1-5, 26, 30-35); Tr. 255 (DCX 64-66).

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the charged violations set forth in the Specification. Tr. 253; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel submitted DCX 64-66 as additional evidence in aggravation. Tr. 255.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on October 20, 2023. Respondent did not a file a brief in response.

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[1] The Attorney Member was unable to participate in the entire hearing. Disciplinary Counsel, however, consented to his participation in the decision of this matter, pursuant to Board Rule 7.12. *See* Disciplinary Counsel's Statement in Response to the Chair's Order of September 18, 2023 (consenting to the participation of the Attorney Member).

[2] "DCX" refers to Disciplinary Counsel's exhibits. "Tr." refers to the transcript of the hearing held on September 20, 2023. "ODC Br." refers to Disciplinary Counsel's October 20, 2023 Post-Hearing Brief.

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").

A. Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on June 20, 1983, and assigned Bar number 370895. DCX 1.

2. Respondent is an experienced lawyer who has practiced for approximately 39 years in the areas of civil, probate, landlord-tenant, and family law. Tr. 230-31 (Matinpour).

B. Count I – Disciplinary Docket No. 2022-D073

3. On August 15, 2018, Latoya Smith hired Respondent to represent her in an ongoing child custody dispute against Rodney Gaylor, her ex-husband and the children's father. DCX 31 at 4; *see* DCX 6. Respondent entered his appearance in the matter on November 2, 2018. DCX 13. Mr. Gaylor was represented by Johnnie Bond, Esquire, who testified at the hearing in this matter. Tr. 18 (Bond).

4. The child custody matter was heavily contested and had an extensive litigation history prior to Respondent's involvement. Tr. 20-21 (Bond); *see generally* DCX 6.

Relevant Litigation History Prior to Respondent's Involvement

5. Custody of Ms. Smith's and Mr. Gaylor's children was governed by a divorce judgment entered on December 22, 2016. DCX 7.

6. The divorce judgment awarded Ms. Smith and Mr. Gaylor joint physical custody of their two minor children under a set schedule. Mr. Gaylor would exercise custody "on Wednesday afternoons after school until Friday morning at the beginning of school, and the second and fourth weekends." DCX 7 at 29. On the weekends that Mr. Gaylor had custody, he was to "pick the children up from school on Fridays and return [them] to Ms. Smith's residence by 4:00 pm on Sundays." *Id.* Mr. Gaylor also received "two weeks of additional visitation" during the children's summer recess from school, and he was required to "provide Ms. Smith with the dates of these weeks by May 1st of each year." *Id.*

7. Soon after the entry of the divorce judgment, the parties disagreed about whether Mr. Gaylor was entitled to custody from Wednesday to Friday and on the specified weekends when school was not in session because the stated exchange times were based upon the start and end of the school day. Tr. 26-28 (Bond).

8. Mr. Gaylor moved to clarify that his custody time did not depend on whether the children were in school on a given day because the divorce judgment was "unclear if the regular schedule extends to days when the children do not have

school for whatever reason, such as snow days, school holidays, and summer." DCX 8 at 2. Mr. Gaylor did not seek to modify or otherwise alter the custody schedule. *See id.* at 3; Tr. 32 (Bond).

9. Ms. Smith did not oppose the motion to clarify; instead, she moved to modify custody, requesting that the children spend every school night with her and that the court specify which two weeks in the summer of 2017 that Mr. Gaylor would exercise his additional visitation. DCX 9.

10. On February 8, 2017, the Superior Court of the District of Columbia issued a two-page order clarifying that Mr. Gaylor's weekly custodial schedule applied "both when the children are in school, and during their summer vacation." DCX 10 at 1-2. This order specified when and where pick-ups and drop-offs would occur "[d]uring summer vacation, holidays or days when the children are not in school[.]" *Id.* The order did not change the custody schedule; it specifically stated that "[t]he December 22, 2016 Order remains in full force and effect." *Id.* at 1; Tr. 40 (Bond).

11. On the same day, the court denied Ms. Smith's motion to modify custody, finding that she had "failed to demonstrate that there has been a substantial and material change that justifies a modification" of child custody. DCX 11 at 2. The court noted that Ms. Smith's motion "appears to be based on her dissatisfaction with the [divorce judgment.]" *Id.*

12. Ms. Smith and Mr. Gaylor continued to disagree over custody of their children. Tr. 43-45 (Bond). *See generally* DCX 12, 14-18. Ms. Smith eventually

took the position that Mr. Gaylor had no right to two weeks of additional visitation in the summer because the February 2017 clarification order did not mention it. Tr. 45 (Bond); *see also* DCX 25 at 5.

Litigation with Respondent's Involvement Prior to Summer 2021

13. By the time Respondent entered his appearance in the custody matter, the parties' dispute had resulted in cross-motions for contempt. DCX 6 at 9-10 (docket entries 67-78). Mr. Gaylor had chosen August 6-19 as his two weeks of summer visitation in 2018, but Ms. Smith had not permitted him to take the children until Friday, August 10, which was the second weekend of the month. Mr. Gaylor then kept the children until August 19. In the meantime, Ms. Smith filed a *pro se* motion for contempt, arguing that Mr. Gaylor was in violation of the February 2017 clarification order, as if he were not entitled to two weeks of visitation during the summer. DCX 12. In response, Mr. Gaylor argued that Ms. Smith was "attempting to intentionally mislead the court by referring to the Court's February 8, 2017 clarification order as a full custody order." DCX 14. He argued Ms. Smith had violated the custody order by denying him access to the children on August 6. DCX 15.

14. After Respondent entered his appearance, he discussed the cross-motions with Mr. Bond in connection with a status conference scheduled in the case. Tr. 61-62 (Bond). Respondent told Mr. Bond that he believed Ms. Smith was justified in her view that Mr. Gaylor did not have a right to the two additional weeks

of visitation under the February 2017 order. Tr. 63 (Bond). However, both parties decided to withdraw their motions. DCX 6 at 9 (docket entry 65).

Litigation with Respondent's Involvement Regarding Summer 2021

15. Prior to May 1, 2021, Mr. Gaylor notified Ms. Smith that he would exercise his two weeks of additional visitation from Sunday, August 15, 2021, through Sunday, August 29, 2021. DCX 19 at 1; DCX 26 at 25. Mr. Gaylor typically arranged his additional visitation with the children to correspond with the end of his regular custodial schedule. Tr. 54 (Bond). The start of this additional visitation coincided with the end of Mr. Gaylor's regular custodial time on Sunday, August 15, which was the second weekend of the month. DCX 24 at 2.

