

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: :
: ANITHA W. JOHNSON, :
: Respondent. : Board Docket No. 18-BD-058
: Disc. Docket Nos. 2010-D511,
A Member of the Bar of the : 2011-D455, 2012-D091, 2013-D305,
District of Columbia Court of Appeals : & 2016-D382
(Bar Registration No. 495672) :

REPORT AND RECOMMENDATION OF
THE AD HOC HEARING COMMITTEE

Respondent, Anitha W. Johnson, is charged in a five-count Specification of Charges with violating Rules 1.1(a) and (b) (Competence and Skill), 1.2(a) (Abiding Client Wishes), 1.3(a) (Diligence and Zeal), 1.3(b)(1)-(2) (Intentional Failure to Seek Client Objectives and Intentional Prejudice), 1.3(c) (Reasonable Promptness), 1.4(a) and (b) (Failure to Inform and Explain), 1.4(c) (Failure to Communicate Settlement Offer), 1.5(a)-(c) (Fees), 1.6(a)(1) (Confidentiality of Information), 1.15(a) (Reckless or Intentional Misappropriation; Record-keeping; Commingling), 1.15(c) (Failing to Promptly Notify, Deliver, or Account for Funds), 1.15(e) (Safekeeping Unearned Fees), 1.16(d) (Terminating Representation), 3.4(c) (Knowing Disobedience of Tribunal Rule or Obligation), 8.4(b) (Criminal Act), 8.4(c) (Dishonesty), and 8.4(d) (Serious Interference with

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

Administration of Justice) of the District of Columbia Rules of Professional Conduct (the “Rules”), in connection with her representation of five different clients in six separate matters.

Although we find one purported client was not in fact a client, this Ad Hoc Hearing Committee (“Committee”) finds violations of the disciplinary rules for each count. Some of these violations are quite serious. The Committee has struggled with this case, not in finding the violations it found, but rather with the appropriate sanction. The violations charged cover a decade -- from Respondent’s early days of practice up to the present. In that time, Respondent has matured to a certain extent and asserts that she conducts her practice today in a more responsible and professional manner, although Respondent’s dealings with the Office of Disciplinary Counsel¹ and her testimony at the hearing raise concerns about Respondent’s present professional conduct. She serves an underserved community. The changes she has made in her practice and habits gave the Committee pause as to whether she should be disbarred as Disciplinary Counsel recommends. When the Committee considered her violations as a whole, however, the length, breadth and seriousness of Respondent’s misconduct -- particularly misconduct involving flagrant dishonesty on repeated occasions -- and her continuing failure to appreciate the seriousness of her misconduct, the Committee

¹ When the disciplinary investigation began, the disciplinary authority was titled “Office of Bar Counsel.” The title of that office changed on December 19, 2015, to the Office of Disciplinary Counsel. Although many of the proceedings and filings referred to Bar Counsel, for consistency, we use the current term, Disciplinary Counsel, in our Report.

decided that its recommendation must be for disbarment. *See* Part IV below.

As explained below, the Committee finds that Disciplinary Counsel has proven violations of Rules 1.1(a) and (b), 1.2(a), 1.3(a), 1.3(b), 1.3(c), 1.4(a), (b) and (c), 1.5(a), (b) and (c), 1.6(a)(1), 1.15(a) (misappropriation; record-keeping; commingling), 1.15(c), 1.16(d), 3.4(c), 8.4(c) and 8.4(d) by clear and convincing evidence in at least one of the five client matters and, in a number of instances, in multiple matters. The Committee finds that Disciplinary Counsel has proven the Rule 1.15(a) misappropriation charge, but did not establish that the misappropriation was either intentional or reckless by clear and convincing evidence so we find only negligent misappropriation. Nor do we find that Respondent has violated Rule 1.15(e) or committed a criminal act as described in Rule 8.4(b).² Finally, the Committee finds that Respondent intentionally testified falsely.

I. PROCEDURAL HISTORY

On June 21, 2018, Disciplinary Counsel served Respondent with a Specification of Charges (“Specification”).

² Accordingly, the Hearing Committee found the following violations by count:

Count 1 (Rudders and Goss): Rules 1.1(a) and (b), 1.3(a), 1.3(b)(1) and (2), 1.3(c), 1.4(a) and (b), and 8.4(c), but not 1.16(d);

Count 2 (Lewis): Rules 1.1(a) and (b), 1.6(a)(1), 3.4(c), and 8.4(d);

Count 3 (Strawder): Rules 1.1(a) and (b), 1.3(a), 1.3(b)(1) and (2), 1.3(c), 1.4(a), 1.4(b), 1.15(a) (record-keeping), and 8.4(c), but not 1.2(a) nor 8.4(d);

Count 4 (Wilson): Rules 1.2(a), 1.3(b)(1) and (2), 1.3(c), 1.4(a), (b), (c), 1.5(a), (b), (c), 1.15(a) (negligent misappropriation, commingling, and record-keeping), 1.15(c), 1.16(d), 8.4(c), and 8.4(d), but not 1.15(e) nor Rule 8.4(b);

Count 5 (Harris): Rule 8.4(d), but not Rule 8.4(c).

The Specification alleges that Respondent, in connection with her representation of clients in the five separate matters, violated the following rules:

- Rule 1.1(a) and (b), by failing to provide competent representation, including failing to use the required knowledge, skill, thoroughness, and/or preparation necessary for the representation, and by failing to serve her clients with the skill and care commensurate with that generally afforded clients by other lawyers in similar matters;
- Rule 1.2(a), by failing to abide by her client's decisions concerning the objectives of the representation and failing to consult her client as to the means by which they were to be pursued;
- Rule 1.3(a), by failing to represent her client with diligence and zeal within the bounds of law;
- Rule 1.3(b), by intentionally (1) failing to seek the lawful objectives of her client through reasonable means permitted by law and ethics and/or (2) prejudicing or damaging her client during the course of the relationship;
- Rule 1.3(c), by failing to act with reasonable promptness in representing her client;
- Rule 1.4(a), by failing to keep her client reasonably informed about the status of the matter;
- Rule 1.4(b), by failing to explain the matter to the extent reasonably necessary to permit her client to make informed decisions regarding the representation;
- Rule 1.4(c), by failing to inform her client of a settlement offer;
- Rule 1.5(a), by charging her client an unreasonable fee;
- Rule 1.5(b), by failing to set forth the basis or rate of the fee, the scope of the representation, and the expenses for which her client would be responsible;
- Rule 1.5(c), by failing to provide her client with a written statement stating the outcome of the matter, the amount of recovery, and showing the remittance to her client and the method of its determination;

- Rule 1.6(a)(1), by revealing client confidences and/or secrets;
- Rule 1.15(a), by intentionally and/or reckless misappropriating entrusted funds;
- Rule 1.15(a), by failing to hold separate from Respondent's own property the funds that her client paid her;
- Rule 1.15(a), by failing to maintain complete records of entrusted funds for a period of five years;
- Rule 1.15(c), by, upon receiving funds in which her client had an interest, failing to promptly notify or promptly deliver the funds and failing to promptly render a full accounting regarding her fees;
- Rule 1.15(e), by failing to maintain in trust the unearned fees her client had paid;
- Rule 1.16(d), by, after termination of the representation, failing to take timely steps to the extent reasonably practicable to protect her client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which clients are entitled, and refunding any advance payment of fee or expenses that had not been earned or incurred;
- Rule 3.4(c), by knowingly disobeying an obligation under the rules of a tribunal,
- Rule 8.4(b), by committing a criminal act (theft under D.C. Code § 22-3211(a) and (b)) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;
- Rule 8.4(c), by engaging in conduct involving dishonesty; and
- Rule 8.4(d), by engaging in conduct that seriously interferes with the administration of justice.

Specification ¶¶ 22, 35, 64, 118, 129.

Respondent filed an answer on July 5, 2018. A hearing was held on March 25, 26, 27 and 29, 2019, before this Committee. Disciplinary Counsel was represented at the hearing by Assistant Disciplinary Counsel Traci M. Tait,

Esquire. Respondent was present during the hearing and was represented at the hearing by John O. Iweanoge, II, Esquire.

During the hearing, Disciplinary Counsel called as witnesses Donnell Lewis, Roger Rudder, Rosena Rudder, Noverlene Giselle Goss, Jean Harris, William Claiborne, Esquire, Glenn Strawder, Peter Grenier, Esquire, Katina Wilson, Linda Ravdin, Esquire, and Charles Anderson. Respondent testified on her own behalf and did not call any other witnesses. The following exhibits were received and admitted into evidence: DX A to D, DX 1A to 1K, DX 2A to 2H, DX 3A to 3N, DX 4A to 4T, DX 5A to 5E, and RX 1 to 51.³ Disciplinary Counsel's exhibits DX 2B at 4-15; DX 2F at 19-30; DX 3G at 25; and DX 4K at 4-7 were placed under seal.⁴

Upon conclusion of the hearing, the Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the ethical violations set forth in the Specification of Charges. Tr. 1352; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel did not

³ "DX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on March 25, 26, 27 and 29 of 2019.

⁴ The Board Chair granted Disciplinary Counsel's Consent Motion for a protective order to prevent the public disclosure of exhibits relating to the Rule 1.6(a)(1) charge in Count 2. Order, *In re Anitha Johnson*, Board Docket No. 18-BD-058 (BPR May 2, 2019). In order to comply with the Board's Protective Order, substantive references to the sealed exhibits are set forth in a "Confidential Appendix to Report and Recommendation" (hereinafter "Confidential Appendix") that the Ad Hoc Hearing Committee files under seal concurrently with and as part of this Report and Recommendation.

introduce any additional exhibits or witness testimony. Respondent testified on her own behalf in support of mitigation of sanction.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on May 8, 2019 (“Disciplinary Counsel’s Proposed Findings”), and Respondent filed her Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on June 6, 2019 (“Respondent’s Proposed Findings”), several days later than allowed by this Committee’s post-hearing briefing order.⁵ Disciplinary Counsel filed its Reply on June 12, 2019 (“Disciplinary Counsel’s Reply”).

II. FINDINGS OF FACT

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

⁵ Had this Committee the power to sanction counsel for Respondent for helping himself, without permission, to several extra days to submit Respondent’s Proposed Findings to the Committee, the Committee would do so. However, the Board’s Rules give us no such power other than to reject Respondent’s *post hoc* motion to file late. We hereby grant that Motion because rejecting it would severely prejudice Respondent for the failure of her counsel to comply with the Committee’s Order.

A. Background

1. Respondent is a member of the District of Columbia Bar, admitted on June 12, 2006, and assigned Bar number 495672. DX A.

2. Respondent was also licensed to practice law in Maryland in 2005.

Id.

B. Count 1: (2010-D511)

*Roger D. Rudder, Jr., Rosena Rudder,
Noverlene Giselle Goss, and Their Daughters*

3. On June 28, 2008, Roger Rudder, his wife Rosena Rudder, their five-year-old daughter, Noverlene Giselle Goss (Mr. Rudder's sister), and Ms. Goss's 15-year-old daughter attended an annual parade celebrating the culture of Trinidad. Tr. 64-65, 111-12 (Mr. Rudder). There was an altercation with the District of Columbia police, which resulted in the arrest of all three adults and the 15-year-old under a charge of assaulting a police officer. The Rudders and Ms. Goss claimed they were the subject of inappropriate conduct and excessive force by the police, including striking and mishandling the minor children. The adult Rudders, Ms. Goss and her daughter were released by the end of the night and reunited with the Rudders' daughter that night. The original felony charge was reduced to a misdemeanor. Tr. 65-73 (Mr. Rudder); 175-82, 187-88 (Mrs. Rudder); 269-76 (Ms. Goss).

4. Represented by counsel as a result of the criminal charges, the adult Rudders accepted a judgment that included a diversion. Tr. 78, 80 (Mr. Rudder); 189-90 (Mrs. Rudder).

Respondent is Retained.

5. Subsequently, on October 3, 2008, Mr. and Mrs. Rudder and Ms. Goss met with Respondent regarding the possibility of filing a civil action for damages against the police. When the Rudders and Ms. Goss interviewed her to determine whether to retain Respondent, Respondent informed them that “she had done several other criminal -- well, criminal or police brutality related cases, and she had been successful in them. So that kind of gave us some level of comfort, being that [in addition to the fact they had had trouble finding counsel to represent them on a contingency fee basis] . . . she seemed like she -- well, at least she gave us the perception that she had been successful in the past closing out . . . police brutality related type cases.” Tr. 80-81 (Mr. Rudder). Respondent also discussed previous similar cases she had handled involving persons who had engaged in criminal conduct: “And she was like the person was doing something criminal and she still was able to get some type of resolution for them. And we were like, ok, that’s interesting, but for us it sounded like, ok, at least she knows what she’s doing, you know.” Tr. 84 (Mr. Rudder). In response to an inquiry from the Office of Disciplinary Counsel on December 20, 2010, Respondent described filing a “similar case for excessive force” in which the government did not file a motion to dismiss the intentional tort claims although the claims were filed after the statute of limitations had expired. DX 1E at 2 (Respondent letter to Mary-Ellen Perry, Office of Disciplinary Counsel, December 20, 2010). There is no evidence in the record that Respondent sought to associate with counsel more experienced in

litigating police misconduct cases, although Respondent now claims she “attempted to locate other medical malpractice [sic] attorneys to either transfer the case or to associate with in representing client.” Respondent’s Proposed Findings at 5. Respondent takes the position, however, that, in any case, it was not necessary for her to partner with another attorney. *Id.*

6. In fact, Respondent admitted in her testimony that “the Rudders was my first brutality case.” Tr. 1255; *see also* Tr. 1354. Respondent did recall dealing with one previous excessive force case but that was when she was a paralegal. Tr. 1162. She also confessed: “although I didn’t have a lot of police brutality experience” Tr. 1167. Nonetheless, Respondent now claims, through counsel, that “Respondent worked as a paralegal for several years with an attorney that handled several police brutality cases, and respondent was comfortable with the litigation process and Respondent successfully handled other police brutality cases after the Rudder case.” Respondent’s Proposed Findings at 5. Respondent’s representations about her later experience, however, do not justify her misrepresentations to the Rudders and Ms. Goss at the time they engaged her services, which were claims of experience Respondent had to know were false. Therefore, the Committee concludes that there is clear and convincing evidence that Respondent’s representations to the Rudders and Ms. Goss constituted an intentional and knowing misrepresentation of her experience in police misconduct matters as of the time she undertook that representation, and

that Respondent similarly misrepresented her experience in her correspondence with the Office of Disciplinary Counsel.

7. On October 3, 2008, the Rudders and Ms. Goss entered into a contingency fee agreement with Respondent, whereby Respondent's law firm would receive thirty-five percent (35%) of any amount recovered by them through settlement, and forty-two percent (42%) of any amount awarded to them if the firm "files suit or the matter is in litigation." Under the agreement: "In the event of an appeal, the Firm and the Client agree that they will make an additional fee arrangement at that time." Costs incurred in connection with the representation were to be reimbursed by the clients. DX 1A at 1-3.

8. As part of the contingency fee agreement signed by the Respondent, the Rudders and Ms. Goss, Respondent agreed to notify the Rudders and Ms. Goss "promptly of any significant developments and to consult with [them] in advance of any significant decisions to be made." DX 1A at 2.

Lawsuits for Police Misconduct in the District of Columbia

9. There are multiple issues that arise in lawsuits against the District of Columbia and members of the Metropolitan Police Department involving claims of police abuse or misconduct. In general, there are two types of causes of action which can be brought claiming police misconduct. First, a potential plaintiff may sue the individual police officers for common law assault, battery, and false imprisonment under District of Columbia common law. There is a one-year statute of limitations for such lawsuits except for minor plaintiffs, for whom the

statute of limitations is tolled until they reach the age of 18. *See* D.C. Code §§ 12-301, 12-302; Tr. 462 (Expert Witness Claiborne⁶). However, in order also to sue and potentially collect from the District of Columbia, the potential plaintiff must also file with the District of Columbia government a so-called 12-309 notice within six months of the complained-about incident. D.C. Code § 12-309. Under the common law counts, the District of Columbia could be held liable for abusive police conduct if the alleged conduct occurred while the police officers were on duty. Respondent was not aware at the time she undertook the representation and made no effort to determine that the common law claims had a one-year statute of limitations. Tr. 1162 (Respondent).

10. A plaintiff in the position of the Rudders and Ms. Goss, and the minor children, also could have a second cause of action: he or she may sue claiming a deprivation of civil rights under federal law: 42 U.S.C. § 1983. The statute of limitations for filing suit under Section 1983 is three years. There are significant obstacles to successful Section 1983 cases. First, a plaintiff cannot offer merely a summary allegation (or “notice pleading”) but must allege sufficient facts that, if taken as true, state a claim that plaintiff was deprived of his clearly established constitutional rights. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Second, in a Section 1983 case,

⁶ The Hearing Committee accepted Disciplinary Counsel witness William Claiborne, Esquire, as qualified to give expert testimony on police misconduct cases, including the practices and procedures necessary to litigate such cases. Tr. 398, 410.

unlike a common law claim in the District of Columbia, police officers may avoid liability by claiming qualified immunity, while the District of Columbia may avoid liability for the police officers' conduct by showing the officers acted contrary to District policy or custom. Tr. 413-19 (Expert Witness Claiborne); *see also Monell v. Dept. of Social Services*, 436 U.S. 658 (1978). At the time she was representing the Rudders and Ms. Goss, Respondent was not aware that the defense of qualified immunity does not apply in a common law suit against the District of Columbia, although she states she is now aware of that principle. Tr. 1259 (Respondent).

11. For these reasons, the Committee takes notice of the fact that common law claims are an easier way to establish liability for police misconduct in the District of Columbia than are Section 1983 claims. *See also* Tr. 420 (Expert Witness Claiborne).

12. In a Section 1983 case, a successful plaintiff could be awarded attorney's fees. To prevail on a fee petition, however, Respondent would have had to record her time and be prepared to justify her fees and costs in detail. Respondent, however, did not maintain time sheets for this matter and admits that, at the time, she was not aware that her clients potentially could be awarded attorney's fees, or that, in order to preserve that potential recovery, she needed to create and maintain time records. Tr. 1260-61 (Respondent).

13. It is not disputed that the required 12-309 form was timely filed on December 22, 2008, with the District of Columbia Office of Risk Management,

although that form was not part of the record submitted to the Committee. DX 1C at 20; Tr. 535-36 (Expert Witness Claiborne). Even at the time of the hearing before the Committee, however, Respondent admitted “I’m not sure” as to what claims were tied to the 12-309 notice or why it had to be filed: “I just know that it’s standard to do a 12-309 notice if either the District of Columbia or an employee, even suing the officers directly I just know that I always err on the side of caution.” Tr. 1248.

The Failure to Develop Evidence

14. When the Rudders and Ms. Goss first met with Respondent, they emphasized their interest in obtaining and preserving all possible evidence. Initially, the Rudders and Ms. Goss had told Respondent about the names of witnesses and the possibility of video of the incident. Later they were concerned when, “even for witnesses, we had to actually go contact them.” Respondent told them: ““Oh, that’s something for later. We don’t have to worry about the witnesses right now.”” Tr. 87 (Mr. Rudder). Similarly, they asked about obtaining video, but in response, “[s]he just kind of blew it off a little.” *Id.*

15. As the representation got under way, the Rudders and Ms. Goss continued to ask Respondent about obtaining supportive evidence. Mr. Rudder asked Respondent: ““Are we ok? Do you need anything?”” Tr. 86-87 (Mr. Rudder). Respondent assured Mr. Rudder and Ms. Goss: ““No problem, I can take care of that.”” Tr. 84-85 (Mr. Rudder); Tr. 279 (Ms. Goss).

16. Respondent requested that the Rudders and Ms. Goss send her “everything that they had -- pictures, any records that they had, any witness, and I can’t recall what else.” Tr. 1155-56 (Respondent). A video that the Rudders and Ms. Goss sent Respondent by e-mail was evaluated by Respondent as being not helpful for their case. Tr. 1158 (Respondent).

17. The Rudders and Ms. Goss told Respondent about pictures and videos that possibly could be obtained and urged her to get them. Tr. 87 (Mr. Rudder). Later, when Mrs. Rudder asked about whether Respondent had obtained “video from the local stores or businesses nearby . . . [Respondent] hadn’t got it.” Tr. 198 (Mrs. Rudder). By way of defense, Respondent now asserts that “if such evidence existed, it would have been obtained by the Plaintiffs’ attorneys in the criminal cases [against them]” and “if the witnesses existed, their criminal lawyers and Plaintiffs would have obtained those videos and information for their criminal trial and would not have acquiesced to disposition short of outright acquittal or dismissal.” Respondent’s Proposed Findings at 7. No evidence of criminal defense counsel taking such actions was introduced at the hearing and thus has not been subjected to cross examination; as such, Respondent’s assertions in her post-hearing brief to the Committee bear no evidentiary weight and are disregarded.

18. Eventually, Respondent told the Rudders and Ms. Goss to talk to the witnesses themselves. Tr. 87 (Mr. Rudder); 198 (Mrs. Rudder). When they attempted to do so, however, some of the witnesses did not like the fact that the

clients were contacting them and not their lawyer. Tr. 87-89 (Mr. Rudder); *see also* RX 2 at 12, 14-15 (email communications sent by Mr. Rudder to Respondent).

19. Since the Rudders and Ms. Goss did not consult with Respondent until more than 90 days after the incident, many stores and businesses may have already erased or taped over any videos taken at the time. Tr. 484 (Expert Witness Claiborne). There was no indication in Respondent's case file, however, that Respondent took any steps to determine whether any such videos still existed in any of the stores or other businesses near the scene. Tr. 482-83 (Expert Witness Claiborne).

20. When, later, Respondent asked her intern to try to call the witnesses identified by the Rudders and Ms. Goss, "essentially, they weren't reachable." Tr. 1158 (Respondent). "[E]ventually" Respondent also tried to contact the witnesses herself but was unsuccessful. Tr. 1249.

21. On January 5, 2010, after the Rudders' and Ms. Goss's Complaint had been filed, counsel for the District of Columbia informed Respondent that: "If indeed . . . tapes [showing the claimed events] exist and they reveal that your allegations have merit then it might be appropriate for us to discuss settlement earlier rather than later." DX 1C at 26; *see also* RX 2 at 12-14. Respondent, however, had not collected any tapes of the incident -- if any existed at that time -- and could not use them to negotiate with counsel for the District.

22. The failure to investigate the case immediately was characterized by Disciplinary Counsel's Expert Witness William Claiborne as a "fatal, fatal

mistake.” Tr. 429. He explained: “You have to have uninvolved witnesses. [The Respondent] didn’t do any of this.” *Id.* If you delay, he said, “memories fade, people lose their phones, the phones get stolen, they buy a new phone, they don’t back up, and the video gets lost.” Tr. 428.

The Litigation

23. On November 16, 2009, more than a year after being retained, Respondent filed a complaint in the United States District Court for the District of Columbia on behalf of the Rudders, Ms. Goss and the two minor children against the District of Columbia and two named police officers. The Complaint alleged five common law counts, a Section 1983 federal civil rights count, and a “Respondeat Superior” count against the District of Columbia. DX 1I at 9-25; RX 3 at 52-68.

24. In preparing the Complaint, Respondent “researched and looked at different complaints I combined a complaint where I saw various causes of actions, and I just put them in there.” Tr. 1163. Respondent stated in her response to Disciplinary Counsel about this matter: “The main count in this case was for excessive force also known as a Section 1983 case All other [common law] claims was [sic] just added to the complaint.” DX 1E at 1-2 (Respondent letter to Mary-Ellen Perry, Office of Disciplinary Counsel, December 20, 2010).

25. The Complaint was filed nearly 17 months after the incident. DX 1I at 9-25; RX 3 at 52. (Respondent incorrectly testified it was filed “about 14 months after the incident.” Tr. 1159.)

26. Respondent testified that the one-year statute of limitations for assault and battery (and other common law claims) “wasn’t on my mind” when she filed the Complaint. Tr. 1162. Respondent failed to consider or to check the statute of limitations for the common law claims at the time of intake or when she prepared the Complaint. Tr. 1162-63 (Respondent). In an effort to excuse her conduct, Respondent later stated in response to an inquiry from Disciplinary Counsel: “In a similar case for excessive force I filed, the government did not file a motion to dismiss the intentional torts which was filed after the statute of limitations.” DX 1E at 2 (Respondent letter to Mary-Helen Perry, Office of Disciplinary Counsel, December 20, 2010). This was a misrepresentation to Disciplinary Counsel (one of several in that letter) since the one prior case she had remembered during her testimony was an “excessive force” case filed by another lawyer which she recalled handling as a paralegal. In that case, Respondent testified: “it was a three-year -- I can’t recall why the attorney filed it within three years I believe the three-year statute of limitations where [sic] still in my head from dealing with that case.” Tr. 1162-63.

27. On January 11, 2010, counsel for the Defendants filed a Motion to Dismiss the common law counts in the Complaint as to the adults because the Complaint was filed beyond the 1-year period provided by the statute of limitations for the common law claims. DX 1I at 37-46. Although the Complaint filed by Respondent simply referred to “plaintiffs” and did not distinguish between adult and minor plaintiffs, the Defendants conceded in their Motion to Dismiss that the

statute of limitations had not expired as to the common law claims of the juveniles. *Id.* at 40 n.1. Defendants also moved for dismissal of the Section 1983 and Constitutional claims against the individual officers on the grounds that the Complaint was conclusory and failed to allege sufficient facts, as required by *Iqbal* and *Twombly*, to establish a violation of the Plaintiffs' Constitutional rights. *Id.* at 42.

28. Despite the distinction made by the *Defendants* between adult and minor Plaintiffs, Respondent, on March 9, 2010, filed a response to the Motion to Dismiss conceding dismissal of *all* of the common law claims stating: "Plaintiffs do not oppose that their common law claims are time-barred by a one-year statute of limitations." DX 1I at 70, 74. "[I]nexplicably" (as the U.S. Court of Appeals for the D.C. Circuit subsequently termed it (DX 1J at 4)), Respondent failed to accept the Defendants' concession that the juveniles' common law claims were preserved. Making the point even more clearly, Respondent submitted with her Opposition to the Motion to Dismiss a Proposed Order providing for dismissal of "all of Plaintiffs' common law claims" DX 1I at 77. In her testimony before the Committee, Respondent admitted: "That was an error." Tr. 1316. In addition, on behalf of the Rudders and Ms. Goss, Respondent also did not "oppose Defendants['] assertion that they do not have Fifth and Fourteenth Amendment Claims against Defendants." DX 1I at 70. Respondent never discussed with her clients that she intended to concede dismissal of all of the common law counts. Tr. 97-98 (Mr. Rudder).

29. In their Reply, the Defendants gave Respondent another opportunity to correct her error by drawing attention to it: “based on plaintiffs’ Opposition, it appears that either the minor plaintiffs do not allege any common law claims or they are abandoning those claims because plaintiffs’ proposed order provides that ‘all of Plaintiffs’ common law claims are dismissed.’” DX 1I at 83 n.3. There is no evidence in the record to establish Respondent made any further effort to preserve her juvenile clients’ claims or the Constitutional claims. Respondent also did not consult with or tell the Rudders or Ms. Goss about her decision to concede all of the common law claims, including those of the two minor plaintiffs, or the Section 1983 claims against the individual police officers in response to the Motion to Dismiss. Tr. 97 (Mr. Rudder).

30. In its Order of June 22, 2010, the Court ordered dismissal with prejudice of all of Plaintiffs’ common law claims based on Respondent’s concession on the Plaintiffs’ behalf, dismissed the Constitutional claims against the individual officers based on Plaintiffs’ (that is, Respondent’s) concession, and dismissed the charges against the District for Respondent’s failure to allege any facts as to the District’s custom or policy that would form the basis for liability under Section 1983. Accordingly, the Judge dismissed the case in its entirety. DX at 1I at 89-92.

31. Respondent failed to inform the Rudders and Ms. Goss at the time about the D.C. Government’s Motion to Dismiss, or her response to the Motion, including the fact that Respondent had failed to file the Complaint within the one-

year statute of limitations that applied to the common law claims for the adult Plaintiffs. Tr. 97-98, 103-04 (Mr. Rudder); 204-06 (Mrs. Rudder); 283-93 (Ms. Goss). As outlined in FF 34-37⁷, Respondent did not even advise her clients at that time that their Complaint had been dismissed.

32. Thereafter, Respondent filed a Motion to Reconsider, Request to Reopen Case, and Request to File Amended Complaint on July 6, 2010 but without an attached Amended Complaint (*see* DX 1I at 94-108), and then two days later, on July 8, 2010, Respondent filed a Supplemental Motion to Reconsider, Request to Reopen Case, and Request to File an Amended Complaint (this time attaching an Amended Complaint) (*id.* at 110-153). These documents were not prepared with assistance from the Rudders or Ms. Goss, and the clients were not offered an opportunity to review them before they were filed. Tr. 106-11 (Mr. Rudder); Tr. 212-13 (Mrs. Rudder); Tr. 283-93 (Ms. Goss). The D.C. Government opposed these Motions (DX 1I at 155-62), and the Court denied the Motions to Reconsider, Request to Reopen Case, and Request to File the Amended Complaint on August 2, 2010. DX 1I at 7. Respondent did not discuss with her clients the Motions to Reconsider that she filed after the District Court dismissed their Complaint (Tr. 108-11 (Mr. Rudder)) or the District of Columbia's opposition. Tr. 213-14 (Mrs. Rudder).

⁷ Findings of Fact are referred to as "FF" followed by paragraph number(s).

33. Respondent filed a Notice of Appeal from the District Court's decision on August 9, 2010. DX 1I at 180.

Respondent Failed to Consult Her Clients.

34. Respondent claimed she talked to Mrs. Rudder and possibly Ms. Goss before she filed her opposition to the Motion to Dismiss in March (Tr. 1160:15-19), but neither Mrs. Rudder nor Ms. Goss testified that there were any such communications. Tr. 98, 132-33, 207 (Mrs. Rudder); Tr. 283-93 (Ms. Goss). Respondent introduced no contemporaneous file notes, records of emails or other communications by Respondent to her clients informing them of these events. In an effort to rebut this evidence, Respondent pointed to an e-mail from Mrs. Rudder to a member of Respondent's staff on July 28, 2010, asking if the Motion to Dismiss had been "thrown out." Respondent claims that this email from Mrs. Rudder to Respondent (not the other way around) is evidence Respondent had made the Rudders aware of the Motion. DX 1C at 33; Respondent's Proposed Findings at 8; Tr. 132-36 (Mr. Rudder). The e-mail, however, did not occur until over six months after the Motion to Dismiss had been filed and over a month after the Court had *dismissed* the Complaint. It was only after the Rudders had discovered through their own research that the case had been dismissed that Respondent discussed the dismissal with them. Tr. 107-08; 120-22 (Mr. Rudder); Tr. 238 (Mrs. Rudder). The e-mail Respondent points to as exculpatory, in fact, is evidence that Respondent failed to tell her clients that a Motion to Dismiss had been filed and their case had been dismissed. Respondent's failure to

communicate with her clients is made even clearer by Respondent's e-mail to her clients a day after Mrs. Rudder's e-mail (on July 29, 2010, a day after the Rudders confronted Respondent with the fact that a Motion to Dismiss had been filed). In that message, Respondent said the District was "not interested in settlement while the issue of dismissal is pending." DX 1C at 33-34. Notably, Respondent did not, in that communication, inform her clients that the Motion to Dismiss had been granted over a month earlier. Respondent now further "asserts that she discussed the pleadings with her clients and her clients did not ask for any copies of the pleadings nor did they ask any further questions regarding the substance of the pleadings." Respondent's Proposed Findings at 8. To the contrary, the Rudders and Ms. Goss made clear that their efforts to obtain information from Respondent were routinely ignored. Tr. 90-95 (Mr. Rudder); 193-201 (Mrs. Rudder); 281-83 (Ms. Goss: "[T]hen there would be a time where the receptionist would stop letting me talk to her, because she said I was harassing [Respondent] Twice I went to her office. One time was to pick up a package she had for us and there was another time I wanted to talk to her personally about what was going on with the case We talked about her problems instead, about her husband and trying to keep her man intact instead of the case." (Tr. 283)). In light of the absence of any contemporaneous evidence supporting Respondent's post-hearing assertion, as well as the concerns expressed by the Rudders and Ms. Goss both in exhibits presented to the Committee and in their testimony, the evidence strongly contradicts Respondent's claims. After weighing all of the evidence and the

credibility of the witnesses, the Committee determines that Disciplinary Counsel established by clear and convincing evidence that Respondent failed to keep her clients informed.

35. Respondent falsely contended in her correspondence with Disciplinary Counsel that she had “previously informed the Rudders of the issue of the dismissal.” DX 1E at 2 (Respondent letter to Mary-Helen Perry, Office of Disciplinary Counsel, December 20, 2010). The example to which she referred of such a communication was the e-mail from Mrs. Rudder in July, discussed above, as evidence that she “immediately advised my clients.” *Id.* Later in her response to Disciplinary Counsel, Respondent clarified that she only informed her clients when she learned “the dismissal was final.” *Id.* That was seven months after the District of Columbia filed its Motion to Dismiss, when the District Court rejected her Motion to Reconsider. Respondent testified that she talked “[e]ventually” to the Rudders and, she “believe[s],” Ms. Goss about the Order dismissing the Complaint, but she “can’t recall when I called them.” Tr. 1160.

36. The Committee does not find Respondent’s testimony credible. Her testimony was conflicting and was not supported by the few documents presented to the Committee relevant to that period of time. Moreover, Respondent’s testimony was contradicted by the testimony of the Rudders and Ms. Goss whom the Committee found to be credible. Respondent’s reference to the July 28, 2010, email from Mrs. Rudder to Respondent’s assistant, inquiring about the status of the Motion to Dismiss, is more supportive of the assertion by the Rudders and Ms.

Goss that they found out about the Motion to Dismiss only through their own research. Thus, the Committee concludes, based on clear and convincing evidence, that Respondent: (a) failed to inform her clients of the District of Columbia's original Motion to Dismiss; (b) failed to consult with her clients before she conceded dismissal of the common law counts against all plaintiffs, including the minor children, and dismissal of the Fifth and Fourteenth Amendment claims; (c) failed to inform her clients, at the time it happened, of the Court's original Order dismissing the Complaint; (d) failed to inform her clients that she was filing the Motions to Reconsider, Request to Reopen Case, and Request to File the Amended Complaint with the Court, or the substance of such motions; (e) only informed her clients of the Court's rejection of Respondent's Motion to Reconsider when Respondent determined (again, without consulting her clients) to notice an appeal of the Court's decision; and (f) provided false information about these issues to her clients, Disciplinary Counsel and this Committee.

37. When Respondent did talk to her clients, she misrepresented the seriousness of the dismissal of their claims. Instead, as Respondent testified, she "continued to want to be positive to them [A]lthough there were certain claims that will be dismissed; that I believe that under the excessive force claim that we had, I believe that their claim was strong So I assured them everything is still on track; don't worry" Tr. 1160-61. In fact, Respondent's assertion to her clients that their "excessive force" claim, under section 1983, was strong, was a blatant falsehood in light of the District Court's dismissal, with prejudice, of the

entire Complaint, including the Section 1983 claims. Thus, the Committee concludes that there is clear and convincing evidence that Respondent affirmatively misled her clients as to the seriousness of the impact of the dismissal of their claims. Moreover, at no time did she disclose to her clients that her mistake in missing the statute of limitations on the common law claims would have a devastating impact on their case; instead, she deceived them by claiming that, despite the dismissal of the common law and Constitutional claims, their case was “on track” and that the dismissal of the case was not her fault, *see* FF 40, a falsehood she also repeated to Disciplinary Counsel.

The Clients Terminate Respondent’s Representation.

38. On November 17, 2010, Mr. Rudder sent a letter to Respondent terminating their attorney-client relationship and requesting a copy of their file. DX 1B at 1. He also submitted a letter to the U.S. Court of Appeals for the D.C. Circuit seeking a continuance in order to obtain new counsel, claiming that Respondent had not acted competently on their behalf. DX 1C at 36.

39. Mr. Rudder claimed that Respondent delayed in providing the Rudders and Ms. Goss their files after Mr. Rudder terminated the relationship with Respondent. DX 1C at 4. Respondent denied that allegation as “totally untrue.” DX 1E at 3. In light of the continuation of Respondent’s relationship with the Rudders and Ms. Goss after that time (discussed below), the Hearing Committee cannot conclude by clear and convincing evidence that such a delay occurred.

40. On November 24, 2010, Respondent further misled the Rudders and Ms. Goss by stating in an e-mail that the “case was not dismissed due to my error.” Respondent stated that the Court “just dismissed the case on its own initiate [sic] which was clearly an error and was inappropriate.” Respondent falsely warned the Rudders and Ms. Goss that if they continued to claim that the case was dismissed due to Respondent’s error instead of the Court’s error, “you will not be successful on appeal.” DX 1F at 13 (emphasis in original).

41. The Committee concludes by clear and convincing evidence that the statement by Respondent that the “case was not dismissed due to my error” was a knowingly false representation by Respondent to her clients. The fact that the Complaint was not filed until after the one-year statute of limitations for the common law counts was clearly Respondent’s error, as was Respondent’s “inexplicable” concession, *see* FF 28, of the common law claims of the minor children, for whom the statute of limitations did not *begin* to toll until they reached majority. Respondent also erred in failing to investigate and plead a sufficient factual basis to support the Section 1983 claims in the Complaint, as required by contemporary Supreme Court precedent. *See Iqbal*, 556 U.S. 662; *Twombly*, 550 U.S. 544.

42. Respondent filed the opening appeal brief on behalf of the Rudders and Ms. Goss on December 13, 2010. DX 1E at 121-148; RX 6 at 164-191. Respondent did not discuss the substance of the brief with her clients before she filed it and did not share a draft of the brief with them before she filed it. Tr. 165-66 (Mr. Rudder).

Appeals Court Mediation

43. In the meantime, the case was placed in the D.C. Circuit's appellate mediation program (RX 4 at 159, 162-63) and mediation was scheduled for January 5, 2011. DX 1E at 1. Respondent urged the Rudders and Ms. Goss to continue to allow her to represent them during the mediation, arguing it would be "unprofessional" for them to participate without representation. As Mr. Rudder recalled, Respondent said: "Well, at least let me do your mediation and you can do whatever you want after that." Tr. 99.

44. The mediation was unsuccessful. The Defendants' lawyers took the position that the Rudders and Ms. Goss had given up their rights and had no bargaining chips left. Tr. 99-100, 170 (Mr. Rudder: Opposing counsel told us, "You really have nothing. You have no leverage. You've given up your rights." (Tr. at 170)). The Defendants' lawyers offered to settle for \$10,000 and Respondent urged her clients to take it. Tr. 100, 150-53 (Mr. Rudder); Tr. 202-03 (Mrs. Rudder). They rejected the offer. Tr. 153 (Mr. Rudder). Given the events described by the Rudders and Ms. Goss, \$10,000 appears to have been little more than a nuisance settlement offer and the Committee does not credit Respondent's

assertion that it was a good offer that should have been accepted, especially in light of Respondent's assertion to her clients that their case remained strong even on appeal.

45. Respondent now asserts that "the Plaintiffs were prepared prior to mediation on how to express and convey the incident to the mediator and opposing counsel." Respondent's Proposed Findings at 9. Respondent, however, provides no evidentiary reference to support that assertion and the Committee is aware of none. Respondent also asserts that it was "inconceivable" that she would have submitted a detailed settlement letter to the mediation (referencing RX 7 at 192-201) and "yet failed to advocate for Plaintiffs at mediation." *Id.* That assertion of forceful advocacy for the Plaintiffs, however, is not supported by the record and is contradicted by the testimony of her clients. Tr. 150-51 (Mr. Rudder). Such assertions in post-hearing briefs without any evidentiary reference are not credible.

46. On February 28, 2011, Mr. Rudder again instructed Respondent that he was terminating their attorney-client relationship. DX 1F at 4. Respondent filed with the Court of Appeals her motion to withdraw as counsel on March 10, 2011, and substitute counsel entered an appearance for the Rudders and Ms. Goss on April 13, 2011. RX 4 at 159.

47. The United States Court of Appeals for the District of Columbia Circuit issued its opinion on January 17, 2012, reversing the District Court in part, reinstating the common law claims of the minor plaintiffs and the Constitutional claims against the individual officers. DX 1J at 1-10.

48. The matter was then returned to the District Court and, on September 5, 2016, the Court approved a settlement among the parties. RX 3 at 40. The exact amount of the settlement could not be disclosed to the Committee, but it was for more than the \$10,000 initially offered in mediation. Tr. 253 (Mr. Rudder).

49. Because the amount of the settlement obtained by the Rudders, Ms. Goss and the minor children was not disclosed, the Committee cannot conclude that Respondent's clients suffered a material financial loss as a result of the inappropriate and inadequate professional actions taken by Respondent. The ultimate success of their settlement, however, cannot be credited to Respondent but to the new counsel who entered the case on behalf of the Rudders and Ms. Goss. The years of unnecessary anguish and disruption Respondent caused her clients through her misrepresentations, failures to communicate, actions and failures to act in a timely fashion, however, were established by clear and convincing evidence through the testimony of Mr. and Mrs. Rudder and Ms. Goss and supporting documents cited above.

The Complaint to Disciplinary Counsel

50. On November 23, 2010, Mr. Rudder filed a complaint regarding Respondent's professional conduct with the Office of Disciplinary Counsel. DX 1C at 1-39. That Office issued a subpoena to Respondent for documents on December 9, 2010. DX 1D at 3.

51. Respondent responded by written answers to Mr. Rudder's allegations on December 20, 2010. In her answers, Respondent repeatedly brushed

aside Mr. Rudder's claims by stating, "Mr. Rudder is not an attorney and does not realize" or "does not understand." DX 1E at 1-3. Respondent also argues that Mr. Rudder filed his grievance against her "because he could not understand the legal issues in the case." *Id.* at 3. However, the Committee finds that Disciplinary Counsel has proven by clear and convincing evidence that, whatever lack of understanding the Rudders and Ms. Goss had about their case was linked directly to Respondent's failure to communicate with her clients to keep them reasonably informed or to explain to her clients the status of their matter to the extent reasonably necessary to permit them to make informed decisions regarding her representation of them. The Committee had a lengthy opportunity to listen to the Rudders and Ms. Goss. They are each intelligent people capable of understanding the issues in their lawsuit if properly and truthfully explained. Instead, they received incompetence and deceit from their attorney.

52. Respondent was dishonest in the following respects:

- Respondent fabricated the extent of her experience handling police misconduct cases, claiming expertise she did not have, and thereby through misrepresentation convinced the Rudders and Ms. Goss to retain her.

- Respondent misrepresented to her clients the significance of the Court's granting the Motion to Dismiss (once she was ultimately forced to admit it had occurred), claiming they had strong claims remaining when, in fact, the entire Complaint had been dismissed with prejudice.

- Respondent falsely informed her clients that the dismissal of their

Complaint was not her fault.

- Respondent misled Disciplinary Counsel regarding the conduct of the Rudder-Goss case, including assuring Disciplinary Counsel that Respondent had not missed any deadlines, had kept her clients reasonably informed and had relevant experience with police brutality cases.

53. Respondent's conduct fell below the standard of care for attorneys handling a police misconduct case in the following respects:

- Respondent lacked core knowledge about the issues raised by police misconduct cases, including the complex issues raised by potential Section 1983 cases, including qualified immunity, the reasons behind the need to file advance notice with the District of Columbia government, and the requirements for drafting and filing a sufficient complaint.

- Respondent failed to determine the statute of limitations for common law claims.

- Respondent failed to file her clients' Complaint within the statute of limitations for common law claims for adult plaintiffs.

- Respondent failed to differentiate the statute of limitations period for adult and minor plaintiffs in her Complaint.

- Respondent, on her own initiative and without consulting her clients, conceded the common law claims of the minor plaintiffs, even after Defendants made clear that her concession was unnecessary and uncalled for.

- Respondent failed to conduct a meaningful investigation of the facts of the claims of her clients, eventually laying the task back on her clients, resulting in her ultimate inability to find and obtain evidence from third-party witnesses and sources of video evidence.

- As a result of Respondent's failure to educate herself and to develop facts relevant to her clients' arrest and claims of police misconduct, she failed to include in her Complaint sufficient details to avoid a dismissal under Supreme Court precedent in *Iqbal* and *Twombly*.

- Respondent failed to inform her clients in a timely manner that she had failed to file the Complaint within the statute of limitations for the common law claims, or that the Complaint had been dismissed.

- Respondent failed to consult with her clients regarding the steps she planned to take, and that she took, in response to the Court's dismissal of the Complaint, and failed to advise them of these steps.

- Respondent failed to preserve her clients' right to potential recovery of attorneys' fees under Section 1983 by failing to maintain records of the time she and her staff spent on the case.

- Respondent failed to keep her clients reasonably and meaningfully informed of the status of their case in a manner sufficient that they could make reasoned decisions regarding their matter.

C. Count 2: (DDN 2011-D455)

Donnell Lewis

54. On July 19, 2007, Mr. Lewis signed a retainer agreement with Respondent to represent him in a divorce matter in the District of Columbia Superior Court. DX 2A; Tr. 29-30, 45-46 (Lewis).

Respondent Fails to Attend Status Hearing.

55. On August 14, 2007, Respondent entered her appearance. DX 2F at 9; RX 11 at 227.

56. Subsequently, after a status hearing scheduled for November 1, 2007 was vacated, the Court scheduled another status hearing for January 10, 2008, without consulting with Respondent. DX 2E at 4; RX 10 at 222-23; Tr. 33 (Lewis); Tr. 1214-15 (Respondent). Respondent spoke with the court clerk and then filed a *Praecipe* informing the Court that she could not attend on that date. Tr. 1215 (Respondent); RX 14 at 236-38. When these steps did not result in changing the status hearing date, Respondent failed to take the additional step of filing a motion to continue the January hearing even though she knew the hearing was likely to proceed without her. Tr. 1226 (Respondent). Respondent recognized that, normally in such a circumstance, she would “just have someone stand in for me. But at that time I didn’t have those resources.” Tr. 1225. In response to an inquiry from Disciplinary Counsel, Melvin G. Bergman, as Respondent’s then-counsel, stated that Respondent said it was her policy “then, and is now, to follow up on motions to continue, up to and including the day of the event, as continuances sometimes are not granted until the eve of the event.” DX 2E at 4.

However, Respondent did not file a motion for continuance and, by Mr. Bergman's telling; Respondent "cannot state with certainty what actually happened." *Id.* The clear and convincing evidence before the Committee confirms Respondent did not file a motion for continuance and failed to pursue other options to ensure Mr. Lewis was represented at the status hearing.

57. When the status hearing nonetheless was held on January 10, 2008, Respondent had requested to participate by telephone, but she did not do so because the court clerk was unable to reach her because she was in another courtroom at the time. DX 2G at 1-13; RX 10 at 223; Tr. 1218-19 (Respondent). Accordingly, Mr. Lewis appeared without counsel at the January 10, 2008 status hearing and did not have the ability to consult with his lawyer when questioned by the Court. The Court expressed exasperation that the case had "been continued numerous times since July [2007]," continuing: "So, I'm very frustrat[ed] that [Respondent] has just chosen not to be here today." DX 2G at 8. In an effort to understand Respondent's absence, the Court questioned Mr. Lewis about what Respondent had told him -- forcing him to disclose confidential information in open court that Respondent could have submitted under seal or *ex parte*. *Id.*

Respondent Discloses Confidential Client Information.

58. Prior to this hearing, Respondent had sent a letter, dated December 6, 2007, to Mr. Lewis, stating her intention to withdraw as his attorney, because she could not continue to work on a case "for which we have not been paid." RX 12 at

229-30. Although, in his testimony before the Hearing Committee, Mr. Lewis could not remember having that communication with Respondent (Tr. 49), according to the transcript of his testimony at the January 10th status hearing, he stated that Respondent had called him and said she could no longer work with him. DX 2G at 8; Tr. 54. Mr. Lewis also testified to the Committee that he had told the judge that Respondent was no longer going to represent him because Mr. Lewis was “unable” to pay her bills. Tr. 55.

59. The transcript of the January 10th status hearing reflects his precise response to the Court’s question as to why Respondent is no longer representing him: “Oh, it’s financial reasons . . . for financial reasons. I’m a design consultant, and the month of December, you know, is very slow for me . . . [to] continue to pay for my bills and try to [have a] retainer and it’s kind of hard for me. And then, she called me Monday and sa[id] that she was no longer going to be able to work with me.” DX 2G at 8; Tr. 49, 53-57.