16. Ms. Smith disagreed with Mr. Gaylor's proposed additional visitation schedule because she believed he did not have a right to two weeks of additional summer visitation under the February 2017 clarification order, DCX 25 at 5, and she had already planned a trip with the children during the two weeks that Mr. Gaylor had chosen. DCX 26 at 19. After attempting to mediate the issue, Ms. Smith contacted Respondent for assistance. DCX 25 at 5.

17. Respondent never advised Ms. Smith that her understanding of the custody orders was incorrect. Tr. 230 (Matinpour). *See generally* DCX 25, 26. Instead, on July 29, 2021—two weeks before Mr. Gaylor's summer custody was to commence—Respondent filed an Emergency Motion requesting that the court "clarify[] summer custody between the parties once and for all." DCX 19 at 1. In the motion, Respondent did not acknowledge the February 8, 2017 clarification

order's statement that the divorce judgment remained in full force and effect. To the contrary, he alleged:

a) "Since the court issued its order of February 8, 2017, [Mr. Gaylor] has interpreted said order as giving him two weeks of custody in the summer with the parties' minor children,"

b) "[Mr. Gaylor] further believes he can randomly select any two weeks in the summer he wants for custody without consulting [Ms. Smith] . . . ," *and*

c) "This year [Mr. Gaylor] has chosen August 15-29, 2021 as his two weeks." *Id.*

18. Although it was captioned as an "Emergency Motion," Respondent did not allege facts sufficient to warrant an *ex parte* hearing under the court's guidelines for emergency hearings. *See* DCX 29 at 9; Tr. 86-87 (Bond). The court therefore held the motion in abeyance pending service and scheduling of a hearing. DCX 20. In the same order, the court found that custody "is currently governed" by the 2016 divorce judgment. *Id.* at 1.

19. Within hours, Respondent filed a motion for reconsideration, claiming that "[t]he Court has misinterpreted the existing custody order" and that Mr. Gaylor "does not currently have two weeks visitation with the minor children in the summer." DCX 21 at 1. Respondent attached the 2017 clarification order, but he did not acknowledge that order's statement that the custody provisions of the 2016

divorce order remained in effect, nor did he otherwise acknowledge or refer to the 2016 divorce judgment. *Id.* at 4-5.

20. The day before Mr. Gaylor was scheduled to get the children under the regular custody schedule, the court denied Respondent's motion for reconsideration and set a status hearing for December 16, 2021. DCX 22. The court stated clearly that "[f]or purposes of this summer, Mr. Gaylor shall have the two additional weeks of visitation" he had chosen as allowed by the 2016 divorce judgment. *Id.* at 1.

21. The next day, upon Respondent's advice, Ms. Smith refused to allow Mr. Gaylor to take the children. DCX 25 at 5-6. When Mr. Gaylor attempted to pick them up from her home, Ms. Smith was not there. DCX 24 at 3-4. When he contacted Ms. Smith to determine where the children were, she told him only that they were in the "local area." *Id*. at 3.

22. The following day, Respondent filed a second motion for reconsideration. DCX 23. Respondent repeated his argument that the February 2017 clarification order "is the current and governing order between the parties," albeit while noting that the clarification order "did not explicitly remove" Mr. Gaylor's right to two weeks of additional visitation. *Id.* at 1-2. Respondent asked the court to "rescind" its prior directive that granted Mr. Gaylor his chosen two weeks for additional visitation. *Id.* at 2. The court did not immediately rule on the second reconsideration motion. *See* DCX 6 at 2-3 (docket entries 12-18). Ultimately, Mr. Gaylor did not receive the two weeks of visitation during the summer of 2021. DCX 24.

23. On November 19, 2021, Mr. Gaylor sought to hold Ms. Smith in contempt for withholding the children from him in August 2021. DCX 24.

24. Respondent filed an opposition written in first person from Ms. Smith's perspective. DCX 25. Although he signed the opposition, Respondent clearly did not write it. It states, for example, that "I was granted primary custodial parent status"; it refers to "when I first engaged you in this matter"; it states that "I consulted with my lawyer"; and it asks, "Please deny Mr. Gaylor's request to strip me of primary custod[y]." *Id.* at 1, 3, 5, 6. The opposition also failed to address any valid defense to contempt, such as substantial compliance or inability to comply, and it included a large amount of irrelevant information. *See* DCX 25; DCX 28 at 4-5.

25. On December 16, 2021, the court held a status hearing on Respondent's second motion for reconsideration and Mr. Gaylor's motion for contempt. DCX 6 at 2 (docket entry 12); *see also* DCX 26. All parties and counsel were present. DCX 26 at 2-3.

26. Respondent argued that he and Ms. Smith believed that the 2017 clarification order entirely replaced the custody provisions in the 2016 divorce. DCX 26 at 17. The court repeatedly asked Respondent why he harbored that belief, particularly considering the August 10, 2021 order that gave Mr. Gaylor the two additional weeks in 2021. *Id.* at 17-19. Respondent never answered that question directly, instead arguing that the February 2017 clarification order was controlling and that the court had not considered that order. *Id.* Respondent also told the court that he advised Ms. Smith to follow the February 2017 clarification order as she

understood it, and that she should do so, in part, because she "had already purchased tickets to take the children to visit their grandparents." *Id.* at 24.

27. Ms. Smith testified at the status hearing that she acted on the advice of counsel when she refused to allow Mr. Gaylor to pick up the children and exercise his two additional weeks, but that it was "always [her] intention to follow the orders." DCX 26 at 22. She testified that Respondent advised her not to allow Mr. Gaylor to have the two weeks of additional visitation while the Second Motion for Reconsideration was pending, and that she would have done things differently but for "the lack of someone telling me what to do in the right way here." *Id.*

28. On April 1, 2022, the court held Ms. Smith in civil contempt for denying Mr. Gaylor's two weeks of visitation in August 2021 and ordered her to pay $2,000 in attorney's fees. DCX 28 at 5-6. The court found that Respondent's advice to Ms. Smith "was directly contrary to an order that no one argues was unclear." *Id.* at 5. The court also referred the matter to Disciplinary Counsel. DCX 4 at 8-9.