60. On January 30, 2008, Respondent filed her Motion to Withdraw. The relevant details of the motion are discussed in the attached Confidential Appendix, ¶ 60.

61. The Court granted Respondent’s Motion to Withdraw on March 5, 2008. DX 2H at 4; RX 16 at 241.

62. Mr. Lewis never gave permission to Respondent to disclose the basis of the motion to withdraw. Tr. 57-58 (Lewis). Respondent had not consulted with Mr. Lewis before she made her communication with opposing counsel implying

the basis for the Motion to Withdraw, nor had she requested or obtained his permission to share that information. Tr. 41-42 (Lewis).

63. Respondent claims that she conveyed the information about Mr. Lewis's financial condition because "Mr. Lewis had already conveyed it, and I wanted to provide the court detail to explain why I'm withdrawing." Tr. 1221. Respondent also now asserts that any disclosure of Mr. Lewis's financial circumstances was not done in "open court" because "family matters are generally not open to the public and financial information [is] generally provided to the opposing party in divorce and custody matters." Respondent's Proposed Findings at 11. There, however, is no evidence in the record indicating that the court hearings involving Mr. Lewis were closed. Nor is it obvious that a closed hearing would ameliorate the harm caused by Respondent's statement, since it was the disclosure to the opposing party, his wife and her counsel, that was potentially harmful to Mr. Lewis.

64. Respondent claims that Mr. Lewis could not be embarrassed by Respondent's disclosures as he testified about his financial condition at the disciplinary hearing (now ten years after her disclosure). *See* Respondent's Proposed Findings at 11 (referring incorrectly to Mrs. Lewis). The current level of embarrassment Mr. Lewis may or may not feel is irrelevant to the fact, established by clear and convincing evidence by Disciplinary Counsel, that Respondent disclosed confidential information about her client, without permission and without

any effort to protect it from public disclosure. The relevant details are discussed in the attached Confidential Appendix, ¶ 64.

65. During Disciplinary Counsel’s investigation, Respondent’s former counsel conceded that the disclosures were improper in a letter on which Respondent was copied. DX 2D at 3-4. Respondent attempted to distance herself from her former counsel’s position at the hearing (Tr. 1222-23), and in her briefing to the Committee. *See* Respondent’s Proposed Findings at 11 (asserting that “statements contained in a settlement negotiation letter by counsel should not be imputed as an admission by the Respondent”). Respondent testified that she was not aware at the time that she could have filed her Motion to Withdraw *in camera* or *ex parte* with the Court. Tr. 1227-28. When asked if it was her view now that the disclosures in her Motion to Withdraw were “not proper,” Respondent stated: “I don’t know. I guess that’s for the [Hearing] Committee to decide, but I don’t believe it was prejudicial and I believe it was agreed by the client, that he understood and that he had already disclosed it.” Tr. 1228-29.

66. The Committee listened carefully to Mr. Lewis’s testimony under both direct and cross examination and concludes by clear and convincing evidence that he had little understanding of the proceedings in his case as they occurred. He did not fully remember or understand the communications Respondent claimed to have had with him or the hearings he attended on his own, without counsel to assist and guide him. Specifically, he testified that he could not recall various communications with Respondent. Tr. 33-35, 38-41. Mr. Lewis did testify at the

January 10, 2008, status hearing about the conversation with Respondent in which she told him she was no longer “going to be able to work with [him].” DX 2G at 8; Tr. 54. Accordingly, the Committee cannot conclude by clear and convincing evidence that Respondent failed to communicate with Mr. Lewis or to tell him before the January 10th hearing that she would no longer be able to represent him in those proceedings. At the same time, as with any client, Respondent had a continuing responsibility, until her Motion to Withdraw was granted, to take steps necessary to ensure Mr. Lewis was aware of and understood the impact of the events affecting his litigation. This, Respondent did not do.

67. The Committee, therefore, concludes by clear and convincing evidence that Respondent failed to appear in Court with Mr. Lewis or to take all appropriate steps to ensure Mr. Lewis would not have to appear without counsel. For example, Respondent did not file a motion to continue the January 10th hearing, or arrange for other counsel to stand in for her at that hearing or at the other court’s hearing at which she appeared instead. Respondent’s Motion to Withdraw was not actually filed until February 7, 2008 (RX 10 at 224), and that Motion was not granted until March 5, 2008. RX 16 at 241. Respondent had not been released from her obligations as counsel at the time of the January 10th hearing, which makes Respondent responsible for putting Mr. Lewis in the position of appearing before the Court by himself without counsel to advise him. From observing Mr. Lewis’s testimony at the Hearing, the Committee concludes that Respondent is not credible in her testimony that Mr. Lewis would not find stressful

appearing in a status conference without counsel. Tr. 1231. The Committee finds that Mr. Lewis was extremely uncomfortable in the relatively friendly confines of the Committee hearing where he had nothing at stake. He would clearly be disadvantaged -- as would most inexperienced non-lawyers -- appearing before a Judge in a courtroom without counsel.

68. The Committee also concludes on the basis of clear and convincing evidence that Respondent failed to take appropriate steps to protect from disclosure to Mr. Lewis's wife and her counsel, and the public, the reasons for her requested withdrawal which Mr. Lewis had not given permission for Respondent to disclose. Tr. 41-42, 57-58.

69. Respondent was dishonest in the following respects:

- Respondent claimed to Disciplinary Counsel and to the Committee that her client had disclosed his financial condition to the Court, when in fact he did not in the same level of detail that Respondent disclosed.

70. Respondent's conduct fell below the standard of care for attorneys handling family law cases in the following respects:

- Respondent failed to take sufficient actions to ensure her client would not have to appear in a court hearing without proper representation by failing to file and pursue a motion for continuance of a hearing she could not attend.

- Respondent failed to recognize her duties to Mr. Lewis as his lawyer until such time as her Motion to Withdraw had been granted.

- Respondent did not know she could file her Motion to Withdraw *in camera* and *ex parte*.
- Respondent failed to file her Motion to Withdraw *in camera* and *ex parte*.
- Respondent, having entered her appearance in Mr. Lewis's case, improperly disregarded her obligations to him, which continued until her Motion to Withdraw was granted.
- Respondent disclosed without permission from her client information regarding the reasons for her Motion for Withdraw, and confidential information regarding her client's financial circumstances.

D. Count 3: (DDN 2012-D091)

Glenn Strawder

Mr. Strawder's Injury and Litigation

71. In 2004, Glenn G. Strawder suffered a retinal tear in his left eye. Tr. 541-44. He lost vision in that eye and blamed that loss on errors in his medical treatment. Tr. 560.

72. Mr. Strawder had worked at Washington Hospital Center for nearly two decades as a computerized axial tomography (CAT or CT) scan technologist, which required him to evaluate CAT scans. Tr. 539-41, 560-61. He also worked as an inventor and had obtained sixteen patents for his inventions. Tr. 555.

73. In early April 2007, having been turned down by multiple lawyers, and facing a statute of limitations deadline, Mr. Strawder was desperate to find representation for his medical malpractice claim. Tr. 597-99 (Strawder); Tr. 1177

(Respondent). Respondent agreed to take his case; she liked him and found him persuasive in his portrayal of his case. Tr. 1175-77; DX 3A. She had never handled a medical malpractice case, let alone a complex one. Tr. 1175-76, 1182. Her plan was to file suit to preserve the cause of action before the statute of limitations expired and then find new counsel who had greater expertise. Tr. 1178-80.

74. Mr. Strawder wanted a lawyer who would pursue obtaining a judgment finding Dr. Desai, one of his treating doctors, negligent. Tr. 597 (Strawder). Respondent was uncertain about her ability and willingness to do that, repeating that she had told Mr. Strawder she “would not take this case to trial.” DX 3F at 8. Respondent claims to have sought assistance from other more experienced lawyers to take the case (Tr. 1178-80) but the records in the file fail to evidence any communications with potential co-counsel (Tr. 1267-70 (Respondent)) and, therefore, it is unclear whether and what communications took place.

75. On August 23, 2007, Respondent filed a medical malpractice action in the Superior Court of the District of Columbia alleging that her client had suffered damages as the result of substandard medical treatment. DX 3I (Tab 2) at 12. The case was styled *Glenn G. Strawder v. Medstar Health d/b/a Washington Hospital Center, The Retina Group of Washington, and Dr. Vinay Desai*, 2007-CA-5885. *Id.* Respondent sought damages for Mr. Strawder for pain and suffering, past and continuing medical expenses, and past and continuing loss of earnings. DX 3I

(Tab 48) at 289. She modeled her complaint after a form complaint she had obtained at a seminar. Tr. 1178.

76. Respondent's initial complaint used an incorrect name for a corporate defendant. DX 3I (Tab 9) at 70. She learned of her error only after opposing counsel pointed it out and courteously agreed to accept service in the correct name of the entity. *Id.* Respondent filed an Amended Complaint on November 19, 2007. Tr. 643 (Expert Witness Grenier⁸); DX 3K at 51. Respondent had previously, on May 21, 2007, filed Notices of Intention to Assert Claim, as required by D.C. law, but misdated the alleged treatment event as occurring in 2007 (when the notice was filed) instead of the actual date of the event, in 2004. DX 3I at 4-11.

77. In his Complaint, Mr. Strawder alleged that he experienced a strange sensation in his left eye that began on August 13, 2004. He went to sleep on August 14, 2004, and awoke the next day unable to see well from that eye. DX 3K at 53-61. He admitted himself to Washington Hospital Center's emergency room. *Id.* at 53. He was seen and treated by several medical personnel, including Dr. Desai. Mr. Strawder was discharged the same day, even though at least one doctor considered him at high risk for retinal detachment. *Id.* at 53-55. Because it was Sunday, no retinal surgeon would come in to do the surgery. *Id.* at 55. Mr.

⁸ The Hearing Committee accepted Disciplinary Counsel's witness, Peter Grenier, Esquire, as qualified to offer expert testimony on personal injury law and practice, including the practices and procedures used in D.C. Superior Court. Tr. 633.

Strawder alleged that thereafter he followed all clinical advice from Washington Hospital Center -- a claim disputed by the hospital (Tr. 1184, 1271 (Respondent)) -- and was seen there repeatedly by multiple doctors. He was informed that the problem with his vision had been fixed, but then was directed to undergo emergency surgery and a further surgery. *Id.* at 57-60. Mr. Strawder finally rejected further surgical treatments at Washington Hospital Center. *Id.* at 60. Ultimately, although he sought treatment at Johns Hopkins and had two more surgeries, Mr. Strawder's vision remained unimproved. He has lost all vision in his left eye. *Id.* at 61.

78. Mr. Strawder is still able to read CAT scans for a living but has had to give up his career as an inventor and is unable to run outside with his granddaughter because he has no depth perception. Tr. 539, 555. Respondent sought to recover damages for permanent injuries to Mr. Strawder's left eye. DX 3K at 63.

79. As discussed below, Respondent had difficulty finding a qualified expert who would testify that the defendants' care of Mr. Strawder fell below the standard of care. She ultimately identified as a medical expert an individual who was not a retinal specialist (Tr. 639, 641-42 (Expert Witness Grenier)) although it was undisputed that Mr. Strawder's eye had required retinal surgery. She filed that expert's designation out of time.

80. In Mr. Strawder's case, Respondent exhibited, and at the Committee hearing, continued to exhibit, a casual attitude toward the rules of civil procedure

and court deadlines. She ignored discovery deadlines until pressured by her opponent. Tr. 645-48, 1323-24. Respondent missed discovery deadlines which she justified by claiming she “felt comfortable” spending her time searching for an expert instead of trying to meet discovery deadlines. Tr. 1323. Once she had identified an expert, she filed her expert witness notice a week after it was due (Tr. 1188), and failed to respond to discovery requests within the normal deadlines. Tr. 1276.

81. The defendants jointly offered three experts, including an expert in finance and economics to rebut anticipated testimony by a plaintiff’s economic expert. DX 3I (Tab 23) at 164-67. Respondent did not obtain an economics expert. *See generally* DX 3I, 3K at 1-10; Tr. 1197-98. She believed she and Mr. Strawder had to focus on finding a liability expert and that Mr. Strawder could explain his economic loss to the jury. Tr. 1197-98.

82. On November 20, 2008, the parties participated in mediation, which was unsuccessful. DX 3K at 6. Later that day, Respondent and counsel for Dr. Desai filed a *Praecipe* dismissing Dr. Desai from the litigation with prejudice. *Id.*; DX 3I (Tab 39) at 245. Washington Hospital Center and The Retina Group of Washington remained as defendants. *See* DX 3K at 116.

83. At the mediation, Respondent persuaded Mr. Strawder to agree to dismiss Dr. Desai because she believed it would make the case easier to settle. However, Dr. Desai was dismissed without any offer on the table from the defendants (or even the promise of an offer), a serious strategic mistake according

to Disciplinary Counsel's expert witness. Tr. 678-82 (Expert Witness Grenier). We do not credit Respondent's testimony that she left the decision up to Mr. Strawder because she did not know what the defendants' intent was. Tr. 1271-72. Instead, we conclude that this testimony by Respondent was intentionally false. Mr. Strawder blamed Dr. Desai for his injury and he would not have dismissed him from the case without encouragement from Respondent. *See* Tr. 1284 (Respondent). Keeping Dr. Desai in the case would have given Mr. Strawder some leverage because of Dr. Desai's obligation to report a malpractice judgment. Tr. 678-80 (Expert Witness Grenier). Before contacting Respondent, Mr. Strawder said he declined to retain other counsel because that lawyer wanted to settle the case, and Mr. Strawder disagreed: "I wanted something done with Dr. Desai because he had done this to me and he had done it to others." Tr. 559-60. According to Respondent, at the mediation, Mr. Strawder "was so angry he didn't want to be in the room with Dr. Desai." Tr. 1284 (Respondent).

84. On December 8, 2008, Respondent filed a Motion to Withdraw. DX 3I (Tab 40) at 246; DX 3K at 6.

85. On December 10, 2008, counsel for the remaining defendants filed a joint response to Respondent's Motion to Withdraw, stating that they did not oppose her request if the litigation schedule then in place would not be disturbed. DX 3I (Tab 41) at 252-53. Defense counsel opposed Respondent's Motion if it entailed "any request to continue the trial date or to reopen discovery in the event [Mr. Strawder] secures new counsel." *Id.*

86. On December 11, 2008, the Court held a pretrial hearing. DX 3K at 6. In an order issued that day, the presiding judge set the case for a four-day trial to begin on February 9, 2009, and, *inter alia*, denied Respondent's Motion to Withdraw. *Id.*; DX 3I (Tab 42) at 255.

87. On February 6, 2009, the Court held another pretrial hearing. DX 3K at 7. There, the presiding judge granted Respondent's Motion to Withdraw in open court, and cancelled the February 9, 2009 trial. *Id.*

88. Eventually, Mr. Strawder retained successor counsel who entered his appearance on September 28, 2009. DX 3K at 154-55. Trial was scheduled for less than one month away, on October 26, 2009. DX 3K at 8.

89. Successor counsel's requests to reopen discovery, to add additional experts, and to continue the trial were all denied (DX 3K at 158). Ultimately, Mr. Strawder accepted what he regarded as a nuisance settlement and agreed to dismiss his case with prejudice. DX 3G at 25.

The Representation

90. By the time Mr. Strawder hired Respondent, Washington Hospital Center had terminated his employment. Tr. 560-61. Respondent agreed to represent him on a contingent-fee basis with Mr. Strawder agreeing to pay costs and expenses. Tr. 544-45, 563-64; DX 3A. Although she took the case even though she admitted at the hearing it was not a "good method to file a case for someone [when she did not] want to take the case" (Tr. 1179), Respondent had

assured Mr. Strawder that: “I think you have a good case or else I would not have accepted it.” DX 3F at 14.

91. Because Mr. Strawder had used his savings, on two occasions Respondent arranged for him to borrow funds against the value of the case from a litigation financing company called Peachtree Funding. Tr. 582-83; DX 3G at 2-21. Respondent did not know whether Mr. Strawder’s case “had value.” Tr. 1278 (Respondent). Nonetheless, her law office facilitated processing Mr. Strawder’s non-recourse loans (DX 3F at 12, 18), including claiming without any evidentiary basis that Mr. Strawder’s case was valued at five million dollars. DX 3J at 29-30, 150; Tr. 669-70 (Expert Witness Grenier). Respondent testified she had “no idea” how that number was arrived at (Tr. 1285-86) and defended use of that number by claiming “[s]omeone in my office [put down the \$5 million figure]. That is not my handwriting.” Tr. 1285-86. However, she admitted that she or another lawyer in her office reviewed the loan application before it was submitted. *Id.* She never sought to correct the potential recovery number given to Peachtree Funding: “I didn’t [because] . . . I didn’t believe that was my obligation.” Tr. 1286. In light of Respondent’s testimony, she cannot avoid responsibility for making an uninformed and baseless assertion to Peachtree Funding about the value of Mr. Strawder’s case.

92. Respondent continued to encourage Mr. Strawder to try to identify an expert witness, and incur increasing amounts of debt, even though she admits she “didn’t know whether his case had value.” Tr. 1278. She described her role as Mr.

Strawder's attorney as encouraging her client to determine for himself whether his case "had value." Tr. 1278-79. Like the dismissal of Dr. Desai, Respondent in her testimony before the Committee laid solely in the hands of her client the decision of whether his case was worth pursuing. In fact, while that decision was ultimately up to the client, his decision should have been guided by and based on intelligent, informed analysis by counsel. Ultimately, Respondent never worked up a formal valuation of Mr. Strawder's claims, at least in part because she "wasn't aware of how to value his case." Tr. 1279 (Respondent).

93. Despite averring the opposite to Peachtree Funding, Respondent did not explain the implications of borrowing the funds, including the high interest rate Mr. Strawder would be charged if he were able to recover any damages. *Compare* DX 3G at 11 *with* Tr. 601-03, 656-59. Mr. Strawder had no real understanding of the mechanics of the loans. Tr. 574-76. Mr. Strawder repeatedly testified that he did not read contracts and just signed what was put in front of him. Tr. 545-46, 568-59, 573-77, 582, 601-02.

94. Over the course of the representation, Mr. Strawder borrowed twice from Peachtree Funding for a total of more than \$17,000, including total principal, fees and interest. DX 3G at 1. Despite his request, Respondent never provided her client an accounting of these funds she received which were intended for litigation costs (Tr. 546-47), and only made available some documentation the day before the disciplinary hearing began. RX 49 at 680-700. Respondent failed to provide

her client any records or receipts for costs justifying the funds Mr. Strawder paid her. Tr. 547 (Strawder).

95. Respondent sought the opinions of two retinal experts but neither found negligence by Mr. Strawder's treating doctors. DX 3I (Tab 43) at 259; *see also* DX 3J at 22. Despite this, Respondent persuaded Mr. Strawder to borrow money for a third expert, without informing her client of the possibility that a helpful opinion might not be obtainable. Tr. 656-60 (Expert Witness Grenier).

96. Mr. Strawder's complaint was ultimately settled for what he considered to be a nuisance value. It is impossible for the Committee to evaluate what monetary impact Respondent's errors in handling this matter had on Mr. Strawder. On the one hand, had Respondent properly conducted and responded to discovery, identified a clearly qualified expert witness, and not dismissed Dr. Desai from the case, Mr. Strawder's ultimate recovery may have been higher. On the other hand, Disciplinary Counsel's expert witness testified that, having received initial responses from two qualified experts that Mr. Strawder's treatment did not fall below the standard of care, Respondent's continuing to represent Mr. Strawder (and encouraging him to take on more and more debt in order to pursue his litigation) fell below her standard of care as a lawyer. Tr. 639-41. The Committee does not believe it is necessary to try to imagine the ultimate outcome of Mr. Strawder's litigation had he been represented properly, in order to determine that Respondent's actions in this matter fell below a lawyer's standard of care and included significant dishonesty by her.

97. Respondent's conduct fell below the standard of care for attorneys handling a medical malpractice case in the following respects:

- Respondent lacked the experience to handle Mr. Strawder's case either alone or as lead counsel; initially, she recognized this and planned to transfer the case to counsel better equipped to bring it to conclusion, but she continued to encourage Mr. Strawder to pursue his case after she failed to associate with experienced counsel. Her assumption of responsibility by taking the case before she found a more experienced, specialized lawyer to take it over or associate with her was a serious error. Once an attorney takes on litigation, she must be prepared to take all necessary steps (including associating with more experienced, specialized counsel) to pursue it.

- Respondent permitted Mr. Strawder's expert to be vulnerable by not ensuring that he had reviewed all of the treatment records before arriving at his liability conclusion, a fact revealed during his deposition. Tr. 649-52 (Expert Witness Grenier). Respondent ordered medical records from Johns Hopkins (the subsequent medical provider) and Washington Hospital Center (the original provider) immediately thereafter. Tr. 649-51. She erred in failing to take this basic step at the outset of the case. *Id.*

- Encouraging Mr. Strawder to dismiss Dr. Desai as a defendant at a time when defendants had not promised anything in return was a serious mistake made with no obvious benefit and considerable risk. Tr. 678-82 (Expert Witness

Grenier). Mr. Strawder lost his leverage over the defendants by dismissing the defendant who would feel the maximum impact of the lawsuit. FF 83.

98. Respondent was dishonest in the following respects:

- Respondent failed to correct the misrepresentation to Peachtree Funding that the value of Mr. Strawder's case was \$5 million, when she had taken no steps to determine and did not know the value of his case. Her claim that "someone in her office" entered that number in the loan application does not excuse her ultimate responsibility as a lawyer for correct and truthful representations to third parties, particularly since she admitted that she or another attorney in her office had reviewed the application. Her view that it was not her problem shows her disregard for her professional responsibilities. Respondent also claimed to Peachtree Funding that her client had been informed of the terms of the loans advanced by Peachtree and that her client understood the terms of the loans, when, in fact, Mr. Strawder did not understand the terms of the loans. Tr. 602-03 (Strawder).

- Respondent encouraged Mr. Strawder to take on an increasing debt burden to identify new possible experts, despite not having made a judgment about the value of his claims.

- Respondent failed to correct the value number given to Peachtree Funding even as Mr. Strawder borrowed more and more money to fund her efforts to find a suitable expert.

- Respondent informed her client that she had faith in his case when in fact she was uncertain about the case, had not taken steps to determine its potential value, and was unwilling to take it to trial. Nonetheless, Respondent encouraged Mr. Strawder to undertake increasing amounts of loans to pay for the cost of identifying potential experts.

99. The Committee recognizes that Mr. Strawder was difficult for Respondent to deal with and may have had unrealistic expectations. Furthermore, he was not candid with Respondent about his prior consultation with other law firms. Respondent might have been able to temper some of these issues by making a careful, thorough due diligence examination of all of Mr. Strawder's records at the time of intake. Instead, Respondent focused too much on potential damages and far too little on what it would take to establish liability in order to reach the question of damages. Once she undertook the representation, however, her responsibility was to carry on that representation within the professional obligations set out by the Rules of Professional Conduct.

E. Count 4 (DDN 2013-D305)

Katina C. Wilson

The Custody Representation

100. Katina Wilson retained Respondent to represent her in a custody case. DX 4A. On July 23, 2012, Ms. Wilson paid Respondent a \$1000 retainer which was deposited into Respondent's IOLTA's account ending in -9009. RX 47 at 644, 646. Ms. Wilson was seeking sole custody of her daughter because her former husband had a history of domestic abuse that included a criminal assault conviction

and time in jail. *Id.*; Tr. 774-83. On July 16, 2012, Ms. Wilson signed Respondent's retainer agreement agreeing to pay an hourly rate. DX 4A.

101. On August 2, 2012, Respondent entered her appearance in the Superior Court of the District of Columbia. DX 4M at 27, 55.

102. On August 20, 2012, the court issued its pretrial and scheduling order. DX 4M at 58.

103. Ms. Wilson requested that Respondent's office provide her regular invoices reflecting how much she had paid and any outstanding balance. Tr. 830-33. Respondent only sent Ms. Wilson invoices the first few months of the representation. DX 4E at 20-24. Despite this, Ms. Wilson made payments to Respondent nearly monthly (sometimes twice a month), often in thousand-dollar amounts, without the benefit of knowing how much Respondent was billing. DX 4E at 6-16; Tr. 831. Respondent now claims that Ms. Wilson "did not request regular invoices" (Respondent's Proposed Findings at 19), which is directly contradicted by Ms. Wilson's testimony. We find Ms. Wilson's testimony that she requested a regular accounting (Tr. 832-33) to be more credible, in part because of her obvious organizational skills and the fact that she was a single parent supporting her daughter on a modest income. *See, e.g.*, Tr. 798-99. Respondent testified that she did not maintain detailed records of the time she spent on Ms. Wilson's case: "I wasn't focused on the billing. I was focused on assisting her." Tr. 1171. After Respondent ceased representing her, Ms. Wilson requested a final bill, which Respondent promised to provide to her but never did. Tr. 839 (Wilson).

Nevertheless, in response to a request from Disciplinary Counsel, Respondent was somehow able to create two different versions of statements, each of which she termed a “comprehensive bill” for services provided to Ms. Wilson (Tr. 1100-01 (Respondent)), although -- despite Ms. Wilson’s specific request -- Respondent never intended to send either version to Ms. Wilson. Tr. 1102.

104. Ms. Wilson cooperated with Respondent during the representation, including providing information and responding in a timely fashion to Respondent. Tr. 778, 784-88, 814.

105. Respondent frequently failed to comply with court discovery rules and scheduling orders. DX 4M at 352. Ms. Wilson became aware of some of Respondent’s lapses only because Respondent sometimes uploaded court documents into a computer system that Ms. Wilson could access. Tr. 787, 789. Before Respondent implemented this system, Ms. Wilson got incomplete information and little explanation about what was happening in her case. Tr. 803-04.

106. Trial was scheduled for July 18, 2013. DX 4M at 18.

107. Opposing counsel unsuccessfully attempted to get complete discovery responses from Respondent. The Court held a hearing for July 5 to resolve opposing counsel’s outstanding discovery motions. DX 4M at 352. The Court ordered that Ms. Wilson update several of her interrogatory responses by July 9 or submit to a deposition at her own expense. *Id.* at 353.

108. Respondent did not submit the updated responses by 5:00 PM on July 9, 2013. As a result, by e-mail to Respondent at 5:54 PM, opposing counsel noticed Ms. Wilson's deposition for July 12. DX 4M at 364-65, 373. Respondent did not inform Ms. Wilson of this turn of events. Tr. 805-06.

109. Three minutes later, at 5:57 PM, Respondent's paralegal e-mailed opposing counsel *unsigned* interrogatory responses. DX 4M at 364-65, 369. By e-mail dated July 11, 2013, Respondent wrote opposing counsel: "Regardless of whether you do not like my client's responses, she has fully and completely responded to the interrogatories. I have complied with the Court Order, and I will not be available for a deposition prior to the trial." *Id.* at 378.

110. Opposing counsel canceled the deposition. DX 4M at 366, 380.

111. Respondent failed to prepare for trial in numerous ways including: (a) failing to propound discovery to Ms. Wilson's former husband who had been convicted of domestic abuse and, although witnesses to his abuse existed, Respondent propounded little or no discovery to develop this evidence or any other evidence to support Ms. Wilson's claim for sole custody (Tr. 803-05, 916 (Wilson); *see also* Tr. 794 (Wilson testifying that she had told Respondent about possible witnesses, including her next door neighbor who "overheard a violent incident" in Wilson's home); (b) failing to identify or discuss with her client whether an expert in domestic abuse should be employed (Tr. 911-16, 935, 786-87, 820); (c) failing to prepare any fact witnesses whom Ms. Wilson had identified as helpful to her case (including a witness to spousal abuse), despite having told Ms.

Wilson earlier in the representation that she would do so (Tr. 917-19, 793-96); (d) mishandling discovery issues, leading to sanctions imposed at trial on her client (Tr. 904-07); and (e) making discovery submissions that were evasive and nonresponsive (Tr. 909).

Respondent Prepares to Leave the Case Before Trial.

112. The July 18 trial had been scheduled for four months, since early March 2013. DX 4M at 18. Around July 10, 2013, Respondent informed Ms. Wilson that she had just received an opportunity to teach a course overseas that conflicted with the trial. Tr. 796, 807. Unsuccessfully seeking an agreement to advance the trial date until her return, Respondent informed opposing counsel that this represented a “great career opportunity for me.” DX 4C at 15. Respondent informed Ms. Wilson that she had arranged for an attorney to stand in for her as counsel. *Id.* at 26-30. Respondent claimed the proposed successor counsel was “of counsel” in her law firm. DX 4C at 29. Initially, Ms. Wilson was amenable to having the other attorney take over because she had originally tried to retain the other attorney. Tr. 796.

113. Respondent failed to disclose fully the consequences to Ms. Wilson of the substitution of counsel. Tr. 795-96. Respondent testified that she asked her client, “[A]re you sure you’re okay with that? And she said, yes.” Tr. 1139. Ms. Wilson’s response, however, was provided with the understanding that (a) potential successor counsel was familiar enough with the details of her case to

proceed, and (b) successor counsel would continue to bill at an hourly rate and would not expect a lump sum retainer in addition. Tr. 797-800.

114. Subsequently, Ms. Wilson said that she had not had the opportunity to “effectively interview” the proposed successor counsel. DX 4C at 25. Once she had a telephone conversation with proposed successor counsel, Ms. Wilson learned that she was expected to pay an additional retainer of several thousand dollars and that trial fees could run close to \$20,000. Tr. 797-802 (Wilson); DX 4J at 4 ¶ 6; DX 4J at 14. Ms. Wilson had already paid Respondent more than \$16,000. DX 4E at 5-16. The proposed successor counsel later substantially lowered her demands for a retainer but Ms. Wilson, whose income was \$75,000 per year at the time, decided she could not afford a retainer of \$3,000 plus the obligation to pay \$1,000-1,500 per month to pay off the balance. Tr. 798-99 (Wilson).

115. Respondent never discussed with Ms. Wilson the unresolved discovery disputes and attendant sanctions motions filed by opposing counsel and she failed to inform her that they were to be addressed at trial or instruct her about how to address them. Tr. 790-91 (Wilson). Ms. Wilson became aware of the most recent sanctions motion against her when it was uploaded to Respondent’s computer system, about a week after it had been filed. *Id.* Respondent never explained that motion or the other pending motions, or their potential consequences. Tr. 791, 813-14 (Wilson). Ms. Wilson was entirely unaware that she could be held personally liable for Respondent’s misconduct. Tr. 814 (Wilson).

116. On July 13, 2013, Ms. Wilson e-mailed all parties and their counsel to inform them that she would proceed *pro se*. DX 4J at 3 ¶ 5, DX 4M at 358, 384; Tr. 811-12.

117. Ms. Wilson was understandably distraught about proceeding to trial without counsel and made an attempt to settle her case with her former husband. Tr. 808-12. She participated without representation in mediation with her former husband, his attorney, and her daughter's guardian *ad litem*. *Id.* Ms. Wilson felt intimidated because she was outnumbered and alone, but she ultimately chose not to settle her case on the terms offered. *Id.* Given her former husband's history of violence, Ms. Wilson was adamant that he not be permitted unsupervised or overnight visits with their daughter. Tr. 809-11; *see* Tr. 914-16.

118. Ms. Wilson determined that representing herself at trial was her only option. Tr. 808-12.

Respondent Leaves the Country Less than a Week
Before Trial and Ms. Wilson Proceeds Alone.

119. On July 13, 2013, Respondent left the country without having filed or been granted a Motion to Withdraw, without having informed the Superior Court judge handling Ms. Wilson's case, and without ensuring that successor counsel had entered an appearance. DX 4M at 396. She did not turn over the case file to Ms. Wilson or consult with her on how to proceed at trial. Tr. 801-02, 814-15 (Wilson).

120. After representing Ms. Wilson for a year, Respondent took the position that her two-hour meeting with proposed successor counsel was adequate

preparation for a trial, once the successor counsel was retained, in which the safety of Ms. Wilson's daughter was at stake. Respondent's Proposed Findings at 21; Tr. 864. Respondent cavalierly assured Ms. Wilson that this was sufficient for the proposed successor counsel to take on this responsibility: "It will not take a rocket scientist to represent someone in a custody case." DX 4C at 36-37.

121. After the Court had closed on July 16, 2013 -- fewer than two days before trial and three days *after* she had departed the country -- Respondent caused to be filed a Motion to Withdraw as Ms. Wilson's counsel. DX 4M at 396.

122. On July 18, 2013, Ms. Wilson appeared alone in court for trial. The presiding judge ordered Respondent to appear by telephone to address the fact that Ms. Wilson was appearing without counsel. DX 4M at 12. During that call, the Court granted Respondent's Motion to Withdraw, and the trial began. *Id.* Ms. Wilson represented herself, including addressing the pending discovery motions -- the implications of which she had been unaware. Tr. 813-14 (Wilson). She also examined witnesses. Tr. 819-20.

123. Respondent had subpoenaed witnesses for Ms. Wilson but had done nothing to prepare them for their testimony. Tr. 795-96 (Wilson).

124. Respondent made no effort to get Ms. Wilson prepared for trial. *Id.* Ms. Wilson found out only from the attorneys for her husband that she was entitled to submit documentary exhibits as evidence and to have access to a trial notebook if Respondent had prepared one. Tr. 801-02. As a result, after the first two days of trial, she went to Respondent's office to obtain the exhibits and a trial notebook

from Respondent's paralegal. Tr. 814-16. The Court agreed to let her late-file the exhibits but did not permit her to submit anything new in her case. Tr. 879 ("I heard the judge say, 'No new evidence at trial.'").

125. On July 19, the court scheduled a final day of trial for July 24, 2013. Tr. 813.

126. Ms. Wilson continued to represent herself, including filing proposed findings of fact and conclusions of law. DX 4M at 10.

127. Ms. Wilson was successful in retaining full custody of her daughter. Tr. 839. Her success, however, cannot be credited to Respondent's efforts since Respondent abandoned her on the eve of trial without any effort to educate her about the issues at the trial, how to question and cross-examine witnesses, or even what exhibits she was entitled to introduce on her own behalf. The Committee found Ms. Wilson to be an incredibly articulate, organized and capable person, who, without the assistance of counsel, did a remarkable job of presenting her case before the Court. Although she was afraid to cross-examine an expert witness (Tr. 819-20), she relied on her recollection of scenes from the television program "Law and Order" to raise successful objections. Tr. 819. In preparing to take her own witnesses' testimony, Ms. Wilson "Googled what to ask" (Tr. 821-22), and relied on her knowledge of "what would make [her former husband] tick" to ask a question that "upset him so much" he showed his true character, in her view. Tr. 822-23.

Respondent Appears at a Show Cause Hearing
to Explain Her Absence from Trial.

128. On September 27, 2013, the presiding judge held a hearing for Respondent “to show cause why she should not be held in contempt of court for her failure to appear at trial, scheduled since March 7, 2013, without prior court leave to withdraw her appearance or without filing a substitution of counsel.” DX 4M at 396, 399-401.

129. Although the Court remained troubled by Respondent’s abrupt withdrawal, the judge discharged the show cause order, stating that addressing Respondent’s failure to appear would interfere with the Court’s ability to resolve the custody case efficiently. DX 4M at 421.

Although Ms. Wilson Prevailed in Obtaining Primary Custody,
She was Sanctioned Personally for Discovery Abuses.

130. Late on July 16, 2013, two days before trial began, opposing counsel had filed his fourth motion to compel discovery and for sanctions, contending that Respondent still had not submitted complete responses for her client. DX 4M at 364. Respondent had already left the country and filed no opposition; nor did she explain to Ms. Wilson why opposing counsel was filing the motion, or discuss how Ms. Wilson should handle the issue or make a substantive response. *See id.* at 12 (no opposition on court docket sheet); Tr. 790-91. Although the Court ruled in Ms. Wilson’s favor regarding custody of her daughter, the Court found that (while Respondent represented Ms. Wilson), the opposing party’s interrogatories, request for admissions, and request for documents had not been timely responded to and

were incomplete. DX 4M at 8, 13; DX 4F at 2-4. Therefore, the Court granted, in part, the opposing party's motions to compel and imposed sanctions against Ms. Wilson of \$1,089.65 in attorney's fees and costs. DX 4F. Respondent now seeks to relieve herself of any blame for this cost to Ms. Wilson by claiming she "would not have known that sanction would be imposed on Ms. Wilson." Respondent's Proposed Findings at 22. This explanation is clearly without basis since the awarding of sanctions, including reasonable expenses and attorney's fees, was routinely demanded by Ms. Wilson's former husband in repeated Motions to Compel and the Awarding of Sanctions (*see, e.g.*, DX 4M at 249, 291, 321) and is contemplated by the Superior Court's Rules. *See* DX 4F at 3; *see also* Superior Court Rules, Domestic Relations. Rule 37(5)(A).

131. The sanction award was credited against the outstanding child support arrears for which Ms. Wilson's former husband was responsible. DX 4F at 4. Respondent did not reimburse this amount to Ms. Wilson although she was responsible for its assessment.

Respondent Acknowledges Her Error.

132. Before the Hearing Committee, Respondent acknowledged she had erred in dealing with the Wilson case: "But in hindsight, I just don't think it was a good or appropriate thing to do, especially in light of [a] situation where the opposing counsel, in my view, was extra adversarial and seemed to have fun, you know, fighting and having issues in the case." Tr. 1313. She also explained: "I mean, I feel badly. I'm not happy. It is one of those regrettable things that I've

never done before. I would never do it, again. I've never left a client in the middle of when a trial is scheduled, after representing a client for so long. That's just never happened." Tr. 1141.

Respondent Has Refunded None of the
More than \$16,000 Ms. Wilson Paid Her.

133. Ms. Wilson paid Respondent more than \$16,000 in attorney's fees. DX 4E at 4-16. It is not disputed that Respondent has refunded none of these fees. *Compare* Respondent's Proposed Findings at 23 with Disciplinary Counsel's Proposed Findings at 35 (¶ 108). Respondent's decision to abandon her client just before trial meant that much of the time she had spent on the case was wasted and of no value to her client.

134. Ms. Wilson filed a disciplinary complaint about Respondent dated August 6, 2013. DX 4C at 1.

135. Although Respondent had promised to send Ms. Wilson an itemized final bill on her return to the country, Respondent never provided one. DX 4E at 1, 19; Tr. 839. Respondent, however, did provide to Disciplinary Counsel two versions of what was described as an "itemized accounting of all of the time that Ms. Johnson spent in her representing Ms. Wilson." DX 4I at 3; *see also* DX 4O (Tab 1) at 2-4; DX 4O (Tab 2) at 5-8; RX 51 at 712-18; Tr. 993-95.

Respondent Fell Below the Standard of Care
in the Domestic Relations Case.

136. Respondent's conduct fell below the standard of care for attorneys handling a domestic relations case like Ms. Wilson's in the following respects:

- Although Ms. Wilson’s former husband had been convicted of domestic abuse -- and witnesses to his abuse existed -- Respondent propounded little or no discovery to develop this evidence or any other evidence to support Ms. Wilson’s claim for sole custody.

- Respondent failed to identify or discuss with her client whether an expert in domestic abuse should be employed.

- Respondent failed to prepare any fact witnesses that Ms. Wilson had identified as helpful to her case (including a witness to spousal abuse), despite having told Ms. Wilson earlier in the representation that she would do so.

- Respondent mishandled discovery issues, leading to sanctions imposed at trial on her client. When Respondent did make discovery submissions, they were evasive and nonresponsive which could not be excused by the assertion that the information provided by Ms. Wilson was inadequate.

- Respondent failed to advise Ms. Wilson that she could be sanctioned financially for attorneys’ fees and costs in connection with Respondent’s failure to comply in a timely fashion with discovery deadlines.

- Respondent failed to keep Ms. Wilson sufficiently well informed both about the status of the issues relating to discovery and her upcoming trial, and about the consequences of a possible change in counsel on the eve of trial, to allow Ms. Wilson to make a reasoned judgment about her litigation. Instead, in her desire to undertake what she considered to be a “great business opportunity,” Respondent misled her client about the potential impact of a change in counsel at that time.

- Respondent failed to ensure Ms. Wilson would be represented by counsel in her trial. Although she made initial efforts to identify prospective successor counsel, she should not have left the country without assurance that her client would be properly and adequately represented.

- Even absent the combination of Respondent's pre-trial actions (which also breached the standard of care), her decision to abandon Ms. Wilson on the eve of trial, standing alone, was an inexcusable, serious breach of the standard of care.

The Personal Injury Representation
Respondent Mishandled Katina Wilson's Personal Injury Case.

137. Several months after Ms. Wilson first retained Respondent to represent her in the custody case, she was walking in a crosswalk when a taxicab struck her. Tr. 825-26.

138. Respondent agreed to handle the matter for her. She concedes she did not provide Ms. Wilson a retainer agreement or any other writing setting forth the basis or rate of her fee in the personal injury case. Tr. 1314, 826, 871-72. Proceeding without a signed engagement letter was not her normal practice. *Id.*; Tr. 1150. Respondent's only prior representation of Ms. Wilson was the custody case discussed above which was billed on an hourly basis. The personal injury matter was to be handled on a contingent fee basis.

139. Respondent's office recommended that Ms. Wilson receive treatment from Maryland Injury Center. Tr. 884. The total cost of medical services is unclear because the medical provider's bill is not in Respondent's client file and she did not provide it to her client. DX 4N; Tr. 828-29. Respondent's office

sought and obtained a \$2,960 reduction of Maryland Injury Center's fee to \$1,500, representing that her firm would reduce its original percentage fee of 33% (contemplated by the proposed but unexecuted retainer agreement (DX 4N at 2)) by five percent. DX 4N at 9. It did not.

140. By letter dated April 4, 2013, Respondent presented the driver's insurance company with a demand package of \$30,000. Tr. 952-53; DX 4N at 8. The insurer responded with an offer to settle, which Respondent never presented to Ms. Wilson. Tr. 827 (Wilson). Some negotiation occurred thereafter. *See* Tr. 949 (Expert Witness Grenier).

141. In June 2013, Respondent settled Ms. Wilson's personal injury case for \$4,500 without discussing the offer with, or receiving approval from her client. Tr. 827-28 (Wilson). At some point, Ms. Wilson was told that her share of the settlement was about \$1,500. DX 4E at 1. This amount was not paid to Ms. Wilson. She wanted any settlement funds applied to her bill for the custody matter, but Respondent did not provide her with regular bills or invoices despite Ms. Wilson's requests. DX 4E at 1, 19; Tr. 831-33 (Wilson). The first time Ms. Wilson saw the purported breakdown of the settlement on her personal injury case was at the hearing. Tr. 876.

142. Respondent never provided a release and settlement of claim with the driver's insurance company for her client to sign. Tr. 876 (Wilson).

143. Ms. Wilson saw none of her personal injury file and signed no documents associated with that case. Tr. 871-76 (Wilson).

144. In June 2013, Respondent deposited the \$4,500 settlement check into her Bank of America Maryland IOLTA -4251 account. RX 51 at 1003 (IOLTA -4251 deposit of \$4,500 dated 6/26/13; *see also* Answer ¶ 48). By letter dated January 9, 2014, Respondent's office sent a check dated that same day to Ms. Wilson's medical provider for \$1,500 drawn against her IOLTA -4251. DX 4N at 10-11.

145. In convincing the medical provider to reduce its charge from \$2,960 to \$1,500, Respondent's office claimed that Respondent was also "decreasing our fee by 5%." *Id.* at 10. Under a contingent fee agreement Respondent drafted (but which Ms. Wilson never signed), Respondent would receive thirty-three percent of any settlement amount received by Ms. Wilson. DX 4N at 2. In fact, Respondent's settlement statement on behalf of Ms. Wilson showed that Respondent took her full 33% of the settlement amount (1/3 of settlement of \$4,500 is \$1,498.50, the fee Respondent took as fees) (DX 4N at 16) and the representation to the medical provider that Respondent was taking a 5% reduction in her fee was false.

146. Respondent never provided to her client any documents that reflected (a) the settlement with the insurance company, (b) the offer to Maryland Injury Center to reduce Respondent's fee as an inducement for the medical provider to reduce its bill, (c) the fee she planned to charge Ms. Wilson, (d) how she planned to calculate and disburse the funds, (e) how and when she actually disbursed the

settlement proceeds, (f) the fee she actually charged, and (g) whether anyone received Respondent's promised five percent reduction in fees. Tr. 827-31.

147. Respondent's conduct fell below the standard of care for attorneys handling a personal injury case like Ms. Wilson's:

- Respondent never provided Ms. Wilson a writing at the start of the representation stating the basis or rate of her fee (Tr. 943-45, 1150), or, at the end of the representation, stating the outcome of the matter or showing how the proceeds of her settlement were to be disbursed (Tr. 947-48).

- Respondent never discussed a settlement range with Ms. Wilson, factoring costs and fees her client would have to pay, so that Ms. Wilson had a basis to assess a settlement offer. Tr. 945-47.

- Respondent never obtained authority from Ms. Wilson to settle her case. Tr. 945-47.

- Respondent never brought any settlement offers and counter-offers to her client. Tr. 954-55.

- Ms. Wilson never saw, approved of, or endorsed the settlement check (Tr. 827-28) and was unaware when Respondent received it. Tr. 953-55. At the time, Ms. Wilson still had an outstanding medical bill of at least \$2,960, although she did not know the amount because Respondent never informed her. DX 4N at 9; Tr. 829.

- Respondent disbursed no funds to Ms. Wilson from the settlement check received in June 2013, either as compensation for Ms. Wilson's injuries or for Ms.

Wilson to pay her medical provider. *See* Tr. 873-76. Nor did Respondent immediately disburse any funds directly to the provider, instead, inexplicably, she waited six months, until January 2014, to do so. DX 4N at 10-11; Tr. 950-52.

Analysis of Entrusted Funds

148. By subpoena *duces tecum* dated June 15, 2015, Disciplinary Counsel informed Respondent that it was aware of Ms. Wilson's personal injury settlement, and asked, *inter alia*, for an accounting of Ms. Wilson's entrusted funds supported by the relevant supporting records. DX 4P at 1-3. The inquiry included all clients with entrusted funds in the relevant IOLTA, which had yet to be identified. *Id.* Disciplinary Counsel inquired again on February 22 and May 4, 2016, after Respondent failed to provide the requested accounting and supporting records. DX 4P at 4-9.

149. In response, on May 25, 2016, Respondent produced to Disciplinary Counsel invoice #577 dated August 1, 2013, relevant to the Wilson custody case. DX 4O (Tab 2) at 5-8; RX 51 at 712-18; Tr. 993-95. However, much earlier in the investigation, Respondent had *already* submitted to Disciplinary Counsel an invoice with the same number and date. DX 4O (Tab 1) at 2-4. The second invoice -- provided after the benefit of reviewing Disciplinary Counsel's specific inquiries into Respondent's handling of Ms. Wilson's settlement funds -- newly credited Ms. Wilson's account in the *custody case* with \$1,501.50 in settlement funds from the personal injury case. DX 4O at 8; RX 51 at 714; Tr. 995-98. Although we have concerns about its reliability, the Hearing Committee does not

discredit the second invoice. The Committee concludes that Disciplinary Counsel did not introduce clear and convincing evidence to support a claim that Respondent submitted an intentionally false document when she produced the second invoice.

150. The second August 1, 2013 invoice also reflected approximately 18 new time entries in the custody case that were not reflected on the version of the bill originally submitted to Disciplinary Counsel. *Compare* DX 4O (Tab 1) *with* (Tab 2). *See also*, DX 4O (Tab 3) at 10-11; Tr. 996-98. If the second August 1, 2013 invoice were taken as correct, Ms. Wilson still owed Respondent \$2,845 in fees in connection with the custody case. DX 4O (Tab 3) at 11.

151. Respondent submitted neither the first August 1, 2013 invoice nor the second August 1, 2013 invoice to Ms. Wilson at any time during or after the custody case, despite Ms. Wilson's request throughout the representation for regular bills. DX 4E at 1, 19; Tr. 831.

152. Once Disciplinary Counsel's forensic investigator, Charles Anderson, determined that Respondent had two IOLTA accounts, he decided to focus his attention on IOLTA account -9009, which listed about 90-plus clients of Respondent. Tr. 971, 973. To supplement his inquiry, Mr. Anderson requested client files for about 20 of the clients listed on the -9009 account. Tr. 974.

153. The extent, completeness and veracity of the records that Respondent presented to Mr. Anderson and Disciplinary Counsel, which continued through March 2018 (*see* DX 4Q at 30-31; Tr. 1004), is heatedly disputed by the parties. Mr. Anderson testified that he never received sufficient information for an accurate

accounting of the activity in the -9009 account, and that Respondent was unable to provide an accounting of the bank records in the various client accounts. Tr. 973-75. Mr. Anderson also testified that it was impossible for him to match up the transactions that appeared in Respondent's bank records with the transactions as they appeared in the client ledgers produced by Respondent. Tr. 977.