29. Ms. Smith paid the $2,000 attorney's fees. Tr. 123-24 (Bond).

C. Count II – Disciplinary Docket No. 2022-D142

30. On August 1, 2020, Barbara Pittman hired Respondent to represent her regarding a claim for wrongful eviction. DCX 55 at 37. Over the next several weeks, Respondent spoke with Ms. Pittman on numerous occasions and drafted a complaint against Ms. Pittman's sister, Jacqueline Williamson. DCX 55 at 32-36; Tr. 136 (Haney) (describing relationship between Ms. Pittman and Ms. Williamson).

31. The complaint alleged that Ms. Pittman had been evicted on July 5, 2017, from a house at 140 Wilmington Place SE, Washington, D.C.; that Ms. Williamson "conducted a self-help eviction without going through [the] D.C. Landlord-Tenant Court"; and that Ms. Williamson "put Plaintiff's personal property on the curb . . . and made no efforts to protect it from weather or theft." DCX 55 at 32. Respondent drafted the complaint based only on information provided by Ms. Pittman. Tr. 224-25 (Matinpour).

32. In fact, Ms. Pittman had been evicted pursuant to a lawful writ of restitution issued following a jury trial in the landlord-tenant court, Ms. Pittman had unsuccessfully appealed the eviction, and the eviction had been carried out by the U.S. Marshals rather than Ms. Williams.

33. Respondent did not independently investigate Ms. Pittman's claim that she was wrongfully evicted, Tr. 224-25 (Matinpour), despite having ample reason to do so. Before filing the complaint, Respondent spoke with Ms. Pittman's former counsel, Bernard Gray, who represented Ms. Pittman during the eviction proceeding, as well as in prior litigation regarding ownership of the property. DCX 39 at 5 (docket entry dated 2/5/2016); DCX 56; Tr. 185 (Haney).

34. Mr. Gray informed Respondent that the U.S. Marshals were involved in Ms. Pittman's eviction. DCX 55 at 36. The U.S. Marshals execute writs of restitution for recovery of real property that are issued by the Landlord-Tenant Branch of the D.C. Superior Court following formal eviction proceedings. Tr. 144-45, 156-58 (Haney); *see also* DCX 45 at 7-8.

35. Mr. Gray's information apparently did not cause Respondent to investigate Ms. Pittman's claim. On August 18, 2020, Respondent filed the complaint in *Pittman v. Williamson*, D.C. Superior Court Case No. 2020 CA 003674 B. DCX 37. Respondent signed the complaint. *Id.* at 3.

36. In response to an inquiry from Disciplinary Counsel, Respondent gave two explanations for not investigating the wrongful eviction claim before filing it. First, Respondent claimed that he was retained at the "last minute" and had no time to investigate. Tr. 225 (Matinpour). Second, Respondent claimed that the court and law libraries "were closed" due to the ongoing COVID-19 pandemic. DCX 34 at 4; *see also* Tr. 226 (Matinpour). These explanations are not credible. In fact, Respondent was not hired at the last minute. Seventeen days passed from when Ms. Pittman hired Respondent to when he filed the complaint. In addition, the pandemic did not affect Respondent's ability to investigate the claim; all the relevant court documents showing the proceedings between Ms. Pittman and Ms. Williamson were available for free online despite the pandemic. Tr. 152-53, 165.

37. After Ms. Williamson was served, her attorney Dorene Haney, Esquire, who testified at the hearing in this disciplinary matter, contacted Respondent and asked him to dismiss the complaint because Ms. Pittman had been lawfully evicted. DCX 39 at 2. Ms. Haney also informed Respondent that if he did not voluntarily dismiss the complaint, then she would file a motion to dismiss and for sanctions. *Id.* Ms. Haney attached to her email a copy of the docket and writ of restitution issued in Ms. Pittman's eviction proceeding. *Id.* at 5-13.

38. The docket showed that Ms. Williamson had filed a complaint for eviction, that Ms. Pittman had answered that complaint and demanded a jury trial, that the case was tried for three days before a jury, that the jury entered a verdict against Ms. Pittman, that the court issued a writ of execution, and that the U.S. Marshals executed the writ on the day Ms. Pittman was evicted. DCX 39 at 6, 8-10. The docket also showed that Ms. Pittman had appealed the verdict. *Id.* at 10. The appellate docket (which was publicly available) showed that the case was fully briefed and argued, and the trial verdict was affirmed. DCX 53.

39. Ms. Haney obtained the docket that she provided to Respondent by downloading it for free from the D.C. Superior Court's publicly accessible website. Tr. 150-52 (Haney). The writ that she provided to Respondent, as well as other filings in the eviction case, could also be downloaded for free from the Court's website. Tr. 153-54 (Haney).

40. Respondent reviewed the information provided by Ms. Haney and discussed it with Ms. Pittman. Tr. 226-27 (Matinpour). He advised Ms. Pittman that the eviction appeared lawful. *Id.* at 227. Nevertheless, Respondent did not voluntarily dismiss the case, instead leaving it to the court to resolve the issue. *Id.* at 227-28.

41. On November 5, 2020, Ms. Haney moved to dismiss the complaint, arguing that it failed to state a claim on which relief could be granted because Ms. Pittman had been lawfully evicted. DCX 43. Her motion cited the case number for the eviction matter, as well as two prior matters in which Ms. Pittman had litigated

and lost claims regarding ownership of the same property. *Id.* at 3-4. The docket and filings in all three cases were publicly available for free on the court's website. Tr. 170 (Haney).

42. Respondent did not file an opposition to the motion to dismiss. Tr. 171 (Haney); *see* DCX 36 at 2.

43. Instead, Respondent filed a motion to amend the caption of the complaint, in which he sought leave to change the caption from "Wrongful Eviction" to "Destruction of Personal Property." DCX 44. Respondent did not seek to remove the factually inaccurate allegation that Ms. Williamson had performed a self-help eviction, did not seek to add or remove any other allegations, and did not seek to join any additional parties. *Id.* Rather, Respondent asked that the body of the complaint "stay as it is." *Id.*

44. In opposition, Ms. Haney argued that the complaint would still fail to state a claim even if amended. DCX 45. The opposition pointed out that, contrary to the allegations, Ms. Pittman's personal property was removed from the home under the supervision of the U.S. Marshals pursuant to a lawful eviction, not by Ms. Williamson or others acting at her direction. *Id.* at 3-5.

45. On January 25, 2021, the court granted the motion to dismiss in part, treating it as a motion for summary judgment and entering judgment in favor of Ms. Williamson on the wrongful eviction claim. DCX 46. The court denied Respondent's motion to amend and dismissed the destruction of personal property claim. *Id.* at 8-9.