154. Respondent contests Mr. Anderson's testimony, claiming (largely without attribution to the record) that "Respondent provided all available documents requested and trust account ledgers" and that Disciplinary Counsel "fail[ed] to review documents provided by Respondent" Respondent's Proposed Findings at 28.

155. It is not contested that Respondent provided to Disciplinary Counsel and Mr. Anderson two different versions of the ledger for account -9009 covering the same time period, one submitted in May 2016, the other in November 2017. Disciplinary Counsel's Proposed Findings at 45; Respondent's Proposed Findings at 29. Mr. Anderson described the second version of the ledger as having "additional transactions. It appears to have been cleaned up. It looks more professional." Tr. 978. Respondent describes the second ledger as "an updated client ledger following demand and request from Disciplinary Counsel for clarification and/or additional information." Respondent's Proposed Findings at 29 (without record references).

156. Disciplinary Counsel presented evidence showing ten randomly chosen accounts of Respondent's clients (different from the five clients who are

the subjects of the Counts in the Specification of Charges). Tr. 982-91; 1336-49. Mr. Anderson made an effort to compare Respondent's 2016 IOLTA -9009 client ledger against relevant bank records and found, among other things, that Respondent's IOLTA -9009 account was short at least \$3,000 from what should have been in the account according to the client ledger. See DX 4Q at 51-63; Tr. 1348.

157. Additionally, with regard to a number of specific accounts described in Respondent's 2017 IOLTA -9009 client ledger, Mr. Anderson determined that accounts for certain randomly selected clients were short when compared with bank records, including: (a) account of Fuad and Marenikeji Aregbe, \$350 short -- Mr. Anderson claimed that on June 30, 2013, the -9009 account balance was only \$445.64 when it should have held \$795.73 of the Aregbes' entrusted funds (DX 4Q at 20, 65-66; DX 4R at 367; Tr. 983-86); and (b) account of Dionne Hart, \$786 short -- Mr. Anderson claimed that on June 30, 2013, the -9009 account balance was only \$445.64 when it should have held \$1,257.50 of Dionne Hart's entrusted funds (DX 4Q at 67-69, DX 4R at 367; Tr. 986-91).

As to the Aregbe funds, Respondent deposited two settlement checks totaling \$14,525, paid Mr. Aregbe \$3,925.52, paid Ms. Aregbe \$4,143.75, paid a medical provider \$3,160, and took a \$2,500 fee, leaving a balance of \$795.73:

Date	-9009 account (Aregbe-related transactions)	Amount	Aregbe-related Balance
12/17/2012	Settlement check	\$9,000.00	\$9,000.00
12/17/2012	Settlement check	\$5,525.00	\$14,525.00
12/17/2012	Transfer to Resp. operating acc't	(\$2,500.00)	\$12,025.00
12/28/2012	Fuad Aregbe payment	(\$3,925.52)	\$8,099.48
12/28/2012	Marenikeji Aregbe payment	(\$4,143.75)	\$3,955.73
12/31/2012	Medical provider payment	(\$3,160.00)	\$795.73

See DX 4R at 206, 208 (settlement checks); DX 4R-199 (-9009 bank statement showing settlement check deposits); DX 4Q at 20 (Nov. 2017 ledger showing \$2,500 debit to the -9009 account for “Earned Income”); DX 4R at 200 (-9009 bank statement showing \$2,500 transfer to Respondent’s operating account); DX 4R at 226 (F. Aregbe check); DX 4R at 254 (M. Aregbe check); DX 4R at 256 (Alliance PT check); DX 4R-199, 231 (-9009 bank statement showing checks were paid).

As to the Hart funds, Respondent deposited Hart-related checks totaling \$4,905 on February 26, 2013, paid Ms. Hart \$2,172.50 on March 7, 2013, and transferred her \$1,500 legal fee from her trust account to her operating account on March 28, 2013, leaving a balance of \$1,232.50:

Date	-9009 account (Hart-related transactions)	Amount	Hart-related Balance
2/26/2013	Settlement check	\$3,350.00	\$3,350.00
2/26/2013	Settlement check	\$1,555.00	\$4,905.00
3/7/2013	Dionne Hart payment	(\$2,172.50)	\$2,732.50
3/28/2013	Transfer to Resp. operating acc't	(\$1,500.00)	\$1,232.50

See DX 4R at 284-89 (settlement checks); 4R at 266 (-9009 account statement showing settlement check deposits); 4R at 316 (Respondent's check to Ms. Hart); 4R at 303 (-9009 account statement showing check to Ms. Hart was paid); DX 4Q at 20-21 (Respondent's ledger showing a \$1,500 transfer to her operating account). Although Ms. Hart's settlement checks were deposited in Respondent's -9009 account, on March 27, 2013, she wrote a check on her -4251 account to pay Atlast Health Care Center on behalf of Ms. Hart. DX 4Q at 86.

158. Because of Respondent's poor record-keeping, we were unable to conclude whether Disciplinary Counsel had demonstrated with clear and convincing evidence that Respondent's IOLTA -9009 account contained funds insufficient to cover the amount of funds due to the additional ten clients randomly identified in the Specification of Charges. See, e.g., Tr. 1339-40 (Anderson); see also Tr. 1348 (Anderson testifying that he could not prove misappropriation of the ten clients' funds). We agree, however, with Disciplinary Counsel that both the bank records and Respondent's ledger provide clear and convincing evidence of Respondent's misappropriation of Ms. Hart's entrusted funds but did not provide clear and convincing evidence of misappropriation of the entrusted funds for the Aregbes. Misappropriation occurs when "the balance in [a client's] account falls below the amount due to the client." *In re Michael*, 610 A.2d 231, 233 (D.C. 1992), quoted in *In re Ekekwe-Kauffman*, 210 A.3d 775, 793 (D.C. 2019) (*per curiam*). Thus, the Hearing Committee concludes that Disciplinary Counsel has

established by clear and convincing evidence that Respondent engaged in misappropriation.

159. But, despite a strong argument, Disciplinary Counsel has failed to establish by clear and convincing evidence that this misappropriation of Ms. Hart's funds was reckless or intentional. To the extent Disciplinary Counsel could not meet the burden of proving reckless or intentional misappropriation, that was because, as Mr. Anderson testified, "[W]e don[']t have the underlying bank records." Tr. 1348.

160. After careful review of Mr. Anderson's testimony, Respondent's testimony, the relevant documents, the proposed findings of the parties, and the record in the case, the Hearing Committee concludes that Disciplinary Counsel has established by clear and convincing evidence the following:

a. Respondent interfered with Disciplinary Counsel's investigation and the administration of justice by: (1) failing to respond to Disciplinary Counsel's inquiries and subpoenas in a truthful and expeditious manner; and (2) providing conflicting and contradictory versions of requested documents, with no adequate explanation as to the differences in the versions, as occurred with the two versions of statements for Ms. Wilson and the two versions of the client accounts for account -9009.

b. Respondent failed to keep reliable and complete records of client funds such that the documentary record itself would tell the full story of how Respondent handled client and third-party funds, and did not maintain records that

would allow a third party pursuing a disciplinary inquiry, such as Mr. Anderson, to answer questions about how Respondent handled client funds without assistance from Respondent, assistance that was in any event unreliable.

161. In certain instances, Respondent appeared to be holding too much money in account -9009 when compared to the client records. By way of explanation, Respondent claimed to have left her “earned fee” in her IOLTA account -9009. *See, e.g.*, Tr. 1110, 1291, 1295 (Respondent identifying earned fees held with Fuad Aregbe’s entrusted funds); *see also* Tr. 1111 (Respondent identifying earned fees held with Dionne Hart’s entrusted funds). Respondent explained some of the variances between the transactions shown in her bank accounts and corresponding client ledgers as her fees left in the IOLTA account. *See, e.g.*, Tr. 1301-02. This admitted activity constitutes commingling in violation of Rule 1.15. *See In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997).

162. Respondent was dishonest in the following respects regarding the Wilson matters and in her responses to Disciplinary Counsel’s inquiries:

- Respondent stated that Ms. Wilson had not requested invoices when, in fact, she had.
- Respondent promised to provide to Ms. Wilson a final statement of her account, which she never did.
- Respondent testified that she had disclosed to Ms. Wilson the full consequences of having replacement counsel when, in fact, she did not.

- Respondent induced Ms. Wilson’s health provider in the personal injury case to accept a reduced compensation for services by stating Respondent would receive a 5% reduction in her fee; that was false, Respondent did not reduce her fee by 5%.

- Respondent provided to Disciplinary Counsel two conflicting versions of an itemized statement of Ms. Wilson’s account, both of which she claimed were a complete listing of all time spent on Ms. Wilson’s behalf.

- Interfered with and obstructed Disciplinary Counsel’s investigation by failing to provide truthful and complete records of her accounts, including two different versions of her client accounts in -9009.

163. Disciplinary Counsel presented insufficient evidence that, in connection with the moneys owed to Ms. Wilson, Respondent had committed the criminal act of theft under D.C. Code § 22-3211(a) and (b), as alleged in the Specification of Charges. Accordingly, we recommend that the Rule 8.4(b) charge be dismissed.

F. Count 5: (DDN 2016-D382)

Jean Harris

164. On September 26, 2016, Jean Harris was involved in an automobile accident in the District of Columbia. DX 5A at 1-2; Tr. 367 (Harris).

165. Shortly thereafter, a man knocked on Ms. Harris’s door, said he was from a law firm and, after being admitted to Ms. Harris’s house, asked Ms. Harris if she would like him to represent her in connection with the accident. Tr. 367-68 (Harris). He gave her a business card, but she does not still have it and she could

not remember the man's name; he said he was from a law firm. Tr. 368, 371. Ms. Harris understood he was from Respondent's law firm. *See* Tr. 368.

166. Ms. Harris agreed to have the man represent her. Tr. 368. There is no evidence by which the Hearing Committee could conclude by clear and convincing evidence that Ms. Harris signed an engagement letter with Respondent's law firm although her testimony on that subject was unclear. Tr. 375-76. The complaint Ms. Harris's new lawyer filed with the Office of Disciplinary Counsel on her behalf regarding Respondent states that she did not sign a "written retainer." DX 5A at 2. There was no engagement or retainer agreement submitted into evidence.

167. Subsequently, after not hearing further from the man who had met with her for about two weeks despite phone calls she made to Respondent's law firm, Ms. Harris wrote a letter to Respondent dated November 1, 2016, to say she no longer wanted the man she had talked to at her home to represent her. DX 5A at 2; Tr. 368, 382 (Harris).

168. Ms. Harris testified that she had been trying to contact the man since he had left her house, "and I wasn't able to get him." Tr. 377 (Harris). Ms. Harris's letter was not placed into evidence.

169. In response, Respondent wrote to Ms. Harris in a letter dated November 4, 2016, stating: "Pursuant to your request, this office will no longer represent you with regard to [the automobile accident]." DX 5E at 2. The letter Respondent sent to Ms. Harris was "pretty much [a] form letter" that her office

would “typically” send “if someone is disengaging from us or believes they’re disengaging.” Tr. 1205-06. Respondent insisted she had never represented Ms. Harris. Tr. 1205 (Respondent).

170. On December 6, 2016, Disciplinary Counsel submitted a request to Respondent asking her to respond to Ms. Harris’s complaint. DX 5B at 1. In response, Respondent informed Disciplinary Counsel that she had no information regarding Ms. Harris. DX 5C at 1. Confronted with Respondent’s denial of any knowledge of Ms. Harris, Ms. Harris provided to Disciplinary Counsel Respondent’s letter of November 4, 2016. DX 5E at 2.

171. The Hearing Committee concludes that Ms. Harris never was a client of Respondent’s. Respondent misled Disciplinary Counsel by claiming she knew nothing about Ms. Harris, when, in fact, she had received a letter from her and, only a month before Disciplinary Counsel’s inquiry, responded to Ms. Harris with a letter stating that Ms. Harris was no longer Respondent’s client. The Committee cannot determine if this misstatement to Disciplinary Counsel was intentional or not. Nonetheless, it was a violation of Rule 8.4(d) to misinform Disciplinary Counsel in their investigatory role.

III. CONCLUSIONS OF LAW

As will be evident, the Committee has reviewed and relies frequently on the D.C. Court of Appeals decision in *Ekekwe-Kauffman*, 210 A.3d 775. This decision is the most recent of the Court’s opinions discussing in detail a number of the Rules of Professional Conduct also at issue in this case, although the proven Rule

violations in this case are both more numerous and more egregious. As of the time the Committee's report was written, this opinion was the most contemporaneous, thorough discussion of these particular Rules, and the conduct that can be viewed as violations of them, and it served as a helpful guide to the Committee as it evaluated the facts the Committee found in this case.

Rule of Professional Conduct 1.1 (Competence) provides:

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

(b) A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

Comment 1 to the Rule explains:

In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances. One such circumstance would be where the lawyer, by representations made to the client, has led the client reasonably to expect a special level of expertise in the matter undertaken by the lawyer.

A. Respondent's Violations of Rule 1.1(a) and (b) in Counts 1, 2, and 3.

The Rule refers to the skill used by "other lawyers in similar matters," not lawyers of similar experience. As Expert Witness Grenier aptly summarized the law: "the standard of care is not a sliding scale based on experience." Tr. 770.

Where a lawyer lacks the expertise to handle a matter, he or she must acquire that expertise or decline the matter. *See In re Sumner*, 665 A.2d 986, 988-89 (D.C. 1995) (appended Board report) (respondent who lacked experience in criminal appeals still had obligation to handle client matter “with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters”).

In *Ekekwe-Kauffman*, 210 A.3d 775, the Court of Appeals held that a “‘grossly deficient’ complaint” without any contemporaneous factual investigation or legal research, violated Rule 1.1(a). Ms. Ekekwe-Kauffman’s repeated mistakes:

demonstrate[d] a “serious deficiency in the representation,” caused by Ms. Ekekwe-Kauffman’s “fail[ure] to engage in the thoroughness and preparation reasonably necessary” for the case, that clearly prejudiced her client. *In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006) (per curiam). For all of the same reasons, her handling of Ms. Manago’s case fell far short of the skill and care generally afforded by other lawyers in similar matters. *See id.* at 72 (“We agree with the Committee that the same failings that constitute Respondent’s 1.1(a) violations constitute 1.1(b) violations.”).

Ekekwe-Kauffman, 210 A.3d at 787.

Count 1 (Rudders and Goss)

Respondent demonstrated a lack of the minimal competence necessary to represent the Rudders, Ms. Goss and their minor children. Police misconduct cases can be complex. They can involve claims both under District of Columbia common law and under federal civil rights law, particularly 42 U.S.C. § 1983. Claims under District of Columbia common law must be filed within one year, and

must be preceded by the filing of a notice (under D.C. Code § 12-309) with the District of Columbia government within six months of the incident from which the claims arises. On the other hand, claims under Section 1983 have a three-year statute of limitations. While Section 1983 claims provide for attorney's fees, common law claims against the District of Columbia do not. Claims under Section 1983, however, can be defeated by defenses of qualified immunity by the individual police officers involved, as well as by claims by the District of Columbia government that the alleged conduct by individual police officers was contrary to District policy or practice. FF 9-12. Thus, bringing both types of claims, where warranted, has the potential to maximize recovery for both client and attorney.

When she was being retained by the Rudders and Ms. Goss, Respondent represented that she had handled several other police brutality cases and had been successful in them. FF 5. This was false; Respondent admitted in her testimony that the representation of the Rudders and Ms. Goss was the first case she had undertaken involving police brutality, although she claimed to have been involved in one or more cases at another law firm when she was a paralegal. FF 6.

Respondent did not have a fundamental understanding of the law applicable to her clients' claims. Despite her lack of expertise, Respondent did not endeavor to educate herself about the legal underpinnings of the claims she intended to bring. Instead, she used other lawyers' complaints as forms, which is no substitute for understanding the causes of action available and investigation as to whether

those causes of action are appropriate. FF 24. Respondent also made no effort to associate with more experienced counsel. FF 5. Respondent now asserts that she attempted to locate other attorneys to either transfer the case or to associate with in representing the Rudders and Ms. Goss (Respondent's Proposed Findings at 5), but Respondent makes no reference to any evidence in the record to support such an assertion and the Committee is unaware of any such evidence. Therefore, the Committee finds that this assertion by Respondent is not credible.

Common Law Claims

As a result of her failure to educate herself, Respondent failed to service her clients with even the minimal amount of skill generally expected to be afforded in such cases. For example, Respondent failed to file her Complaint on behalf of her clients within the one-year statute of limitations applicable to the common law claims they had against the District of Columbia. FF 25-26. Respondent testified she had not even made an effort to determine the proper statute of limitations for the common law claims, testifying that the one-year statute of limitations "wasn't on my mind" when she filed the Complaint. FF 26. Moreover, after the District of Columbia moved to dismiss the common law claims for the adult plaintiffs because of the passage of the statute of limitations, Respondent, on her own accord, "inexplicably" (as the D.C Circuit later termed it) agreed to dismiss the common-law claims as to all of the plaintiffs, even though that was not requested in the District of Columbia's Motion and, by statute, the common law claims of the minor children were preserved until one year after they reached 18 years of age.

FF 27-28. As a result, the district court dismissed all of the common law claims against all of the plaintiffs. FF 30. While this particular holding was an error by the District Court which was eventually reversed by the U.S. Court of Appeals (FF 47), that did not occur until almost two years later, after the Rudders and Ms. Goss had changed counsel. FF 46-47, 49. This all could have been avoided, and the adult plaintiffs' common law claims could have been preserved, had Respondent demonstrated minimal competence at intake by looking up the appropriate statute of limitations for the common law claims, and filing the Complaint within that period of time. In *Ekekwe-Kauffman*, the Court of Appeals could have been writing about this case:

Our finding of incompetence is based on the specific circumstances of this case, in which Ms. Ekekwe-Kauffman failed to do any factual investigation or legal research and in which many of her fatal errors could have been avoided if she had studied the relevant civil rules, statutes, and related case law.

Ekekwe-Kauffman, 210 A.3d at 798 n.29.

Section 1983 Claims

As noted above (FF 9-11), there are more barriers to bringing a successful Section 1983 claim than a common law assault and false arrest claim. Respondent showed no appreciation for this difference and her pleadings did not contain the details necessary to overcome challenges from the police officers on qualified immunity grounds and from the District of Columbia that the police officers alleged conduct was contrary to District policy or practice. Battering people, especially children, for no reason or for wrongful reasons, is most likely not in

accord with official District policy. Therefore, in order to prevail on the Section 1983 claim against the District, Respondent would have had to allege and prove that this was a custom of the police in the District, which decision makers were aware of and failed to prevent. *See Monell*, 436 U.S. 658, *supra*. Thus, the Section 1983 claim against the District was more difficult to sustain than the common law claims. In addition, Respondent should have undertaken the effort to collect and preserve evidence prior to drafting her complaint so that it could withstand a motion to dismiss under *Twombly*.

Because of the lack of pre-complaint investigation, Respondent had drafted a complaint that could not have been based on extensive investigation and confirmation of her clients' allegations. Instead, in preparing the Complaint, Respondent admitted she "just put . . . in" allegations she saw in other complaints she used as models. FF 24. Beyond that, Respondent admitted that she was not aware at the time of preparing the Complaint that a successful Section 1983 case could include the awarding of attorney's fees and, thus, she had failed to maintain time records for her representation of the Rudders and Ms. Goss and their children. FF 12. In addition, Respondent's efforts to educate herself since 2010 (when the Complaint was filed) do not appear to have been particularly successful. Although Respondent claims to have litigated a number of police misconduct cases since her first such matter representing the Rudders and Ms. Goss (FF 6), in her testimony before the Hearing Committee, she admitted not knowing what claims included in

the Complaint were relevant to the District of Columbia requirement to file a Section 12-309 notice with the District government. FF 13.

Taken as a whole, these actions demonstrate an extraordinary lack of competence as a lawyer for the Rudders and Ms. Goss and their children. Certainly, Respondent did not use or attempt to acquire the skill and care that other lawyers generally would use in such cases. Disciplinary Counsel has established by clear and convincing evidence that Respondent violated both Rule 1.1(a) and (b) in representing the Rudders and Ms. Goss.

Count 2 (Lewis)

Respondent failed to appear in Court with Mr. Lewis at the January 10, 2008 status hearing or to take appropriate steps to ensure he would not have to appear without counsel. Although she continued to represent Mr. Lewis until her Motion to Withdraw as counsel was granted on March 5, 2008 (FF 61), she failed to take the steps necessary to protect his interests in the interim. Although Respondent proposed to participate in the January 10, 2008 status hearing by telephone, she was unable to do so because the court clerk could not reach her. FF 57. When the hearing was scheduled at a time she could not attend in person, she failed to file a formal motion to continue the hearing although she then understood she would not be able to attend. FF 56-57. Therefore, Mr. Lewis had to appear without assistance of counsel at the hearing, and made disclosures potentially helpful to the opposing party, that he might not have made if counsel had been with him. FF 59.

In addition, Respondent filed a Motion to Withdraw which disclosed, without permission, client-confidential information about her client without taking the additional steps of seeking to file the Motion *in camera* or *ex parte*, thus disclosing confidential information about Mr. Lewis to his adversary -- Mrs. Lewis and her lawyers -- and potentially making it available to the general public. Respondent testified that she was not aware at the time that she could have protected Mr. Lewis's confidential information by those means. FF 60, 62, 65.

Nor apparently has Respondent learned from her mistake of failing to protect her client's confidential information. When asked during the hearing if she now understood that her disclosure of the information was not proper, Respondent replied: "I don't know. I guess that's for the [Hearing] Committee to decide" FF 65.

Any lawyer appearing in court with a basic skill set should know (or take appropriate steps to learn) how to ensure her client will not have to face a judge alone, without representation, and how to file documents with the Court in a manner that will recognize and protect the client's confidences. Respondent did not do that in the case of Mr. Lewis. Accordingly, Disciplinary Counsel has established by clear and convincing evidence that Respondent failed to provide Mr. Lewis with competent representation, and failed to serve Mr. Lewis with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters in violation of Rule 1.1(a) and (b).

Count 3 (Strawder)

Comment 1 to Rule 1.16 counsels: “A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion.” When Respondent accepted Mr. Strawder’s case, she knew that she was not competent to handle it to completion. Her intent from the beginning was to transfer the case to more experienced counsel. Accepting the case and filing suit when she knew she was not competent to handle it was a violation of Rule 1.1 (a) and (b). Respondent’s intentions were good -- to preserve Mr. Strawder’s right to file suit by filing before the statute of limitations was about to expire. However, her assumption that she could avoid her professional responsibility by offloading a complex and expensive suit onto another lawyer was seriously flawed.

As discussed in FF 76, 79-80, 81-83 and 91-98, once engaged, Respondent failed to handle the matter competently, missing deadlines, failing to request important medical records in a timely fashion and dismissing an important defendant without any consideration or enforceable promise of consideration in return. She failed to identify experienced counsel with whom to associate and failed to identify a qualified expert before filing a malpractice claim (although the pressures of time to file the suit before the expiration of the statute of limitations made her decision to undertake the representation a more complex one).

It is true that, by undertaking the representation, Respondent enabled her client ultimately to obtain a small recovery. Her continuation of the lawsuit,

however, and encouraging her client to spend more and more money, is not excusable in light of her failure to determine the reasonable value of the potential recovery, which depended in part on whether a qualified expert could be identified and would agree to testify, and then discussing with her client whether he wanted to pursue the case in light of the potential cost of his indebtedness. As such, her conduct was below the standard of care expected of any lawyer in that situation. FF 91-93, 95, 98. Accordingly, Disciplinary Counsel has proved by clear and convincing evidence that Respondent failed to provide Mr. Strawder with competent representation, and failed to serve Mr. Strawder with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters in violation of Rule 1.1(a) and (b).

Rule of Professional Conduct: Rule 1.2 (Scope of Representation) provides:

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter.

Comment 1 (in part) explains:

Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within these limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives.

B. Respondent's Violation of Rule 1.2(a) in Count 4 but not Count 3

Count 4 (Wilson)

In Ms. Wilson's case, Respondent failed to communicate the settlement offer received in the personal injury case. Ms. Wilson therefore did not and could not make a decision whether to settle her case for the amount offered. Respondent made that decision for her in an explicit violation of Rule 1.2(a). FF 141.

Disciplinary Counsel has proved the violation of Rule 1.2(a) by clear and convincing evidence when she failed to consult with Ms. Wilson in the personal injury matter.

Count 3 (Strawder)

However, as to Count 3, even though Mr. Strawder sought to bring to light what he regarded as Dr. Desai's misconduct, because Mr. Strawder himself agreed to the dismissal of Dr. Desai, the Hearing Committee finds that the evidence is not clear and convincing that Respondent violated Rule 1.2(a) in the Strawder representation.

Rule of Professional Conduct 1.3 (Diligence and Zeal) provides:

(a) A lawyer shall represent a client zealously and diligently within the bounds of the law.

(b) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or

(2) Prejudice or damage a client during the course of the professional relationship.

(c) A lawyer shall act with reasonable promptness in representing a client.

Comment 1 (in part) explains:

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

Addressing Rule 1.3(c), Comment 8 notes:

Perhaps no professional shortcoming is more widely resented by clients than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. Neglect of client matters is a serious violation of the obligation of diligence.

C. Respondent's Violations of Rule 1.3(a), (b)(1) and (2), and (c) in Counts 1 and 3, and Violations of Rules 1.3(b)(1) and (2) and 1.3(c) in Count 4

Count 1 (Rudders and Goss)

Respondent failed to represent the Rudders, Ms. Goss and their minor children, with diligence and zeal and prejudiced them in the process. Further, Respondent failed to act reasonably promptly on behalf of her clients and failed to investigate her clients' case in a timely fashion (FF 14-22) in violation of Rule 1.3(c). Respondent does not dispute that she failed to prepare and file the Complaint for the Rudders and Ms. Goss within the one-year statute of limitations applicable to their common law claims against the District of Columbia. (FF 25-

26) When, as a result, the District of Columbia moved to dismiss the common law claims by the adult plaintiffs, instead of seeking to preserve as much of their claims as possible, Respondent conceded the dismissal of the common law claims as to the minor plaintiffs as well, contrary to District of Columbia law and even the position taken by the District in its Motion. FF 27-29. As a result, the District Court dismissed their action with prejudice, and it was not until almost two years later that the U.S. Court of Appeals reversed the District Court's ruling as to the minors' common law claims. FF 47. In addition to causing the loss of the adult plaintiffs' common law claims, Respondent's sloppy pleadings caused needless anxiety and expense for her clients.

Disciplinary Counsel has provided clear and convincing evidence that Respondent failed to collect evidence in support of her clients' claims. Although urged to do so by her clients, Respondent failed to reach out to witnesses and potential sources of video evidence in a timely way. FF 14-22

This failure to collect adequate evidence, over a period of time, cannot be dismissed as mere negligence, but must be seen as a knowing, systematic disregard by Respondent for her clients' interests, the very opposite of diligence and zeal called for by the Rule. It is reasonable to expect any lawyer undertaking representation of plaintiffs in any case involving injury to collect the relevant witness statements and cellphone videos before they disappear. FF 22.

Disciplinary Counsel's expert witness described this failure to investigate her case and develop whatever evidence was available as a "fatal, fatal mistake." FF 22.

This lack of effort and diligence by Respondent inevitably resulted in the loss of evidence to support her clients' case and weakened their bargaining power with the District of Columbia. This foiled her clients' reasonable objectives and prejudiced them. For example, after the Complaint was filed (even though out of time), counsel for the District of Columbia offered to discuss settlement "earlier rather than later" if Respondent could present video evidence of the evidence alleged by her clients. FF 21. Having failed to collect evidence in a timely fashion, however, Respondent lost that opportunity to avoid prejudicing her clients by depriving them of the possibility of an early settlement discussion.

Respondent apparently claims her lack of diligence caused her clients no harm because it was unlikely that there was any video evidence of the arrests of the Rudders, Ms. Goss and their children to support their claims. She bases that argument on an assertion that any such evidence naturally would have been collected by the criminal defense counsel for the Rudders and Ms. Goss. Respondent's Proposed Findings at 7. That, however, is pure speculation; there is nothing in the record to indicate that criminal counsel made any effort to collect such evidence, nor is there any reason to think criminal defense counsel would have done so in a case, such as theirs, that was resolved by a favorable plea. FF 4, 17. Furthermore, although Disciplinary Counsel's expert witness testified that business video security recordings are usually kept for only 30 days, as Respondent asserts (Respondent's Proposed Findings at 7), that does not rule out the possibility that one or more local businesses may have retained its video recordings for a

longer period of time, or that civilian witnesses may have taken pictures or video of the alleged incidents on their phones.

Once Respondent appealed the District Court's dismissal of her clients' Complaint, an appeals court mediation was scheduled. There, too, Respondent failed to represent her clients diligently and with zeal. Although Mr. Rudder, on behalf of his family, had attempted to discharge Respondent from representing them by that time, she requested that she continue to represent them at the mediation. Because of Respondent's overly broad concessions and errors in the lower court, the District of Columbia took the position that the Rudders and Ms. Goss had given up their rights and had no bargaining chips left. At the same time, Respondent was assuring her clients that they still had a strong case, even as she filed her appeal. FF 37. When Respondent urged her clients to accept the District of Columbia's settlement offer of \$10,000, it is no wonder they did not, and felt that Respondent was not properly representing their interests in light of her assurances to them about the strength of their case. FF 44. Eventually, six years after the original Complaint was filed, and using other counsel, the Rudders and Ms. Goss were able to settle their litigation with the District of Columbia for an undisclosed amount, but more than the \$10,000 Respondent had urged them to accept in mediation. FF 48.

Respondent's breathtaking indifference to her clients' interests in this case reveals that not only did she lack the skill to handle the Rudder/Goss matter, she was unwilling to exercise the diligence and zeal to handle the matter properly and

promptly. “Neglect has been defined as indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client.” *In re Wright*, 702 A.2d 1251, 1255 (D.C. 1997) (*per curiam*) (appended Board Report). Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.3 (a), (b) and (c) in this matter.

Count 3 (Strawder)

Respondent failed in the most basic step in representing a medical malpractice claimant. She did not order or carefully review her client’s complete medical records until *after* her expert’s deposition, a failure in violation of Rule 1.3 (a) and (c). The expert was questionable to begin with because he did not specialize in retinal surgery and Respondent’s failure to supply him with Mr. Strawder’s complete medical records made the expert’s opinion even more questionable. FF 97.

Respondent’s actions in the dismissal of Dr. Desai were intentional within the meaning of Rule 1.3(b). *See Ekekwe-Kauffman*, 210 A.3d at 788-89. She knew this would defeat one of Mr. Strawder’s primary objectives and she should have known that, without any settlement offer in sight, it would make the case harder to settle, not easier. FF 83, 97. A negligent failure to pursue a client’s interest is deemed intentional when “the neglect is so pervasive that the lawyer must be aware of it” or “when a lawyer’s inaction coexists with an awareness of his obligations to his client.” *In re Ukwu*, 926 A.2d 1106, 1116, 1135 (D.C. 2007)

(citations and quotation marks omitted) (appended Board Report in second pin cite).

In addition, Respondent failed to adhere to the schedule ordered by the Court, a reflection of her failure to accomplish the substantive tasks in the case in a timely way in violation of Rule 1.3(c). FF 80. *See, e.g., In re Speights*, 173 A.3d 96, 101 (D.C. 2017) (*per curiam*); Comment 8 to Rule 1.3 (“Even when the client’s interests are not affected in substance . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness,” making such delay a “serious violation.”).

Count 4 (Wilson)

Respondent did not adhere to the Court’s discovery schedule, resulting in sanctions assessed against Ms. Wilson personally. Respondent abandoned her client just before trial before assuring substitute counsel had entered an appearance. Knowing abandonment of a client is a clear violation of Rule 1.3(b)(1). *Ekekwe-Kauffman*, 210 A.3d at 789. Although Ms. Wilson’s former husband had been convicted of domestic abuse -- and witnesses to the abuse existed -- Respondent propounded little or no discovery to develop this evidence or any other evidence to support Ms. Wilson’s claim for sole custody. She failed to prepare Ms. Wilson’s witnesses. Because she abandoned her client on the eve of trial to satisfy a personal ambition and she failed to handle discovery properly, much of the \$16,000 Ms. Wilson paid Respondent was wasted. To this day, Respondent has not even refunded the fine assessed by the Court for discovery

violations. FF 130, 131, 133. She has clearly violated Rule 1.3(b) and (c). Just as Respondent's abandonment of her client was clearly intentional, her continuing neglect of her duties to Ms. Wilson also constitutes intentional conduct within the meaning of Rule 1.3(b)(1) and (2). *Ekekwe-Kauffman*, 210 A.3d at 788 (“[K]nowing abandonment of a client is the classic case of a Rule 1.3(b)(1) violation.”) (alteration in original) (quoting *Ukwu*, 926 A.2d at 1116)); *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (*per curiam*) (appended Board Report).

Rule of Professional Conduct 1.4 provides:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer who receives an offer of settlement in a civil case or proffered plea bargain in a criminal case shall inform the client promptly of the substance of the communication.

Comment 3 states:

Adequacy of communication depends in part on the kind of advice or assistance involved. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with (1) the duty to act in the client's best interests, and (2) the client's overall requirements and objectives as to the character of representation.

D. Respondent’s Violations of Rule 1.4(a) and (b) in Counts 1 and 3 and Violations of Rule 1.4(a), (b) and (c) in Count 4

In *Ekekwe-Kauffman*, the Court of Appeals provided guidance as to what clients should expect from their attorneys:

While “[a]n attorney need not communicate with a client as often as the client would like,” the attorney’s communication with the client must be “reasonable under the circumstances.” . . . Accordingly, the “guiding principle” for evaluating conduct under Rule 1.4 is whether the lawyer fulfilled “reasonable client expectations for information” consistent with the lawyer’s “duty to act in the client’s best interests” and the client’s overall objectives “To meet that expectation, a lawyer not only must respond to client inquiries but also must initiate communications to provide information when needed [A] lawyer may not withhold information to serve the lawyer’s own interest or convenience.

Ekekwe-Kauffman, 210 A.3d at 789 (alterations in original) (citations omitted).

Count 1 (Rudders and Goss)

From beginning to end, Respondent failed to keep the Rudders and Ms. Goss reasonably informed about the status of their litigation, and failed to confer with them regarding developments in their case. Thus, not only did Respondent fail to explain their matter in an ongoing way sufficient to allow them to make informed decisions about their case, she deliberately withheld from them information to which they had an absolute right in order to reach decisions on how best to proceed. Finally, to the extent that she did keep her clients informed, Respondent sought to deceive them by assuring them their case was proceeding in a positive way when in fact, due to her mistakes, it was not. Lawyers are human and thus make mistakes, sometimes terminal mistakes as Respondent did in the

Rudder/Goss matter. The Rules of Professional Conduct help guide lawyers at such difficult and embarrassing times. Respondent ignored them.

Respondent's failures resulted not just from a failure to meet her responsibilities under the Rules of Professional Conduct. The contingency fee agreement form that Respondent signed and used with the Rudders and Ms. Goss provided that Respondent would inform her clients "promptly of any significant developments and to consult with [them] in advance of significant decisions to be made." FF 7-8. Instead, in violation both of her written agreement with her clients and the Rules of Professional Conduct, Respondent (a) failed to inform her clients that she had failed to file the Complaint on their behalf within the one-year statute of limitations imposed by District of Columbia for common law claims; (b) failed to inform them at the time of the District of Columbia's Motion to Dismiss, or to consult with them about her response to the Motion to Dismiss; (c) failed to consult with them regarding her response to the Motion to Dismiss or her concessions leading to the dismissal of the Complaint against the District of Columbia for all plaintiffs; (d) failed to inform them or consult with them regarding her Motions to Reconsider filed with the Court, along with an amended complaint about which they also were not consulted; and (e) informed her clients of the Court's rejection of Respondent's Motions to Reconsider only when Respondent -- again, without consulting her clients -- filed a notice of appeal. FF 28-29, 31-32, 34-36.

The Committee does not find credible Respondent's claim that she had kept the Rudders and Ms. Goss informed of the status of their matter. FF 36.

When she did communicate with her clients, it was not always accurately or truthfully. When she finally informed them of the dismissal of their common law claims, she testified she "assured them everything is still on track; don't worry" She admitted she "continued to want to be positive to them [A]lthough there were certain claims that will be dismissed; that I believe that under the excessive force claim [*i.e.*, the Section 1983 claim] that we had, I believe that their claim was strong." Subsequently, after filing her notice of appeal, Respondent asserted to her clients that the "case was not dismissed due to my error." These statements were false. FF 37, 40-41. The requirement contained in Rule 1.4(a) to keep clients "reasonably informed" cannot encompass keeping clients misinformed. *See, e.g., In re Fox*, 35 A.3d 441 (D.C. 2012) (*per curiam*) (the respondent violated Rule 1.4(a) when he erroneously informed his client that it was "'too late' [to file the lawsuit]; however, in fact, the statute of limitations had not yet run as to one of the claims").

In light of the written evidence contradicting Respondent and the strong and convincing evidence provided by the testimony of Mr. and Mrs. Rudder and Ms. Goss at the hearing, the Committee does not find credible Respondent's assertions that she kept her clients informed sufficiently for them to make reasonable judgments. In fact, Respondent, in her correspondence with Disciplinary Counsel, appears to admit that her communications with and explanations to her clients fell

short. After the Office of Disciplinary Counsel informed Respondent of Mr. Rudder's complaint regarding her professional conduct, Respondent asserted in response that Mr. Rudder was incorrect in his allegations, because he "does not realize . . . [or] does not understand" the legal issues involved. FF 51.

Furthermore, Respondent contended that Mr. Rudder "could not understand the legal issues in the case." *Id.* If, however, she was correct that Mr. Rudder did not understand the issues in the case, it was because he did not possess sufficient information to make reasonable decisions regarding his case because Respondent failed to keep her clients informed and to explain the matters to the extent reasonably necessary so that her clients could understand and make informed decisions. Respondent's blaming her clients' lack of understanding for the complaint against her is also a further sign of her indifference to her clients' interests and her failure to take responsibility for the disastrous way she handled the Rudder/Goss matter.

Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.4(a) and (b) in the handling of the Rudder/Goss matter.

Count 3 (Strawder)

Respondent failed to prepare, much less provide to Mr. Strawder, an analysis of the value of his case so that he could decide whether he was throwing good money after bad in borrowing money from Peachtree Funding. She failed to account for the money received from Mr. Strawder and Peachtree Funding for expenses, thus failing to communicate information her client requested.

Respondent also failed to advise Mr. Strawder of the risk he was taking in dismissing Dr. Desai without any meaningful settlement offer from defendants. These failures detailed in FF 83, 91-92, and 94 clearly demonstrate that Disciplinary Counsel has proved violations of Rule 1.4(a) and (b) by clear and convincing evidence.

Count 4 (Wilson)

In Ms. Wilson's custody case, Respondent clearly violated Rule 1.4(a) and (b). She failed to inform her client about her failures to meet discovery deadlines or to warn Ms. Wilson that she could be personally liable for sanctions. She failed to advise Ms. Wilson of the full consequences of a last-minute change of counsel. She failed to provide Ms. Wilson regular billing statements despite her requests.

In Ms. Wilson's personal injury case, Respondent never discussed a settlement range with Ms. Wilson, factoring costs and fees her client would have to pay, so that Ms. Wilson had a basis to assess a settlement offer. Respondent never obtained authority to settle Ms. Wilson's case for \$4,500. Respondent failed to communicate the settlement offer received in the personal injury case. Ms. Wilson, therefore, did not and could not make a decision whether to settle her case for the amount offered. Respondent made that decision for her in violation of Rule 1.4(c). FF 141. Thus, Disciplinary Counsel has proved violations of Rule 1.4(a), (b) and (c) by clear and convincing evidence.

Rule of Professional Conduct 1.5 (Fees) provides:

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;*
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;*
- (3) The fee customarily charged in the locality for similar legal services;*
- (4) The amount involved and the results obtained;*
- (5) The limitations imposed by the client or by the circumstances;*
- (6) The nature and length of the professional relationship with the client;*
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and*
- (8) Whether the fee is fixed or contingent.*

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, litigation, other expenses to be deducted from the recovery, whether such expenses are to be deducted before or after the contingent fee is calculated, and whether the client will be liable for expenses regardless of the outcome of the matter. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter, and if there is a recovery, showing the remittance to the client and the method of its determination.

E. Respondent's Violations of Rule 1.5 in Count 4

Count 4 (Wilson)

Respondent committed multiple violations of Rule 1.5 in the handling of Ms. Wilson's matters. For the work that was actually completed in the custody matter, the fee Respondent collected was unreasonable in violation of Rule 1.5(a). While Respondent's hourly rate may have been reasonable, her discovery failures and abandonment of her client made her total fee in the custody case unreasonable. Her failure to apply a credit for the discovery sanction imposed on Ms. Wilson for Respondent's discovery failures by itself resulted in her fee being unreasonable. *See In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006) ("The prototypical circumstance of charging an unreasonable fee is undoubtedly one in which an attorney did the work that he or she claimed to have done, but charged the client too much for doing it."). FF 103, 119-20, 130-31, 133.

Respondent also violated Rule 1.5(b) and (c) in the personal injury matter. She failed to provide Ms. Wilson with a written fee agreement. FF 138. In addition to failing to give Ms. Wilson a written statement of her basis for her fee, Respondent also did not put the contingency fee in writing as required by Rule 1.5(c). At the end of the representation, Respondent did not provide a written statement stating the outcome of the matter or showing how the proceeds of her settlement were to be disbursed. FF 146.

Thus, the Committee finds that Disciplinary Counsel has proven the violations of Rule 1.5 by clear and convincing evidence.

Rule of Professional Conduct 1.6(a)(1) (Confidentiality of Information) provides:

(a) Except when permitted under paragraph (c), (d), or (e), a lawyer shall not knowingly:

(1) reveal a confidence or secret of the lawyer's client;

Rule 1.6(b) explains:

(b) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to 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.

F. Respondent's Violation of Rule 1.6(a)(1) in Count 2

Count 2 (Lewis)

In her Motion to Withdraw from representing Mr. Lewis, but without Mr. Lewis's permission, Respondent disclosed information regarding his financial status that was secret within the meaning of Rule 1.6(b) and went beyond what Mr. Lewis himself had disclosed at a January 10, 2008, status hearing (and which he might not have disclosed if Respondent had taken appropriate steps to ensure she or substitute counsel would be present with him at the time). FF 59-60, 62. At that hearing, Mr. Lewis only stated in Court that he understood Respondent would not continue to represent him because "the month of December, you know, is very slow for me . . . to continue to pay for my bills" FF 59.

Based on the foregoing and for the reasons set forth in the Confidential Appendix (*infra* at pp. 148-50), Respondent's disclosure of Mr. Lewis's financial circumstances was contrary to the requirements of Rule 1.6(a)(1) and is not

excused by Rule 1.6(e)(4) -- that is, Respondent did not have reasonable grounds for believing that Mr. Lewis had impliedly authorized disclosure of the information in order to carry out her representation of his interests. Even Respondent's original counsel recognized that Respondent's disclosure of Mr. Lewis's confidential financial information was prohibited by *In re Gonzalez*, 773 A.2d 1026 (D.C. 2001), and Respondent's position now that her former counsel's representation should be disregarded because it was part of a "settlement negotiation" is not credible. Had Respondent thought her former counsel's correspondence with Disciplinary Counsel was part of a settlement negotiation, and should be barred from introduction into evidence, Respondent had ample opportunity to raise that issue early in the proceedings; she did not do so. Regardless, the Court of Appeals' decision in *Gonzalez* is applicable and controlling in terms of a finding that Respondent violate Rule 1.6(a)(1). Disciplinary Counsel has proved the violations of Rule 1.6(a)(1) by clear and convincing evidence.

Rule of Professional Conduct: Rule 1.15(a), (c) and (e) (Safekeeping Property) provides:

(a) A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b).

Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) All trust funds shall be deposited with an "approved depository" as that term is defined in Rule XI of the Rules Governing the District of

Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia's Interest on Lawyers Trust Account (DC IOLTA) program. The title on each DC IOLTA account shall include the name of the lawyer or law firm that controls the account, as well as "DC IOLTA Account" or "IOLTA Account." The title on all other trust accounts shall include the name of the lawyer or law firm that controls the account, as well as "Trust Account" or "Escrow Account." The requirements of this paragraph (b) shall not apply when a lawyer is otherwise compliant with the contrary mandates of a tribunal; or when the lawyer is participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the lawyer is licensed and principally practices.

(c) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property, subject to Rule 1.6.

*(d) ****

(e) Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives informed consent to a different arrangement. Regardless of whether such consent is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer's services in accordance with Rule 1.16(d).

(f) Nothing in this rule shall prohibit a lawyer from placing a small amount of the lawyer's funds into a trust account for the sole purpose of defraying bank charges that may be made against that account.

G. Respondent’s Violations of Rule 1.15(a) and (c), but not Rule 1.15(e)

Comment 1 to Rule 1.15 states: “A lawyer should hold property of others with the care required of a professional fiduciary.”

(1) Rule 1.15(a): Commingling

Commingling occurs when attorneys fail to hold entrusted funds in accounts separate from their own funds. *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997) (*per curiam*) (appended Board Report). To establish commingling, the entrusted and non-entrusted funds must be in the same account at the same time. “The rule against commingling has three principal objectives: to preserve the identity of client funds, to eliminate the risk that client funds might be taken by the attorney’s creditors, and most importantly, to prevent lawyers from misusing/misappropriating client funds, whether intentionally or inadvertently.” *In re Rivlin*, 856 A.2d 1086, 1095 (D.C. 2004) (*per curiam*) (appended Board Report).

In Count 4, Disciplinary Counsel alleged commingling of funds in both the custody and personal injury cases handled by Respondent on behalf of Ms. Wilson. Respondent testified that she left earned fees in her IOLTA account for months. This was an admission that she had engaged in commingling which is not abrogated by Rule 1.15(f), under which IOLTA accounts are permitted to contain a “small” amount of funds belonging to an attorney to cover bank charges.

Assuming *arguendo* that Respondent’s assertion that she left her earned fees in her trust accounts for extended periods of time is true, and no reason for doing this was

proffered, mixing attorney funds with client funds is commingling and a plain violation of Rule 1.15(a). However, Respondent's admissions of commingling were in connection with the Aregbe and Hart entrusted funds, and not specific to the funds held in the custody and personal injury matter for Ms. Wilson. *See* FF 161. Disciplinary Counsel's briefing to the Committee also did not cite to any record evidence showing commingling of Respondent's funds with Ms. Wilson's entrusted funds from the custody or personal injury matter.

Although the Specification of Charges did not allege commingling more generally of "multiple clients' entrusted funds" (the language used for the record-keeping and misappropriation charges), but only references the failure to "hold separate from Respondent's own property the funds that Ms. Wilson paid Respondent in connection with the custody case, as well as those that Respondent obtained in the settlement of her personal injury case," *see* Specification ¶ 18 (J), we believe a finding of a violation of Rule 1.15(a)'s prohibition against commingling in the Aregbe and Hart matters is warranted and justified. Respondent herself raised the issue of commingling in defense to the more serious allegation of reckless and intentional misappropriation. Respondent did not claim surprise when testifying or in briefing about her failure to keep separate her entrusted funds from her earned fees in Aregbe and Hart. Accordingly, we find the Rule 1.15(a) commingling violation, having considered and ruled out any possible due process issues. *See In re Slattery*, 767 A.2d 203, 212 (D.C. 2001) (where respondent is on notice of the nature of the rule violation, no Fifth Amendment due

process rights violated). *See also In re Salgado*, Board Docket No. 16-BD-041, at 4 (BPR Oct. 23, 2018) (finding uncharged Rule 1.15(a) violation of commingling based on the respondent’s admissions).

(2) Rule 1.15(e): Treating Unearned Fees as the Client’s Property

Disciplinary Counsel also alleged that Respondent violated Rule 1.15(e) when she failed to deposit the \$1000 retainer for the Wilson custody case into a trust account. *Id.*, ¶¶ 66, 118(L). In response to the Rule 1.15(e) charge, Respondent introduced evidence showing that the \$1000 retainer (unearned fee) paid on January 23, 2012 through Ms. Wilson’s debit card, was actually deposited into the -9009 IOLTA account on January 24, 2012. *See* FF 100; RX 47 at 644, 646. Mr. Anderson’s inability to locate the deposit, *see* Disciplinary Counsel’s Proposed Findings ¶ 76, was likely due to the inclusion of other deposits that same day. *See* Respondent’s Proposed Findings ¶ 76 (the total for deposits on January 24, 2012 was \$1300, including the \$1000 from Ms. Wilson). Absent evidence contradicting Respondent’s claim and records, the Rule 1.15(e) charge has not been proven by clear and convincing evidence.