46. Ms. Haney then sought an award of attorney's fees, arguing that the complaint had been frivolous and brought in bad faith. DCX 47.

47. Respondent opposed the motion, arguing that Ms. Pittman "honestly believed that her eviction was a self-help eviction notwithstanding court documents to the contrary," and that "the entire situation was mishandled by previous counsel." DCX 48 at 1.

48. On May 26, 2021, the court ordered both Respondent and Ms. Pittman to pay $1,720 in attorney's fees to Ms. Williamson. DCX 49. The court found that the complaint "was initiated in bad faith, as the claim of wrongful eviction was entirely without merit." *Id.* at 4. The court further found that Respondent "litigated this matter . . . in bad faith" because he "could not have in good faith believed that the instant lawsuit had any merit, particularly after [he] was informed of the prior eviction action." *Id.* at 4-5. The court ordered payment by September 13, 2021. *Id.* at 5.

49. Neither Respondent nor Ms. Pittman paid the attorney's fees by the deadline. Tr. 188 (Haney).

50. Nearly a year after the order awarding attorney's fees, Ms. Haney sought a money judgment, informing the court that "[n]o payments of any kind were made in the past year." DCX 50 at 1. Respondent did not oppose the motion. Tr. 189 (Haney); *see also* DCX 36 at 3.

51. The court granted the motion and entered judgment against Respondent and his client, jointly and severally, in the amount of $1,720 with interest at the statutory rate. DCX 51, 52.

52. A month later, on July 26, 2022, Ms. Williamson filed a complaint with Disciplinary Counsel alleging that "to date neither [Respondent nor Ms. Pittman has] rendered payment to satisfy" the money judgment. DCX 32 at 5.

53. After Disciplinary Counsel forwarded Ms. Williamson's disciplinary complaint to him, Respondent asked to hold the matter in abeyance until he could reach Ms. Pittman to determine whether she had paid the money judgment. DCX 33.

54. On August 29, 2022, Respondent emailed Disciplinary Counsel a copy of a cashier's check and postal receipt showing that Ms. Pittman had remitted payment of $1,720 to Ms. Haney three days prior. DCX 35.

III. CONCLUSIONS OF LAW

Disciplinary Counsel argues that, except for Rule 1.6(a)(1),[3] Respondent violated all of the charged Rule violations, namely Rules 1.1 (a) & (b) (competence, skill, and care), 3.1 (frivolous claim), and 8.4(d) (serious inference with the administration of justice). In addressing each allegation in turn, we find that Disciplinary Counsel has proven that Respondent violated Rules 1.1 (a) & (b), 3.1

[3] At the hearing, Disciplinary Counsel acknowledged that it did not believe it can prove its 1.6(a)(1) charge by clear and convincing evidence. It thus did not "proceed with," nor "present evidence on" that charge, and it reinforced this position in its post-hearing brief. Tr. 10-11; *see* Disciplinary Counsel's Post-Hearing Brief ("ODC Br.") at 20.

and 8.4(d) in both Count I (the Gaylor/Smith matter) & Count II (the Pittman/Williamson matter).

A. Disciplinary Counsel Proved that Respondent Violated Rules 1.1(a) & (b) by Failing to Provide his Clients with Competent Representation (Counts I & II).

Summary of Disciplinary Counsel's Arguments. Disciplinary Counsel argues that Respondent, though an experienced practitioner, did not apply his "skill and knowledge to basic legal problems that all practicing lawyers routinely confront." ODC Br. at 21.

In Count I, Disciplinary Counsel argues that Respondent violated these Rules first by filing an emergency motion that advanced an "unfounded" position instead of advising Ms. Smith against disputing Mr. Gaylor's right to additional time with the children. ODC Br. at 22. Next, Disciplinary Counsel argues that Respondent advised his client to defy the court's order permitting Mr. Gaylor two additional weeks of visitation. *Id.*

Finally, when the opposing party sought to hold Respondent's client in contempt, "Respondent filed a grossly deficient opposition that he did not write, and which raised no permissible defense to contempt." ODC Br. at 22-23.

In Count II, Disciplinary Counsel alleges that Respondent filed suit on behalf of Ms. Pittman for wrongful eviction when Respondent had reason to believe her client was evicted lawfully, and could have verified this by checking the court's website. ODC Br. at 23. Then, after opposing counsel alerted him of Ms. Pittman's lawful eviction case, Respondent did not dismiss the suit. He instead changed the caption while keeping the body of the complaint "as it [wa]s." *Id.* Respondent and

Ms. Pittman were required to pay attorney's fees as the court found that the complaint was initiated "in bad faith." *Id.* at 24.

Discussion and Findings. Rule 1.1(a) requires a lawyer to "provide competent representation to a client." The Court of Appeals has determined that competent representation requires the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (lawyer who has requisite skill and knowledge, but who does not apply it for 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 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. It has generally been found in cases where the attorney makes an error that 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.

902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board Report). Although the Board referred to Rule 1.1(a) only, the "serious deficiency" requirement applies equally to 1.1(b). *See In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014). To prove a "serious deficiency," Disciplinary Counsel must prove that the conduct "prejudices or could have prejudiced the client." *Id.* at 422.

Rule 1.1(b) requires a lawyer to "serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." The Rule 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).

A Hearing Committee 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), *findings and recommendation adopted*, 905 A.2d 221, 227, 232 (D.C. 2006) (*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); *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) & (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].

In Count I, the Hearing Committee finds clear and convincing evidence in the record that Respondent did not adequately prepare himself to competently represent Ms. Smith in her custody matter on at least three occasions: (1) Ms. Smith's first motion for reconsideration, (2) her second motion for reconsideration, and (3) Ms. Smith's response to the motion to hold her in contempt for withholding the children from Mr. Gaylor in August 2021. In each of these filings, Respondent omitted any mention of the December 22, 2016 divorce judgment, which remained in full force and effect. His lack of preparation, attention, and thoroughness were evident when he submitted his client's first-person account, without any edits, as a response to the motion to hold her in contempt. *See generally Drew*, 693 A.2d at 1132. Further, by his actions and omissions, Respondent's representation constituted serious

deficiency that prejudiced his client's defense to the contempt motion that resulted in her being ordered to pay $2,000 in attorney's fees to her ex-husband. *See, e.g.*, *In re Johnson*, 298 A.3d 294, 305-06 (D.C. 2023) (violations of Rules 1.1(a) & (b) found, in part, where client was sanctioned by the court and ordered to pay opposition's attorney's fees resulting from discovery violations by former counsel).