(3) Rule 1.15(a): Record-keeping Failures

The Record-keeping requirement of Rule 1.15(a) “requires lawyers to keep ‘complete records of . . . account funds and other property’ and preserve them ‘for a period of five years after termination of the representation.’” *See In re Edwards*, 990 A.2d 501, 522 (D.C. 2010) (*per curiam*) (appended Board Report) (citation omitted). The purpose of the requirement of “complete records is so that ‘the

documentary record itself tells the full story of how the attorney handled client or third-party funds’ and whether, for example, the attorney misappropriated or commingled a client’s funds.” *Id.*

In Count 3, Respondent failed to maintain complete records of the disposition of the large amount of money Mr. Strawder borrowed from Peachtree Funding to fund the costs of the litigation. *See* FF 94. In Count 4, Respondent similarly failed to maintain complete records in both the custody and personal injury matters for Ms. Wilson. *See* FF 103, 135, 146, 149-51, 160. Accordingly, Disciplinary Counsel has proven the record-keeping violations in both counts.

(4) Rule 1.15(a) Misappropriation of Entrusted Funds

Disciplinary Counsel argues that Respondent misappropriated funds held in trust for Katina Wilson, Fuad and Marenikeji Aregbe and Dionne Hart.⁹ In considering the evidence and arguments in this case, we are mindful of the application of the burden of proof in misappropriation cases. Disciplinary Counsel bears the burden of proving by clear and convincing evidence that Respondent engaged in the unauthorized use of entrusted funds. *See In re Anderson*, 778 A.2d 330, 335 (D.C. 2001); *In re Nave*, 197 A.3d 511 (D.C. 2018) (*per curiam*) (“This

⁹ Disciplinary Counsel also analyzed Respondent’s handling of funds belonging to ten randomly-selected clients, including the Aregbes, (*see* Specification ¶ 117) and determined that Respondent’s trust account held thousands of dollars less than it should have, according to Respondent’s ledger. Tr. 1337-38. Disciplinary Counsel’s investigator Mr. Anderson, however, explained that given the state of Respondent’s bank records, his review of the amounts that should have been held for those ten clients identified was “inconclusive.” Tr. 1035; *see also* Tr. 1040-41 (noting that the transfers to Respondent’s operating account are not identified by client names so that he “cannot definitively say from the bank records that this is a misappropriation”).

stringent standard ‘expresses a preference for the attorney’s interests by allocating more of the risk’ of an erroneous conclusion to Disciplinary Counsel.’’) (citation omitted)).

Disciplinary Counsel argues that Respondent engaged in the unauthorized use of entrusted funds when the balance in her trust account fell below the amount she was required to hold in trust. Respondent presented evidence to rebut the evidence presented by Disciplinary Counsel. We consider Respondent’s factual defense together with all of the evidence presented to determine whether Disciplinary Counsel has proven the unauthorized use of entrusted funds by clear and convincing evidence. *See In re Szymkowitz*, 195 A.3d 785, 789-90 (D.C. 2018) (*per curiam*) (discussing the burden of proof in disciplinary cases); *see, e.g., In re Arneja*, 790 A.2d 552, 553-54 (D.C. 2002) (Disciplinary Counsel failed to prove misappropriation where it failed to rebut respondent’s evidence that the clients had consented to the respondent’s use of the funds); *In re Ingram*, 584 A.2d 602, 603 (D.C. 1991) (*per curiam*) (where the balance in the respondent’s bank account fell below the amount to be held in trust for a client, testimony that the respondent kept the money owed to the client intact in the client’s file was “sufficient to negate a finding of misappropriation”); *In re Gilchrist*, 488 A.2d 1354, 1357-58 (D.C. 1985) (no misappropriation where Disciplinary Counsel failed to offer testimony or evidence to refute the respondent’s explanation for his use of the funds). In determining whether Disciplinary Counsel has carried its burden, we may consider Respondent’s explanation for the use of entrusted funds,

or lack thereof. *See In re Thompson*, 579 A.2d 218, 221 (D.C. 1990). Finally, although Disciplinary Counsel bears the burden of proof, it is not obligated “to rebut all conceivable defenses” that Respondent could have raised to the hearing committee but did not. *In re Burton*, 472 A.2d 831, 846 (D.C. 1984).

With that background, we assess the misappropriation-related evidence to determine whether Disciplinary Counsel has proven misappropriation by clear and convincing evidence.

Katina Wilson -- Disciplinary Counsel argues that “Respondent took all of Ms. Wilson’s share of the personal injury settlement without crediting any portion to her client -- not even the savings resulting from medical provider’s reduction of its bills,” (Disciplinary Counsel’s Proposed Findings at 76) but concedes that it does not know how Respondent handled Ms. Wilson’s funds. When addressing the poor quality of the records Respondent provided, Disciplinary Counsel asserted that

Consequently, it is still impossible to determine how Respondent handled Ms. Wilson’s entrusted funds from the advance fee paid in the **custody case** (Tr. 967-70; *see, e.g.*, DCX 4Q:25), and from the **personal injury** settlement (*see e.g.*, DCX 4Q:26-35); to distinguish Ms. Wilson’s settlement funds from the entrusted funds held for other clients (*see e.g.*, DCX 4Q:35), or to distinguish any client’s entrusted funds from those that constituted Respondent’s personal funds (*see generally* DCX 4Q & 4R). *See generally* Tr. 968-1005 (testimony of forensic accountant).

Disciplinary Counsel's Proposed Findings at 44-45 (emphasis in original).¹⁰ We agree that it is impossible to determine on this record how Respondent handled Ms. Wilson's funds, and thus Disciplinary Counsel has failed to prove by clear and convincing evidence that Respondent misappropriated Ms. Wilson's funds.

Fuad and Marenikeji Aregbe -- Disciplinary Counsel argues that Respondent should have held \$795.73 in trust for Fuad and Marenikeji Aregbe, and engaged in the unauthorized use of entrusted funds when the balance in her trust account fell to \$445.64 on June 30, 2013. Disciplinary Counsel's Proposed Findings at 48. Respondent agrees that \$795.73 remained after she made disbursements from the Aregbes' settlement, but argues that she was entitled to that amount as a part of her fee. Respondent's Proposed Findings at 30. In reply, Disciplinary Counsel appears to concede that it has not proven unauthorized use of entrusted funds as it asserts that the \$795.73 represented "*either* client entrusted funds *or* if they were Respondent's as she now claims, were commingled with her other clients' entrusted funds." Disciplinary Counsel's Reply at 8 (emphasis added). As Disciplinary Counsel concedes that these might have been Respondent's funds, we cannot find that Disciplinary Counsel proved by clear and convincing evidence an

¹⁰ Disciplinary Counsel's assertion that it cannot "distinguish any client's entrusted funds from those that constituted Respondent's personal funds" is certainly puzzling given that it argues that it has proven misappropriation in the Hart matter. We do not understand this admission to mean that Disciplinary Counsel is unable to determine the amount to be held in trust for any of Respondent's clients.

unauthorized use occurred when the balance in her trust account fell below \$795.73.

Moreover, our own analysis of the evidence confirms that Disciplinary Counsel proved commingling of funds in the Aregbe matter, *see* Tr. 1294-95, but not misappropriation. Disciplinary Counsel proved that Respondent deposited two settlement checks totaling \$14,525, paid Mr. Aregbe \$3,925.52, paid Ms. Aregbe \$4,143.75, paid a medical provider \$3,160, and took a \$2,500 fee, leaving a balance of \$795.73. *See* FF 157.

These payments were consistent with the allocations reflected on the settlement sheets the Aregbes signed, with the notable exception that it appears that Respondent was due \$5,161.25 in attorney's fees, rather than the \$2,500 she paid herself.¹¹ *See* RX 51 at 1018-19 (settlement sheets).¹² As there is no evidence that

¹¹ The precise amount due to the medical provider (Alliance PT) is not entirely clear from the settlement sheet, which contains the following entry on the Alliance PT line: "(1,321.71) \$1838.29 PD." RX 51 at 1018. There is a question whether Alliance PT was due \$1,321.71 or the amount Respondent paid, \$3,160 (which is the sum of \$1,321.71 and \$1,838.29). We recognize that Respondent may have overpaid Alliance PT, but need not resolve that question because, as discussed above, any such overpayment would have come from Respondent's share of the settlement proceeds, and thus, there does not appear to have been an unauthorized use of the Aregbes' settlement funds.

¹² We note that DX 4R at 200 shows that on December 20, 2012, Respondent transferred \$3,780 from her -9009 account to her operating account. This amount equals the amount of the legal fee reflected on Fuad Aregbe's settlement sheet. RX 51 at 856. However, this transfer is not reflected in Respondent's ledger for the Aregbes' case, and neither party has argued that this transfer is a transfer of Respondent's Aregbe-related fees. If this \$3,780 reflected an Aregbe-related transfer, Respondent would have disbursed \$15,009.27 in Aregbe-related settlement money, despite having received only \$14,525.

the Aregbes or any third party were owed any more money from the settlement, and as it appears that Respondent took \$2,661.25 less in fees than is reflected on the settlement sheet, we cannot conclude that Disciplinary Counsel proved by clear and convincing evidence that the \$795.73 remaining in the account did not belong to Respondent.

Dionne Hart -- Disciplinary Counsel argues that Respondent misappropriated Ms. Hart's funds because Disciplinary Counsel's analysis showed that Respondent owed Ms. Hart \$1,232.50, when her account held only \$445.64 on June 30, 2013. Disciplinary Counsel's Proposed Findings at 48-49. Respondent does not dispute Disciplinary Counsel's calculation, but argues that the \$1,232.50 at issue "is clearly Respondent's attorney's fees."¹³ Respondent's Proposed Findings at 33. For the reasons set forth below, we agree with Disciplinary Counsel that the funds at issue belonged to Ms. Hart, and were not Respondent's fees. In so finding, we recognize that the Specification of Charges did not specifically identify Ms. Hart but alleged "intentional and/or reckless misappropriation of multiple clients' entrusted funds, including Ms. Wilson."¹⁴

¹³ Respondent's ledger calculated the balance as \$1,257.50, due to the inclusion of two erroneous entries, a \$1,555 transfer into the account, and a \$1,530 check written on the account (reflecting a \$25 net account balance increase). As discussed below, neither of these transactions actually took place.

¹⁴ Respondent did not raise any due process objection when questioned about her handling of the Hart funds, *see, e.g.*, Tr. 1110-11, or in her briefing, nor does the Committee believe that any such objection would have had merit. *See, e.g., Slattery*, 767 A.2d at 211 (due process not violated where no amendment of the charges and "'issues involve the scope of the *original* charges'") (quoting *In re James*, 452 A.2d 163, 168 n.3 (D.C. 1982)); *see also In re Francis*, 137

Disciplinary Counsel proved that Respondent deposited Hart-related checks totaling \$4,905 on February 26, 2013, paid Ms. Hart \$2,172.50 on March 7, 2013, and transferred her \$1,500 legal fee from her trust account to her operating account on March 28, 2013, leaving a balance of \$1,232.50. *See* FF 157.

Respondent argues that the \$1,232.50 at issue were her fees, and that Disciplinary Counsel's calculation was flawed because it did not account for the attorney's fees and/or costs she was due in the Hart matter. Disciplinary Counsel's investigator testified that Respondent took a \$1,500 fee on March 28, 2013, when she transferred that amount from the -9009 account into her operating account. Tr. 989. Respondent did not contest that testimony during cross-examination, or in her own testimony. *See* Tr. 1028-29 (Respondent's cross-examination of the investigator regarding the Hart matter); Tr. 1110-11 (Respondent's testimony regarding the Hart funds).

On cross-examination of Disciplinary Counsel's investigator, Respondent's counsel established that the investigator did not know the financial arrangement between Respondent and Ms. Hart. Tr. 1028-29. In her post-hearing brief, Respondent argues that Disciplinary Counsel could not have properly analyzed Ms. Hart's account without this missing information. Yet, after highlighting the importance of this information, Respondent did not provide *any evidence* showing that she was entitled to take \$1,232.50 in fees in addition to the \$1,500 she had

A.3d 187, 190 (D.C. 2016) (*per curiam*) (due process requirement is satisfied by adequate notice of the charges and a meaningful opportunity to be heard).

already taken, or otherwise explain why the balance in the account belonged to her. Instead, she asserts in her post-hearing brief only that her customary contingency fee is 35%. Respondent's Proposed Findings at 33. If Respondent was entitled to 35% of the total recovery (\$4,905), she was entitled to \$1,716.75.¹⁵ If the \$1,232.50 of the settlement amount remaining on the -9009 account reflected Respondent's attorney fee, as did the \$1,500 transferred to Respondent's operating account on March 28, 2013 (which fact Respondent has never contested), Respondent would have taken a total fee of \$2,732.50, or approximately 56% of the \$4,905 in Hart-related funds deposited into the -9009 account. Thus, the evidence does not support Respondent's contention that all of the \$1,232.50 in Hart-related money were Respondent's fees. At most, Respondent was entitled to an additional \$216.75 as her fee, and the remainder, \$1,015.75 belonged to Ms. Hart.

The foregoing does not address Respondent's payment to Ms. Hart's medical provider because Respondent paid that bill from a different account, and thus it is not directly relevant to the misappropriation analysis, but is included here for completeness. Although Ms. Hart's settlement checks were deposited in Respondent's -9009 account, on March 27, 2013, she wrote a check on her -4251 account to pay Atlast Health Care Center on behalf of Ms. Hart. DX 4Q at 86.

¹⁵ We recognize that Respondent may have incurred some costs in representing Ms. Hart, but absent evidence of the amount of those costs from Respondent, we decline to speculate about the amount of costs owed to Respondent. *See Thompson*, 579 A.2d at 221; *Burton*, 472 A.2d at 845-46.

Respondent asserts in her brief that on March 18, 2013, she had transferred \$1,555.00 from the -9009 account to the -4251 account “and paid Atlast Healthcare center [sic] \$1,530.00 for services rendered to Ms. Hart.” Respondent’s Proposed Findings at 33. Respondent cites no records to support this transfer, and our review of the bank records shows that, instead of transferring \$1,555 from the -9009 account to the -4251 account, Respondent transferred \$1,555 to the -9009 account from the -4251 account (the opposite of what she argued in her brief). *See* DX 4R at 303 (-9009 account statement showing March 18, 2013 transfer from -4251 account); DX 4S at 7 (-4251 account statement showing March 18, 2013 transfer to -9009 account).¹⁶ The money transferred from the -4251 account to the -9009 account was not Ms. Hart’s because her two settlement checks had been deposited into the -9009 account, as discussed above. DX 4R at 284-89 (settlement checks); DX 4R at 266 (-9009 account statement showing settlement check deposits). Even though Respondent transferred \$1,555 from the -4251 account to the -9009 account, she paid Atlast Healthcare from the -4251 account, which held none of Ms. Hart’s funds. Because Respondent did not use

¹⁶ Respondent’s ledger shows that on March 18, 2013, \$1,555 was transferred into the -9009 account, and a \$1,530 check was written on the -9009 account. DX 4Q at 20. Respondent’s bank records do not support these entries on her ledger.

Ms. Hart's money to pay the \$1,530 check to Atlast Healthcare, Respondent should have continued to hold \$1,232.50 of Ms. Hart's money in her trust account.¹⁷

Upon consideration of all of the evidence discussed above, we conclude that Disciplinary Counsel has proven by clear and convincing evidence that Respondent misappropriated funds held in trust for Ms. Hart on May 2, 2013, when the balance in the -9009 account dipped below \$1,015.75.¹⁸ DX 4R at 360, 370 (the balance also dipped below \$1,015.75 on May 30, May 31, June 1, June 27 and June 28, 2013).

As to whether the misappropriation was negligent or reckless, Disciplinary Counsel's argument is that Respondent used her clients' funds "as though they were hers by using them without meaningful recordkeeping that would permit someone to reconstruct her disbursement of entrusted funds, indiscriminately commingling her funds with theirs, and moving her earned fees between IOLTAs rather than putting them in her operating or personal account." Disciplinary Counsel's Proposed Findings at 81 (*citing Anderson*, 778 A.2d at 338). In effect, Disciplinary Counsel takes the position that Respondent must have known what

¹⁷ On March 18, 2013, the day that Respondent transferred \$1,555 from the -4251 account to the -9009 account, she also transferred \$3,000 from the -9009 account to the -4251 account. *See* DX 4S at 7. Respondent did not explain the purpose of that transfer, or suggest that it was in any way related to the Hart-related transactions discussed above. Had this transfer of funds from the -9009 account to the -4251 account related to Ms. Hart's funds, we would expect that Respondent would have offered evidence on this point. Given her failure to do so, we decline to speculate that this \$3,000 transfer related to the Hart funds.

¹⁸ It appears that Disciplinary Counsel used June 30, 2013 to determine when the unauthorized use occurred because that was the first day the balance in the -9009 account fell below \$795.73, the amount Disciplinary Counsel argued that Respondent owed to the Aregbes. *See* Tr. 1033-34.

she was doing and so the misappropriation was at least reckless. *Id.* at 82. However, in *Anderson*, the Court explained that its decisions “by clear implication, have rejected the proposition that recklessness can be shown by inadequate record-keeping alone combined with commingling and misappropriation.” *Anderson*, 778 A.2d at 340. The mishandling of Ms. Hart’s funds was problematic, but we are not convinced that Disciplinary Counsel has met its burden of showing intentional or reckless misappropriation of client funds. The IOLTA account records are incomplete and Respondent’s ledger was so inconsistent that the Committee is unable to discern that she intentionally or recklessly misappropriated Ms. Hart’s funds. We find that Disciplinary Counsel has proven only negligent misappropriation. *See In re Ray*, 675 A.2d 1381, 1388 (D.C. 1996) (“If [the respondent’s] conduct was not deliberate or reckless, then [Disciplinary] Counsel proved no more than simple negligence.”).

We conclude that, in violation of Rule 1.15(a), Respondent negligently misappropriated Ms. Hart’s funds.

(5) Rule 1.15(c): Prompt Notification, Delivery, and Accounting of Settlement Funds

Rule 1.15(c) was violated during Respondent’s handling of Ms. Wilson’s personal injury matter in Count 4. Rule 1.15(c) provides that a lawyer shall promptly notify the client of a settlement, promptly deliver the funds from the settlement to the client or third person, and promptly deliver a full accounting upon request. Rule 1.15(c) “recognize[s] that lawyers often receive funds from third parties from which the lawyer’s fee will be paid.” Rule 1.15, cmt. [6].

In connection with Ms. Wilson's personal injury case, Respondent failed to notify (promptly or otherwise) her client that she had settled her case and failed to provide the remaining settlement amount to Ms. Wilson with any explanation. Respondent did not promptly disburse funds to Ms. Wilson from the settlement check received in June 2013, and the credit to the custody case was not made until January 2014. *See* Tr. 873-76. Nor did Respondent immediately disburse any funds directly to the medical provider, instead, inexplicably, she waited six months, until January 2014, to do so. DX 4N at 10-11; Tr. 950-52.

Although Respondent eventually credited the settlement amount due to Ms. Wilson to her custody case account, that entry did not appear until the second version of the statement regarding that case provided to Disciplinary Counsel but, despite Ms. Wilson's repeated requests, neither statement was provided to Ms. Wilson. FF 149-51. Accordingly, Respondent also did not promptly render a full accounting as required by Rule 1.15(c).

Respondent's handling of funds in trust was both amateur and suspicious, but we do not find that Disciplinary Counsel has proven, by clear and convincing evidence, that the second invoice in the Wilson representation was false or fraudulently created. As detailed in FF 148-162, Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Rule 1.15(c) in her handling Ms. Wilson's personal injury matter.

Rule of Professional Conduct: Rule 1.16(d) (Declining or Terminating Representation) provides:

(d) In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by Rule 1.8(i).

Comment 9 to Rule 1.16 further states that even if a lawyer has been unfairly discharged, “a lawyer must take all reasonable steps to mitigate the consequences to the client.”

H. The Violation of Rule 1.16(d) in Count 4, but not Count 1

Count 1 (Rudders and Goss)

The Specification of Charges includes a claim that, in terminating her representation of the Rudders and Ms. Goss, Respondent failed to take timely steps to the extent reasonably practicable to protect the Rudders' and Ms. Goss's interests, including giving reasonable notice to the clients, allowing time for employment of other counsel, surrendering papers and property to which the clients were entitled, and refunding any advance payment of fee or expense that had not been earned or incurred. The evidence on this allegation is uncertain. *See, e.g.,* FF 39. Accordingly, the Hearing Committee concludes that Disciplinary Counsel has not established with clear and convincing evidence a violation of Rule 1.16(d) in connection with Count 1.

Count 4 (Wilson)

Respondent's termination of her representation of Ms. Wilson in the custody case violated Rule 1.16(d). Upon deciding, a week before trial, to teach overseas, Respondent failed to "giv[e] reasonable notice to [Ms. Wilson]," failed to allow her client adequate time to search for new counsel she could afford and failed to ensure that Ms. Wilson had the trial notebook and adequate briefing prior to trial, violating Rule 1.16(d). FF 112-15, 117, 124; Tr. 814-16 (Respondent did not provide the trial notebook to Ms. Wilson before Respondent left to teach overseas). Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rule 1.16(d) by terminating her representation of Ms. Wilson without reasonable warning or assistance.

Rule of Professional Conduct: Rule 3.4(c) (Fairness to Opposing Party and Counsel) provides:

A lawyer shall not:

(c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists[.]

I. Respondent's Violations of Rule 3.4(c) in Count 2

Count 2 (Lewis)

Respondent failed to appear with Mr. Lewis at his status hearing and failed to make arrangements to ensure he would be represented at the hearing even though she had a conflict. Although she hoped to be available by telephone, she was not, leaving her client without counsel and violating the Court's order to appear for the hearing. Thus, Disciplinary Counsel have proved by clear and

convincing evidence Respondent violated Rule 3.4(c). *See In re Bland*, Bar Docket No. 245-95, at 16 (BPR Jan. 13, 1998), *recommendation adopted*, 714 A.2d 787, 787 n.2 (D.C. 1998) (*per curiam*).

Rule of Professional Conduct: Rule 8.4 (Misconduct) provides:

It is professional misconduct for a lawyer to:

(a) ***

(b) *Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;*

(c) *Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;*

(d) *Engage in conduct that seriously interferes with the administration of justice;*

J. Respondent's Violations of Rule 8.4 in Counts 1 through 5

In *Ekekwe-Kauffman*, the Court of Appeals addressed the meaning of “dishonesty, fraud, deceit or misrepresentation” in Rule 8.4(c):

The concepts of dishonesty, fraud, and misrepresentation each have a distinct meaning, though they overlap in certain respects. Dishonesty is the most general of the violations. It 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) (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990)). Fraud and misrepresentation are more specific and require “active deception or positive falsehood.” *In re Shorter*, 570 A.2d at 768. . . . Misrepresentation, finally, is an untrue or incorrect representation, statement, or account. *In re Shorter*, 570 A.2d at 767 n.12.

210 A.3d at 796-97.

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 conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding.

Count 1 (Rudders and Goss)

Disciplinary counsel has shown by clear and convincing evidence violations of Rule 8.4(c) in Count 1.

Respondent was dishonest when she misrepresented her experience handling police brutality-related cases. Although the Rudders and Ms. Goss retained her after she represented she had been successful in the past in handling such cases (FF 5), she admitted during her testimony before the Committee that this had been her "first brutality case" and that she "didn't have a lot of police brutality experience." FF 6. Respondent claimed in her Proposed Findings that she had "worked as a paralegal for several years with an attorney that handled several police brutality cases," (*id.*) but that is a very different type of experience than what she claimed when she convinced the Rudders and Ms. Goss to retain her to sue the District of Columbia. Respondent went on in her Proposed Findings to

claim that she had “successfully handled other police brutality cases after the Rudder case.” (*Id.*) Respondent provides no citation to the record to support that assertion. In any case, Respondent’s experience after she represented the Rudders and Ms. Goss is irrelevant to her false claims to them of experience she, in fact, did not have.