Respondent's lack of preparation and attention in the Pittman eviction matter (Count II) were strikingly similar, and likewise violative of Rules 1.1(a) & (b). Upon his retention by the client, Respondent had enough time (17 days), an available public record of his client's eviction, as well as information from her previous counsel, to make the threshold determination that a wrongful eviction action should not be filed. His failure to do so, compounded by the lack of any effort to dismiss unmeritorious claims or meaningfully amend the complaint beyond its caption, demonstrated his lack of competency, skill, and care in the representation of Ms. Pittman. And, once again, this conduct constituted serious deficiency as it resulted in Ms. Pittman being sanctioned and ordered to pay $1,720 in attorney's fees. *See, e.g.*, *Johnson*, 298 A.3d at 306.

Accordingly, the Hearing Committee finds that Disciplinary Counsel has proven that Respondent violated Rules 1.1(a) & (b) in both Counts I and II.

B. Disciplinary Counsel Did Not Prove that Respondent Violated Rule 1.6(a)(1) by Knowingly Revealing a Confidence or Secret (Count I).

Rule 1.6(a)(1) prohibits a lawyer from "knowingly reveal[ing] a confidence or secret of the lawyer's client." "'Knowingly,' . . . denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Rule

1.0(f). Rule 1.6(b) defines a "confidence" as "information protected by the attorney-client privilege under applicable law" and a "secret" as "other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client." In discussing the definition of "secret" under Rule 1.6(b), the Court has stated:

> [T]here can be no doubt that the information about [the attorney's client] disclosed by [the attorney] was so "gained." If there had been no professional relationship, then the alleged facts of which [the attorney] complained—[the client's] non-payment of her fees, her lack of cooperation, and her misrepresentations—would not have existed, and [the attorney] would [not] have known them . . . .

In re Gonzalez, 773 A.2d 1026, 1030 (D.C. 2001).

Discussion and Findings. At the hearing, Disciplinary Counsel acknowledged that it did not have clear and convincing evidence to prove this charge. And it reiterated this belief in its Brief. Tr. 10-11; ODC Br. at 20. During the hearing, no evidence was presented to suggest that Ms. Smith's written account to Respondent in support of her opposition to the motion for contempt—which was then copied and pasted into the opposition without any editing by Respondent—were confidences or secrets under Rule 1.6(a)(1). Absent such showing, the Hearing Committee cannot find that Respondent knowingly revealed any confidence or secret during his representation of Ms. Smith.

Because Disciplinary Counsel did not present clear and convincing evidence on this charge, we find that Disciplinary Counsel has not proven that Respondent violated Rule 1.6(a)(1).

C. Disciplinary Counsel Proved that Respondent Violated Rule 3.1 by Advancing Frivolous Claims (Counts I & II).

Summary of Disciplinary Counsel's Arguments. In Count I, Disciplinary Counsel argues that Respondent's argument that Mr. Gaylor was not entitled to the additional two weeks of visitation was frivolous because Respondent knew that Mr. Gaylor was entitled to this visitation, yet Respondent continued to press his incorrect interpretation. ODC Br. at 25-26.

In Count II, Disciplinary Counsel argues that there was no "faint hope of success" on Respondent's wrongful eviction claim as Ms. Pittman had been lawfully evicted. ODC Br. at 26. Disciplinary Counsel further argues that, rather than withdrawing the complaint, Respondent changed his claim to a new, "objectively meritless" one (destruction of personal property). *Id.*

Discussion and Findings. Rule 3.1 provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law." Attorneys '"should not fear discipline for making aggressive and creative arguments,"'—the Rule's good-faith exception allows for '"a wide range of creative and aggressive challenges to existing law."' *In re Pearson*, 228 A.3d 417, 424 (D.C. 2020) (per curiam) (quoting Board Report).

An objective test, therefore, is used to determine whether a respondent's conduct violated Rule 3.1. A filing is frivolous if, after an "objective appraisal of merit," a reasonable attorney would conclude that there was "not even a faint hope

of success on the legal merits." *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005) (first citing *Tupling v. Britton*, 411 A.2d 349, 352 (D.C. 1980) and then citing *Slater v. Biehl*, 793 A.2d 1268, 1278 (D.C. 2002)). "Attorneys have a continuing responsibility to make an 'objective appraisal of the legal merits of a position,' asking how a 'reasonable attorney' would evaluate 'whether a claim is truly meritless or merely weak.'" *Pearson*, 228 A.3d at 424 (quoting *Yelverton*, 105 A.3d at 425). Though distinguishing '"between a weak claim and a frivolous or meritless one can be difficult to pinpoint,'" the Court has relied on "'cases applying Superior Court Rule 11'" and D.C. Appellate Rule 38. *Id.* (quoting *Yelverton*, 105 A.3d at 424).

In effect, the '"entire course of [a r]espondent's extreme conduct over the course of the suit,"' and not '"that the claims were frivolous when first made,"' can dictate whether Disciplinary Counsel has proven a violation. *Id.* (quoting Board Report). Misconduct over an entire course can include numerous, baseless filings and practices. *See Pearson*, 228 A.3d 424-27 (pointing to the respondent's unfounded repetitive motions and discovery practices and similarly unfounded allegations of bias against a judge in finding a Rule 3.1 violation).

In *Spikes*, an attorney brought a defamation lawsuit and filed several appeals based on a complaint lodged against him with Disciplinary Counsel, even though D.C. Bar R. XI, § 19(a) expressly prohibits such claims. 881 A.2d at 1120-22. Recognizing that "the law is not always clear and never is static," *Spikes* noted that Rule 3.1 provides a safe harbor for a non-frivolous, good faith argument for an

extension. *Id.* Importantly, *Spikes* requires that any such argument be "reasoned and supported." *Id.* at 1125. The Court, finding violations of Rules 3.1 and 8.4(d), held that the attorney's stated desire to vindicate his reputation was not a "reasoned and supported" explanation for bringing the defamation claim. *Id.*

Relying on cases applying Super. Ct. Civ. R. 11, *Spikes* notes that in determining whether a pleading is frivolous, "consideration should be given to the clarity or ambiguity of the law," and "the plausibility of the position taken, and the complexity of the issue." *Spikes*, 881 A.2d at 1125 (citing *District of Columbia v. Fraternal Order of Police*, 691 A.2d 115, 119 (D.C. 1997)). In *Fraternal Order of Police*, the Court noted that Rule 11 sanctions are not imposed where "the law was unsettled," or "where [the] case law on this issue was sparse and unclear." 691 A.2d at 119. Conversely, the Court noted that "[a] legal position which ignores relevant controlling authority may be sanctioned." *Id.*

In *Slater v. Biehl*, 793 A.2d 1268, 1278-79, another case cited in *Spikes*, the Court held that an appeal may be frivolous even if not brought in bad faith. In *Slater*, the Court of Appeals imposed sanctions even though it found no bad faith because the law "could not be clearer" that the suit at issue had been litigated in the wrong court. *Slater*, 793 A.2d at 1278.

Examining Respondent's conduct throughout his representation of Ms. Smith (Count I), it is clear that his two motions for reconsideration of the court's order on emergency motion were repetitive, unfounded, and without objective reason. *See Yelverton*, 105 A.3d at 424-26. Both motions for reconsideration simply offered the

same factual and legal arguments, and thus had "not even a faint hope of success on the legal merits." *See Spikes*, 881 A.2d at 1125. Respondent offered no new evidence, no contention of incorrect interpretations of law by the court, nor claims of manifest injustice resulting from the court's order. Further, a review of the events of July and August 2021 surrounding the two reconsideration motions does not indicate that Respondent had any such basis for filing a second motion for reconsideration.

Turning to Count II, the merit of Respondent's filing of the wrongful eviction complaint and amended complaint on behalf of his client is seriously undercut by the information available to him before and after these filings. The Hearing Committee finds that had Respondent performed the investigation necessary for an objective appraisal of the merits, he would have learned that Ms. Pittman's eviction was already final and lawful. Moreover, his duty to appraise the legal merits of her wrongful eviction and property claims continued after filing of the complaint, and the hearing record shows that by the time he amended the complaint, Respondent had more than enough information to conclude that Ms. Pittman's claims had no hope of success. *See Pearson*, 228 A.3d at 424-25; *Spikes*, 881 A.2d at 1125.

Thus, the Hearing Committee finds that Disciplinary Counsel has proven that Respondent has violated Rule 3.1 in both Counts I & II.

D. Disciplinary Counsel Proved that Respondent Violated Rule 8.4(d) by Engaging in Conduct that Seriously Interferes with the Administration of Justice (Counts I & II).

Summary of Disciplinary Counsel's Arguments. In Count I, Disciplinary Counsel argues that Respondent repeatedly refiled essentially the same motions while hoping for different results. This, Disciplinary Counsel alleges, added to the work of an already burdened court, as the court was "required to issue written rulings on his motions, hold a status hearing, and consider the opposing party's motion for contempt and request for attorney fees." ODC Br. at 27-28.

In Count II, Disciplinary Counsel argues that both the frivolous wrongful eviction and destruction of personal property claims caused unwarranted litigation, wasting the court's time and resources (ruling on the motion to dismiss, the request for attorney fees, and the request for money judgment). ODC Br. at 28.

Discussion and Findings. 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 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). Failures to comply with orders of the Court can also violate this Rule. *In re Askew*, Board Docket No. 12-BD-037 (BPR July 31, 2013), appended Hearing Committee Report at 22-23 (failure to comply with a court orders requiring her to file a brief and to turn over client files), *recommendation adopted in relevant part*, 96 A.3d 52 (D.C. 2014) (per curiam).

The Hearing Committee finds that Disciplinary Counsel has proven that Respondent has violated Rule 8.4(d) in both Counts I & II. In his representation of Ms. Smith in her custody matter, Respondent filed frivolous motions, including two motions for reconsideration that contained little to no changes from the original motion that was denied, and instructed his client to disobey an order of the court, leading to the imposition of sanctions in the form of attorney's fees. *See, e.g.*, *Cole*, 967 A.2d at 1266; *Askew*, Board Docket No. 12-BD-037, appended HC Rpt. at 22-23.

In his representation of Ms. Pittman, Respondent filed a frivolous complaint and took no corrective action, thereby forcing the court to expend unnecessary time and effort in its disposition(s). Further, Respondent's conduct again resulted in attorney's fees being assessed against his client.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend at least a six-month suspension, with a fitness showing. For the reasons described below, we recommend the sanction of a 90-day suspension with a fitness showing.

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); *Cater*, 887 A.2d at 17. "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 misconduct was very serious. His representations of both Ms. Smith and Ms. Pittman evidenced a lack of basic attention and preparation. Equally as grave was Respondent's advice to Ms. Smith to ignore and disobey a clear court order. Such conduct displays a troubling lack of respect for the court and rule of law by an attorney with nearly 40 years of experience.

In sum, the Hearing Committee considers the seriousness of Respondent's conduct to be a significant aggravating factor.

2. Prejudice to the Client

Both of Respondent's clients suffered significant prejudice by virtue of his representation, as both were ordered to pay their adversary's attorney's fees. The Hearing Committee finds this to be an aggravating factor.

3. Dishonesty

Respondent's Rule violations are not based in dishonesty. Thus, this factor does not impact the Hearing Committee's imposition of sanctions.

4. Violations of Other Disciplinary Rules

Disciplinary Counsel has proven that Respondent has violated Rules 1.1(a) & (b), 3.1, and 8.4(d). However, the violation of these Rules is considered in the imposition of sanctions and not as a stand-alone aggravating factor.

5. Previous Disciplinary History

Respondent has been issued two letters of informal admonition by Disciplinary Counsel. On April 10, 2002, Respondent was found to have violated Rules 1.5(c) and/or 1.5(b), 8.4(d), and 1.16(d) stemming from his representation of a client in a civil dispute in 2001. DCX 64. On March 11, 2022, Respondent was found to have violated Rules 1.4(a), 1.16(d), and 8.4(d) stemming from his abandonment of a representation of a client in a real property dispute in 2019. DCX 65.

In light of the two informal admonitions, including one related to conduct within two years of the violations at issue in the instant report, the Hearing Committee finds Respondent's previous disciplinary history to be an aggravating factor, albeit a minor one.