By way of justification, Respondent claims to have been “comfortable with the litigation process,” (*id.*) apparently claiming that her general skill and experience excused her misrepresentations to her client. To the contrary, Respondent’s claim of “comfort with the litigation process” is belied by her repeated and significant errors in representing the Rudders and Ms. Goss, including her failure to file their Complaint within the time required by the statute of limitations for common law claims, her failure to investigate adequately her clients’ claims and to collect corroborating evidence in a timely fashion, and her unwarranted concessions that resulted in the Court’s initial dismissal of their Complaint. FF 14-22, 25-30.

Disciplinary Counsel also established by clear and convincing evidence other examples of Respondent’s violation of Rule 8.4(c). Once Respondent conferred with her clients, some months after the dismissal of their Complaint (and only after her clients had discovered on their own that the District of Columbia had filed a Motion to Dismiss their Complaint), Respondent misrepresented the status of their case by assuring them that “everything is still on track.” FF 37. In fact, as she represented to her clients that the remaining “excessive force” (*i.e.*, Section

1983) claims were “strong,” (*id.*), she failed to inform them that their entire Complaint, including the Section 1983 claims, had been dismissed by the District Court. FF 30-31. Furthermore, she contended to her clients that the dismissal of their Complaint was not “due to my error” (FF 40), which was simply false. *See* FF 41.

In responding both to Disciplinary Counsel’s initial inquiry after Mr. Rudder filed a complaint with the Office of Disciplinary Counsel, and in testimony before the Committee, Respondent claimed she had “immediately advised” her clients of the dismissal. Only under cross-examination before the Committee did Respondent admit she “can’t recall when I called them.” FF 35. Respondent falsely assured Disciplinary Counsel that she had not missed any deadlines in the Rudder-Goss representation and falsely stated that she had relevant experience with police brutality cases. FF 52.

Respondent’s dishonesty and misrepresentations to the Rudders and Ms. Goss caused them great harm. While they ultimately were able to settle their claims against the District of Columbia, that occurred only after many years and after retaining new counsel. FF 46-49. Moreover, Respondent, in her communication with Disciplinary Counsel, her testimony before the Committee and in her subsequent filing with the Committee of her Proposed Findings, misrepresented her actions and demonstrated neither an understanding that she had made errors, nor remorse for her dishonest representations and the damage she has caused to her clients and the administration of justice.

Count 2 (Lewis)

Respondent seriously interfered with the administration of justice in violation of Rule 8.4(d) as it applied to Mr. Lewis, by failing to appear with her client at a status conference and not making adequate accommodations to ensure that her client would not appear without counsel. She sought to arrange with the court clerk to participate by telephone, but that was impossible to accomplish.

FF 57. Respondent had not taken the additional step of filing a formal motion to continue the hearing, since she would not be available. FF 56. Respondent does recognize that, now, she would have some else “stand in for me,” but did not have the resources then. *Id.*

Respondent also misled Disciplinary Counsel in claiming that her client had disclosed his financial condition to the Court when he had not to the same extent she did. FF 69.

Count 3 (Strawder)

The representation to Peachtree Funding that Mr. Strawder’s case was worth \$5 million was without any basis. Respondent claimed that she was not responsible for this dishonest answer on the application form because this figure is not in her handwriting. FF 91. However, it was her obligation, as the attorney for Mr. Strawder, to make sure that his application for litigation funding, drafted in her office, and from which she would benefit, was filled out correctly and truthful information submitted. Her reckless failure to do so, and her failure to correct the information, were violations of Rule 8.4(c). Furthermore, she misrepresented to

Peachtree that she had explained the terms of the Peachtree financing arrangement to her client, and that he understood those terms. FF 93, 98.

Likewise, Respondent's continual urging that Mr. Strawder incur more and more expense, and borrow more money, to fund a lawsuit for which she knew no qualified expert could be found was less than candid in violation of Rule 8.4(c).

Although Respondent missed some deadlines in Mr. Strawder's case, Disciplinary Counsel did not prove by clear and convincing evidence that her interference in the administration of justice was sufficiently serious to constitute a violation of Rule 8.4(d). The violations of Rule 8.4(c) discussed above, however, were proved by clear and convincing evidence.

Count 4 (Wilson)

As noted above, Disciplinary Counsel failed to establish by clear and convincing evidence that Respondent committed any criminal act and thus there is no violation of Rule 8.4(b). FF 163. Nor do the fee issues raised with respect to Ms. Wilson rise to the level of dishonesty within the meaning Rule 8.4(c). Respondent did violate Rule 8.4(d) in that her abandonment of her client right before trial seriously interfered with the administration of justice. *See* FF 133. Moreover, Respondent mishandled discovery issues -- leading to sanctions imposed at trial on her client -- causing delays with discovery submissions that were both evasive and nonresponsive. FF 111. Likewise, her failure to cooperate with Disciplinary Counsel in its investigation of the financial aspects of Ms.

Wilson's cases seriously interfered with the administration of justice. *See* FF 148-155.

Disciplinary Counsel proved by clear and convincing evidence several violations of Rule 8.4(c). Respondent falsely stated to Ms. Wilson's health care provider that Respondent would take a 5% reduction in her fees, in order to convince the health care provider to reduce its bill for services rendered to Ms. Wilson, when in fact Respondent did not reduce her fees to Ms. Wilson. FF 145.

Respondent falsely claimed Ms. Wilson had not requested invoices when in fact she had, and she promised Ms. Wilson she would provide her with a final statement when she did not do so. FF 103. Respondent interfered with and obstructed Disciplinary Counsel's investigation by providing two different versions of Ms. Wilson's account, providing incomplete responses to Disciplinary Counsel's subpoenas and requests for information, and failing to have a complete and cogent set of records for Disciplinary Counsel to review. *See* FF 148-155.

Count 5 (Harris)

Disciplinary Counsel has established with clear and convincing evidence that Respondent incorrectly stated she had no information regarding Ms. Harris when, in fact, she had recently corresponded with Ms. Harris. FF 170. In providing false and incomplete information to Disciplinary Counsel, Respondent violated Rule 8.4(d). *See* Rule 8.4, cmt. [2]. The Committee, however, does not find that Disciplinary Counsel has proven a Rule 8.4(c) violation in this matter; we are not convinced that Respondent was not merely mistaken, as opposed to

intentionally or recklessly dishonest, when she made her statement to Disciplinary Counsel. *See, e.g., In re Romansky*, 825 A.2d 311, 317 (D.C. 2003).

Intentionally False Statements to Disciplinary Counsel and the Hearing Committee

The Committee has identified a number of times in which Respondent gave testimony to the Committee in the hearing which the Committee found not to be credible and deliberately false. For example, in response to an inquiry from the Office of Disciplinary Counsel on December 20, 2010, Respondent described filing a “similar case for excessive force” in which the government did not file a motion to dismiss the intentional tort claims although they were filed after the statute of limitations had expired. FF 5. She later testified that the Rudder-Goss case was her first police misconduct case. FF 6; *see also* FF 26. Respondent also falsely testified that she had kept the Rudders and Ms. Goss informed of the Motion to Dismiss their Complaint, and other developments in their case, which the Committee concluded was not credible and was deliberately false. FF 35-37. Respondent testified Ms. Wilson never asked for a statement of her account, which the Committee found to be not credible and false in light of its evaluation of Ms. Wilson and her testimony. FF 103. These examples of a lack of candor with the Committee, and her misrepresentations to Disciplinary Counsel, belie Respondent’s argument that her errors were committed only early in her career and she has changed her ways. *See* Respondent’s Proposed Findings at 55. They leave the Committee with the firm conviction that, given the chance, Respondent would be willing in the future to mislead her clients if it suited her purposes.

Accordingly, Disciplinary Counsel has proved by clear and convincing evidence that Respondent has violated Rule 8.4. These violations are numerous and many are serious, having an impact on the administration of justice. They are set out in detail above, *see, e.g.*, FF 5-6, 26, 31-32, 34-37, 40-41, 52, 67, 69, 91, 93, 98, 103, 162. Respondent additionally gave false testimony to the Committee. *E.g.*, FF 36, 69, 83, 162. Her misrepresentations, untruths and pure lies have happened with such frequency and such random abandon that it is hard to conclude that Respondent is capable of consistently telling the truth, much less meeting her deep obligation for honesty, truthfulness and candor under the Rules. Respondent takes the position that Disciplinary Counsel has failed to establish violations of Rule 8.4(c) because Disciplinary Counsel has failed to prove fraudulent intent or state of mind. Respondent's Proposed Findings at 49-51. Again, we turn to *Ekekwe-Kauffman*: "Fraud . . . unlike dishonesty, requires a showing of intent to fraud or deceive Misrepresentation . . . is an untrue or incorrect representation, statement, or account." 210 A.3d at 796; *see also In re Rosen*, 570 A.2d 728, 729 (D.C. 1989) (finding "reckless disregard of the truth" where the respondent's conduct "evinced an obvious and culpable contempt for an attorney's duty to be candid"). Thus, without a need to prove the intent necessary for fraud, Disciplinary Counsel has clearly and convincingly proven Respondent's multiple violations of Rule 8.4.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Committee to recommend the sanction of disbarment. Respondent has requested that the Committee recommend no discipline or a minor suspension. For the reasons described below, we recommend the sanction of disbarment.

A. Standard of Review

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

The sanction also must not “foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted.” D.C. Bar R. XI, § 9(h)(1); *see, e.g., Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including:

- (1) the seriousness of the conduct at issue;
- (2) the prejudice, if any, to the client which resulted from the conduct;
- (3) whether the conduct involved dishonesty;
- (4) the presence or absence of violations of other provisions of the

- disciplinary rules;
- (5) whether the attorney has a previous disciplinary history;
- (6) whether the attorney has acknowledged his wrongful conduct; and
- (7) circumstances in mitigation or aggravation.

See, e.g., Martin, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers “‘the moral fitness of the attorney’ and ‘the need to protect the public, the courts, and the legal profession’” *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (*per curiam*) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. Seriousness of Respondent’s Misconduct

Respondent’s conduct as a lawyer was reprehensible. The case before us is many times more egregious than the conduct of the respondent in *Ekekwe-Kauffman*, which resulted in a three-year suspension for failures associated with one client over a period of time much briefer than the many years associated with Respondent’s violations. *See* 210 A.3d at 797-800.

The number and variety of Respondent’s violations is astonishing:

Rule 1.1 (Rudders/Goss, Lewis, Strawder)

Rule 1.2 (Wilson)

Rule 1.3 (Rudders/Goss, Strawder, Wilson)

Rule 1.4 (Rudders/Goss, Strawder, Wilson)

Rule 1.5 (Wilson)

Rule 1.6 (Lewis)

Rule 1.15 (Strawder, Wilson)

Rule 1.16 (Wilson)

Rule 3.4 (Lewis)

Rule 8.4 (Rudders/Goss, Lewis, Strawder, Wilson, Harris)

However, it is not just the number and variety of infractions, some of which are minor, that lead the Committee to recommend disbarment. Rather it is the seriousness of certain of the infractions that mandate our recommendation of disbarment. Listening carefully to and observing the demeanor of the witnesses, including Respondent, and weighing all the other evidence, we can only conclude that Respondent lacks the fundamental character necessary to practice law in compliance with the Rules.

First and foremost, the repeated dishonesty evidenced by Respondent, discussed at length in our Findings of Fact and Conclusions of Law and in Part 3 below, rises to the level of flagrant dishonesty and should by itself be a bar to the continued practice of law. No better example exists than Respondent's treatment of the Rudder/Goss family, citizens who claimed to be abused by the police. Respondent lied about her experience in police misconduct litigation in order to convince them to retain her. She committed malpractice when she let the statute of limitations run on the adults' common law claims. She realized that when she received the District's Motion to Dismiss. She did not notify her clients of this error. She then committed malpractice again by inexplicably conceding the juveniles' claims. When the district court dismissed the case, she should have called her clients and said: "I made some bad mistakes. I'm going to try to fix

what I can or perhaps another attorney would do better getting the judge to change his mind.” Instead, she filed two motions to reconsider without telling her clients what had happened or consulting with them. When the clients finally found out what happened, instead of having a belated conversation about the mistakes she has made, she lied to them and said that they still had a strong case and what happened was not her fault. Respondent had a lot of time to think about how to handle her mistakes in the Rudder/Goss matter but she always defaulted to the dishonest course of action. Everyone makes mistakes; it is how a lawyer handles them that is the test of her character.

As dismaying as the dishonesty toward the Rudder/Goss family was, Respondent’s indifference to her other clients’ welfare was outdone by her abandonment of Ms. Wilson on the eve of a custody trial in which the safety of a young child was at stake. Respondent thought her only obligation to Ms. Wilson, before she left the country, was to refer her to another attorney. When that did not work out, she did nothing to help. She had no backup plan to protect her client, nor did she prepare her client for the worst: that she would be alone and without counsel in her efforts to maintain custody of her daughter. It was only Ms. Wilson’s extraordinary creativity and resilience that made her trial successful. The safety of children is one of our society’s and the legal system’s highest priorities. For Respondent, a business opportunity was more important.

The Committee was also dismayed that Disciplinary Counsel’s forensic investigator, with decades of experience, found Respondent’s accounting/banking

records so disordered, and her cooperation so limited, that it was impossible to reconcile them. The Committee could not conclude that Respondent stole from her clients or recklessly used their money, but having someone practice law whose trust accounts cannot be reconciled is a dangerous game to play. Respondent should not be trusted with clients' money.

2. Prejudice to the Client

As detailed at length above, Respondent inflicted serious harm on her clients. The Rudders and Ms. Goss lost their claims through Respondent's malpractice, leaving them only with the minor children's claims as bargaining chips. Mr. Lewis was forced to appear in court without counsel. Ms. Wilson, a diligent client who paid Respondent \$16,000 and was fined by the Court due to Respondent's misconduct, did not receive any refund of her fee. She endured serious stress due to Respondent's selfish decision to abandon her to pursue a personal opportunity.

3. Dishonesty

In the view of the Committee, the main differences between this case and *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) and particularly *Ekekwe-Kauffman*, are the severity, frequency and nature of Respondent's dishonesty to her clients, third-parties, and the Office of Disciplinary Counsel. As quoted in *Ekekwe-Kauffman* (210 A.3d at 798), "[t]here is nothing more antithetical to the practice of law than dishonesty." *In re Daniel*, 11 A. 3d 291, 300 (D.C. 2011). That is particularly true

when dealing with clients, who must rely on their lawyer's representations and have nowhere else to go for their protection.

In this case, Respondent's flagrant dishonesty was pervasive and enormously harmful to her clients. She misrepresented her experience in police misconduct cases to the Rudders and Ms. Goss, leading them to retain her despite her total lack, as a lawyer, of experience in a complicated area of law. She lied to the Rudders and Ms. Goss about the potential impact of the District Court's dismissal of their Complaint, and falsely claimed it was not her fault the Complaint was dismissed.

She misled Mr. Strawder by encouraging him to continue to build up debt to pay for more and more potential experts, leading her client to believe she had confidence that the case was worth it. That was only possible by her lie to Peachtree Funding regarding the value of Mr. Strawder's case, claiming it was worth \$5 million dollars when, in fact, she not only had not valued the case -- she did not know how to value it. Respondent was even dishonest in telling Ms. Wilson's healthcare provider that she was going to reduce her fee 5% to encourage the provider to reduce its fee to Ms. Wilson, an untruth that directly benefitted Respondent's bottom line. Beyond that, Respondent's numerous misrepresentations and instances of dishonesty are catalogued throughout this report and need not be repeated once again here.

It is in large part because of Respondent's repeated dishonesty here that the Committee recommends going beyond a lengthy suspension and recommends that

Respondent be sanctioned by disbarment. *See, e.g., In re Howes*, 52 A.3d 1, 24-25 (D.C. 2012). Respondent’s dishonesty was flagrant, “reflect[ing] a continuing and pervasive indifference to the obligations of honesty in the judicial system.” *In re Pennington*, 921 A.2d 135, 141 (D.C. 2007) (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)).

In *Ekekwe-Kauffman*, the respondent was found to have deliberately falsified an invoice and, as in this case, given false testimony before a Hearing Committee, in violation of Rule 8.4(c). 210 A.3d at 795-97. Similarly, in *Samad*, the respondent was found to have been dishonest in informing a judge that he was not available to appear because of his obligations in another trial, a statement that was untrue. *In re Samad*, 51 A.3d 486, 496 (D.C. 2012). While the Committee does not discount the dishonest conduct found in those two cases, neither of those actions were aimed directly at the clients of those respondents in quite the same way.

Finally, Respondent evaded, lied to and misled the Office of Disciplinary Counsel in their investigations of her activity. *See, e.g., FF 5, 35, 51, 69, 171.*

4. Violations of Other Disciplinary Rules

See discussion of violations of Rules in Section IV, B.1 above.

5. Previous Disciplinary History

Respondent has no previous disciplinary history. However, had the matters involving the five clients described herein been brought forth as separate statements of charges as they occurred, and had each resulted in findings such as

those reported herein, there would have been a long disciplinary history involving Respondent up to the present.

6. Acknowledgement of Wrongful Conduct

Respondent's acknowledgement of her wrongful conduct was minimal. See discussion in Section IV, B.7 below.

7. Other Circumstances in Aggravation and Mitigation

Respondent sought to lessen any sanctions that might be imposed against her by taking the opportunity to testify in mitigation before the Committee. The Committee does not credit portions of her testimony in light of the facts developed in the hearing and its observation of Respondent's testimony.

Respondent admits she should not have taken Mr. Strawder's case and states she has decided not to handle medical malpractice cases. Tr. 1354. But she goes on to say Mr. Strawder was able to get a settlement -- after retaining other counsel -- as if that explains away her incompetence and her continuing to encourage him to pursue his case even in the face of his increased debt with Peachtree Funding. Tr. 1355. As to Ms. Wilson, Respondent sought to excuse her actions by claiming health issues and stating, as to the monetary sanction imposed on Ms. Wilson, "that's not the type of situation that regularly occurs." Tr. 1356.

As it turns out, the Rudders and Ms. Goss, Mr. Strawder, and Ms. Wilson were able to obtain, ultimately, some level of success in their cases. The Rudders and Ms. Goss, and Mr. Strawder were successful in retaining replacement counsel who were able to settle their cases with as positive a result as possible in light of

Respondent's mismanagement and failures. Ms. Wilson is another story altogether: she was somehow able to succeed in a three-day trial through reliance on Google and "Law and Order," and knowing her husband well enough to jerk him into showing the Court his true character -- not many people could do what she did. But none of their successes can be credited, in fairness, to Respondent.

Yes, Respondent filed the appeal brief for the Rudders and Ms. Goss, but only after she made it necessary by mishandling the case below. And nothing could be done to recover the common law counts for the adult plaintiffs after the expiration of the statute of limitations. She ultimately helped Mr. Strawder find an expert, but there is no testimony in the record that supports a conclusion that that expert was instrumental in reaching a resolution of Mr. Strawder's case.

There is nothing in the record to indicate what happened to Mr. Lewis's case after Respondent disclosed confidential and privileged information that could only have aided his wife's case.

Respondent contends her actions should be excused because they occurred "during the early years of her practice between 2008 and 2013." Respondent's Proposed Findings at 55. That, however, is a five-year period of time over which Respondent has failed to demonstrate her ability to learn from her mistakes. In fact, what may be Respondent's most outrageous conduct -- when she abandoned Ms. Wilson on the eve of trial -- occurred at the end of this period, in July 2013. Moreover, the Harris case occurred in September 2016, and Respondent's efforts to obstruct and mislead Disciplinary Counsel, which included Disciplinary

Counsel’s frustrating correspondence with Respondent regarding her IOLTA accounts, went into 2018. And, finally, in 2019, Respondent testified falsely before this Committee.

Most disturbing to the Committee while hearing Respondent’s testimony was her focus on herself and her indifference to the harm she caused her clients. Her statement to Ms. Wilson, when the safety of her only child was at stake, that “[i]t will not take a rocket scientist to represent someone in a custody case,” (DX 4C at 36-37) sums up this core problem with Respondent’s character and indifferent attitude.

The Court of Appeals has “disbarred attorneys for conduct falling short of misappropriation or conviction of a crime involving moral turpitude.” *In re Foster*, 699 A.2d 1110, 1112 (D.C. 1997) (*per curiam*) (appended Board Report), and cases cited therein. The Committee concludes that this should be one such case, and urges that a sanction of disbarment be imposed against Respondent.

C. Sanctions Imposed for Comparable Misconduct

The Committee is mindful of its responsibility to recommend a sanction that is not inconsistent with comparable conduct or not otherwise unwarranted. *See In re Kanu*, 5 A.3d 1, 14 (D.C. 2010) (citing *In re Cleaver-Bascombe*, 986 A.2d 1191, 1194 (D.C. 2010), *Elgin*, 918 A.2d at 373); *see also* D.C. Bar Rule XI, § 9(h)(1). In considering the facts of this case, the Court of Appeals’ recent decision in *Ekekwe-Kauffman* provides a useful, but less extreme, analogy.

In the *Ekekwe-Kauffman* matter, the lawyer there was found by the Board on Professional Responsibility to have violated Rules 1.1(a) and (b), 1.3(a), 1.3(b)(1) and (b)(2), 1.4(a) and (b), 1.5(a), 1.15(a) and (e), 1.16(d), and 8.4(c), all in connection with a single client over a relatively short period of time. 210 A.3d at 779. The Court of Appeals accepted all of those findings except the finding of a violation of Rule 1.15(a), reckless misappropriation of client funds, because the Court found there was insufficient evidence to support a finding of misappropriation. *Id.* Accordingly, while the Court of Appeals declined to order disbarment, it did impose a three-year suspension with reinstatement conditioned upon a showing of fitness. *Id.* at 779-780, 797-800; *see also Samad*, 51 A.3d at 500 (three-year suspension with reinstatement conditioned upon a showing of fitness for similar Rules violations involving a number of clients demonstrating “a consistent pattern of neglect that in some instances prejudiced his clients, and in nearly every instance prejudiced the administration of justice”).

In this case, the Hearing Committee determined that Respondent committed multiple violations of 20 Rules of Professional Conduct, in six different matters (involving five clients), over a period of six years, and in dealing with the Office of Disciplinary Counsel and the Committee over a period of an additional six years, up to and including the time of the hearing. If Respondent had been found guilty *seriatim* in separate hearings of the Rules violations in each of the five cases brought before the Hearing Committee, we would be faced with a long history of violations that would instruct the appropriate sanction. While that is not the case

here, the Court of Appeals does not require that the sanction(s) imposed in consolidated attorney disciplinary cases must be arrived at “rigidly” or “mechanically” by establishing a separate sanction in each matter. *In re Scott*, 19 A.3d 774, 782 (D.C. 2011). When considering consolidated attorney disciplinary matters, the appropriate question is if all of the matters underlying the separate attorney discipline cases were before the Board on Professional Responsibility simultaneously, what would be recommended as the appropriate discipline? *Id.* at 783. When considered in combination, instances of attorney misconduct charged in separate matters may justify an extremely serious sanction (such as a lengthy suspension or disbarment), even though when considered individually, and in isolation, these instances of misconduct might be deemed less serious than such a sanction would indicate. *Id.*; see also *In re Foster*, 699 A.2d 1110, 1112 (D.C. 1997) (*per curiam*) (appended Board Report) (“Presumably, the sanction recommendation would have been more severe had all of the matters [heard in that case by separate hearing committees] been heard by a single committee.”).

In evaluating the current case in light of these precedents, therefore, the Committee would recommend at least a multi- (three) year suspension with a required showing of fitness for reinstatement. After much consideration, however, the Committee has decided, unanimously, to recommend the more severe sanction of disbarment due to Respondent’s flagrant dishonesty and for the reasons discussed above.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.1(a) and (b), 1.2(a), 1.3(a), 1.3(b)(1) and (2), 1.3(c), 1.4(a), 1.4(b), 1.4(c), 1.5(a), 1.5(b), 1.5(c), 1.6(a)(1), 1.15(a), 1.15(c), 1.16 (d), 3.4(c), 8.4(c) and 8.4(d) and should receive the sanction of disbarment. 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). We further recommend that should Respondent apply for reinstatement, she be required to refund a substantial portion of the fees paid by Ms. Wilson.

AD HOC HEARING COMMITTEE

Sheila J. Carpenter

Sheila J. Carpenter, Chair

Marcia Carter
Marcia Carter, Public Member

Daniel C. Schwartz
Daniel C. Schwartz, Attorney Member