6. Acknowledgement of Wrongful Conduct

Respondent has not acknowledged his wrongful conduct. In his only communication with Disciplinary Counsel on March 16, 2023, Respondent denied any wrongdoing and called the charges "a grotesque exaggeration, offensive speculation and gross miscarriage of justice." DCX 3 at 1 (Respondent's Answer). He further asserted that "Judges are human and humans make mistakes." *Id*. Beyond this, Respondent has not responded to Hearing Committee orders, Disciplinary Counsel's attempts to contact him, nor otherwise appeared in these proceedings. The Hearing Committee considers the lack of acknowledgement of wrongful conduct as an aggravating factor in the imposition of sanctions.

7. Other Circumstances in Aggravation and Mitigation

Following his initial response to the Specification of Charges, Respondent has not participated in these disciplinary proceedings. The Hearing Committee considers Respondent's failure to participate in these disciplinary proceedings beyond his initial email response an aggravating factor in the imposition of sanctions. *See In re Lea*, 969 A.2d 881, 890-91 (D.C. 2009).

B. Comparable Sanctions Imposed for Similar Misconduct

Violations involving lack of competence and skill and care (Rules 1.1(a) & (b)), frivolous claims (Rule 3.1), and serious interference with the administration of justice (Rule 8.4(d)) have resulted in 30-day to two-year suspensions—sometimes with fitness. *See, e.g.*, *Cole*, 967 A.2d at 1267-1270 (30-day suspension for nine Rule violations, including Rules 1.1(a) & (b) and 8.4(d) where the respondent had no prior discipline, had committed misconduct involving only one client matter, and had sought to mitigate the consequences of his actions); *Yelverton*, 105 A.3d at 428-432 (30-day suspension, with fitness, for violating Rules 3.1 & 8.4(d), where the respondent had no prior discipline and where no client was harmed); *Spikes*, 881 A.2d at 1125, 1127-28 (30-day suspension for violating Rules 3.1 & 8.4(d)); *Drew*, 693 A.2d at 1127-28 (60-day suspension for violating Rules 1.1(a) & (b), 1.3(a), 1.3(b)(1), 1.5(b), 1.16(d), and 8.4(d), where the respondent had received three previous informal admonitions); *In re Chapman*, Board Docket No. 20-BD-034 (BPR Oct. 27, 2021), appended HC Rpt. (Aug. 11, 2021), *recommendation adopted*, 284 A.3d 395 (D.C. 2022) (90-day suspension for violating Maryland Rules of

Professional Conduct 19-301.1 (competence), 19-301.2(a) (consultation with a client), 19-301.4(b) (explaining a matter to a client), and 19-303.1 (filing frivolous claims), coupled with aggravating factors such as misleading assertions to the Hearing Committee and to Disciplinary Counsel, and prior discipline); *Pearson*, 228 A.3d at 420, 428-29 (90-day suspension for violating Rules 3.1 and 8.4(d)); *In re Lyles*, 680 A.2d 408, 409-410 (D.C. 1996) (per curiam) (appended Board Report) (six-month suspension, with fitness, for violating Rules 1.1(b), 1.3(a), and 8.4(d)); *In re Bradley*, 70 A.3d 1189, 1191, 1195-96 (D.C. 2013) (per curiam) (two-year suspension, with fitness, for violating Rules 1.1(a) & (b), 1.3(a), 1.3(b)(1), 1.3(c), and 8.4(d)).

Though Disciplinary Counsel asks for a six-month suspension, we believe that a 90-day suspension is consistent with the sanctions imposed in cases involving comparable misconduct.

1. Chapman is most analogous to our matter.

Most analogous to our matter is *Chapman* (90-day suspension), which involved both competence and frivolous filings, like Respondent's violations here. And like the respondent in *Chapman*, Respondent has prior discipline—one instance occurring fairly recently and involving similar misconduct. *Chapman*, Board Docket No. 20-BD-034, appended HC Rpt. at 47 (finding that the respondent's prior discipline "involved misconduct and aggravating factors that strongly resembled his conduct in the instant case," and that his representation leading to his misconduct and 90-day suspension occurred "[t]he year after he was disciplined"). The

respondent, moreover, had not accepted responsibility for his actions, which Respondent also has not done. *Id.* at 45-46.

True enough, the respondent in *Chapman* was "less than candid throughout the disciplinary process," including making "misleading assertions to the Committee." *Id.* at 43, 45. This is unlike Respondent, who did not participate in the overwhelming majority of these proceedings. But *Chapman* contained other circumstances found here—though the respondent's claims were not for his own pecuniary gain, the respondent did prejudice his client. *Id.* at 43 (noting that the client "was prejudiced when she paid $3,000 in fees and a $300 filing fee . . . to pursue a case that she did not know was frivolous"); *id.* at 47 (finding that the respondent "did not assert personal claims for his own pecuniary gain, although he did expect [the client] to pay him").

2. Other cases where respondents received lower suspensions are either inapposite and/or involve less serious circumstances.

Yelverton and *Spikes* are both comparable to this matter, but to a lesser degree as they involve less serious circumstances. Along with filing frivolous claims, the Court in *Yelverton* found that the respondent seriously interfered with the administration of justice and failed to acknowledge the wrongfulness of his misconduct. 105 A.3d at 428-29. So too here. But there were also key differences distinguishing this case: the respondent had no prior discipline, the respondent did

not harm a client, and the respondent did not violate any competence Rules (Rules 1.1(a) or (b)).

Spikes presents a similar theme—violations of Rules 3.1 and 8.4(d)—but the respondent had also received two prior informal admonitions—one of which appearing to track similar misconduct. 881 A.2d at 1119, 1127-28. This matches Respondent's case in important ways. But *Spikes*, like *Yelverton*, did not contain any competence violations (Rules 1.1(a) or (b)). And the respondent in *Spikes* participated throughout the disciplinary proceedings, unlike Respondent. *See, e.g.*, *In re Spikes*, Bar Docket No. 276-97, at 2 & n.1 (BPR July 30, 2003) (noting that the respondent represented himself *pro se* at the hearing with the assistance of counsel); *see also In re Wright*, 702 A.2d 1251, 1257 (D.C. 1997) (per curiam) (appended Board Report) (finding that the respondent's failure to participate in any of the disciplinary proceedings is an aggravating factor because it "reflects an egregious disregard for his obligations within the disciplinary system").

Next, we find *Drew* distinguishable. Though the respondent violated Rules 1.1(a) & (b) and 8.4(d), his misconduct spanned four other Rule violations, and not Rule 3.1, and stemmed from his clients' convictions in criminal matters. 693 A.2d at 1127. As these violations included intentional neglect and failing to protect his clients' interests upon termination of his representation, *Drew* is of limited significance here.

Disciplinary Counsel cites *In re Mance*, *In re Outlaw*, and *Askew* in setting forth the range of sanctions for competence violations. *See* ODC Br. at 31. For each

of these cases, we reach the same conclusion as in *Drew*. *See In re Mance*, 869 A.2d 339, 340-43 (D.C. 2005) (30-day stayed suspension where the respondent intentionally "neglected his client and committed other ethical violations in handling a criminal appeal."); *In re Outlaw*, 917 A.2d 684, 686-87 (D.C. 2007) (per curiam) (60-day suspension for violating Rules 1.1(a) & (b) among others, including Rule 8.4(c) (dishonesty, fraud, deceit, or misrepresentation), but not Rules 3.1 or 8.4(d)); *Askew*, 96 A.3d at 53-54 (six-month suspension with all but 60 days stayed and a one-year probationary period for violating Rules 1.1(a) & (b), 1.3(a), 1.4(b), 1.16(d), 3.4(c), and 8.4(d), where the respondent was court-appointed and then mishandled the client's appeal of the denial of a post-conviction motion); *see also infra* (discussing *In re Ukwu*, 926 A.2d 1106 (D.C. 2007) & *In re Ekekwe-Kauffman*, 210 A.3d 775 (D.C. 2019) (per curiam)).

3. Pearson is somewhat instructive, and cases imposing greater than 90-day suspensions involve inapposite and/or more serious circumstances.

We find sufficient similar factors in *Pearson* to render it useful for our analysis, albeit to a lesser degree than in *Chapman*. *Pearson* matches *Yelverton*, in that the respondent seriously interfered with the administration of justice and failed to acknowledge the wrongfulness of his misconduct. *Pearson*, 228 A.3d at 429. Again, this is so here. But the respondent in *Pearson* persistently submitted meritless filings for his own pecuniary gain and continued making meritless arguments throughout the disciplinary proceedings. *Id.* at 428; *see also Chapman*, Board Docket No. 20-BD-034, appended HC Rpt. at 47 (differentiating its case from

Pearson in noting that the respondent in *Chapman* "did not assert personal claims for his own pecuniary gain").

Finally, *Bradley*, *Ukwu*, and *Ekekwe-Kauffman* all contain more serious circumstances. The respondent in *Bradley* received a two-year suspension in part for intentional neglect of two clients spanning five and ten years respectively, compounded by her intentional false testimony to the hearing committee and three previous informal admonitions—two of which involved neglect. 70 A.3d at 1195. *Ukwu* is likewise more serious where, spanning five clients and significantly more Rule violations, the respondent received a two-year suspension with fitness in part for making knowing misrepresentations, including before a tribunal (in violation of Rule 3.3(a)(1)). 926 A.2d at 1120-21 (appended Board Report). The same is true with *Ekekwe-Kauffman*, where the Court imposed a three-year suspension with fitness in part for intentional prejudice to a client, commingling, and dishonesty for submitting a deliberately, falsified invoice. 210 A.3d at 779-80, 796.

Considering all of these cases and the circumstances therein, a 90-day suspension is consistent with cases involving comparable misconduct.

C. Fitness

A fitness showing is a substantial undertaking. *In re Cater*, 887 A.2d at 20. Thus, in *Cater*, the Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id*. at 6. Proof of a "serious doubt" involves

"more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

In articulating this standard, the Court observed that the reason for conditioning reinstatement on proof of fitness was "conceptually different" from the basis for imposing a suspension. As the Court explained:

> The fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct. In contrast, the open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run. . . . [P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement . . . .

Cater, 887 A.2d at 22.

In addition, the Court found that, traditionally, the five factors for reinstatement set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985), should be used in applying the *Cater* fitness standard. They include:

(a) the nature and circumstances of the misconduct for which the attorney was disciplined;

(b) whether the attorney recognizes the seriousness of the misconduct;

(c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;

(d) the attorney's present character; and

(e) the attorney's present qualifications and competence to practice law.

Cater, 887 A.2d at 21, 25.

But in assessing whether to impose fitness based on a respondent's failure to participate in the disciplinary process, the Court has set out the following factors: (1) the respondent's level of cooperation in the pending proceeding(s), (2) the repetitive nature of the respondent's lack of cooperation in disciplinary proceedings, and (3) other evidence that may reflect on fitness. *Id.* at 25.

Here, Respondent demonstrated a repeated pattern of not participating in the disciplinary proceedings. Respondent first did not respond to the Committee's order about his purported Answer. Compounding this failure, Respondent next did not participate in the pre-hearing conference, nor the hearing itself. Finally, Respondent did not submit a post-hearing brief. Respondent's absence throughout his own disciplinary proceedings gives the Committee serious doubt of his ability to act competently and ethically in the future. *See Lea*, 969 A.2d at 890-94; *see also In re Hallmark*, 831 A.2d 366, 377 (D.C. 2003).

Worse still, "other evidence" reflects that a fitness requirement is warranted. Respondent's multiple violations of Rules 1.1(a) & (b) and 3.1 evidence a troubling pattern of lack of preparation and care, bordering on disinterest. In both Counts I and II, Respondent failed to perform basic fact-finding and legal research—steps that would have saved his clients time and money, as well as the court's resources. Further, Respondent's actions in the custody and eviction matters at issue occurred in close temporal proximity to his violations of Rules 1.4(a), 1.16(d), and 8.4(d) during his representation of a client in a real property dispute in 2019, for which he

received an informal admonition. Taken together, the Committee has serious concerns that a Respondent has displayed a pattern of not representing clients at the standards required of him by the D.C. Rules and, without the affirmative step of a fitness showing, Respondent will continue to represent clients without appropriate skill and care and resulting in unnecessary expenditure of courts' time and resources.

Respondent's underlying misconduct and failure to participate in these proceedings is clear and convincing evidence of a serious doubt of Respondent's ability to practice in accordance with the Rules following his period of suspension. *See Lea*, 969 A.2d at 890-94 (failure to participate relevant to fitness determination); *see also Hallmark*, 831 A.2d at 377 (same).

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.1(a) & (b), 3.1, and 8.4(d), and should receive a sanction of a 90-day suspension and a showing of fitness. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Daniel Portnov, Chair

Thomas Alderson, Public Member

Philip C. Andonian, Attorney Member