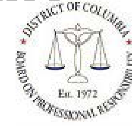
THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER SIX



FILED

May 12 2023 2:10pm

Board on Professional Responsibility

In the Matter of:	:	
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CRAIG A. BUTLER,	:	
	:	Board Docket No. 22-BD-003
Respondent.	:	Disciplinary Docket Nos. 2018-D024;
	:	2018-D211; 2018-D224; & 2021-D049
A Member of the Bar of the District	:	
of Columbia Court of Appeals	:	
(Bar Registration No. 451320)	:	

REPORT AND RECOMMENDATION OF
HEARING COMMITTEE NUMBER SIX

Respondent, Craig A. Butler, is charged with violating District of Columbia Rules of Professional Conduct ("Rules") 1.1(a) (Competence), 1.1(b) (Skill and Care), 1.3(a) (Diligence and Zeal), 1.3(c) (Reasonable Promptness), and 1.4(a) (Communication) in Count I; Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), and 8.4(d) (Serious Interference with the Administration of Justice) in Count II; and Maryland Rules ("MD Rules") 19-301.1 (Competence), 19-301.3 (Diligence), and 19-308.4(d) (Conduct Prejudicial to the Administration of Justice) in Count III.[1] Disciplinary Counsel argues that this matter arises out of Respondent's neglect of eight client

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[1] Because the underlying conduct in Count III arose in connection with a matter pending in Maryland federal court, Disciplinary Counsel charged violations of the MD Rules. *See* D.C. Rule 8.5(b)(1) ("For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise.").

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

matters in three courts from 2017 to 2019, and below is a summary of Respondent's alleged misconduct in those matters:

- *Jones*, August 22, 2017 to January 12, 2018: Respondent ignored an adverse summary judgment motion; he failed to respond to the court's adverse judgment of foreclosure; and he failed to appear at the post-judgment hearing.

- *Robinson*, August 18, 2017 to January 18, 2018: Respondent knowingly ignored his client's bankruptcy deficiency; he failed to respond to the bank's motion to terminate his client's bankruptcy stay; and he did not tell his client about the motion despite several calls, texts, and emails from his client. From February to May 2018, after the Bank moved to foreclosure, he purposely withheld information from his client and, later, failed to keep his client informed about what was happening.

- *Geremew I*, February and March 2018: Respondent failed to respond to a motion to dismiss his client's bankruptcy case, causing the court to dismiss the case.

- *Becton*, May 2018: Respondent filed a deficient motion to extend his client's bankruptcy stay and failed to respond to the court's deficiency notice, causing his client's bankruptcy stay to terminate automatically.

- *Geremew II*, May and June 2018: Respondent jeopardized his client's interests by not filing a timely motion to extend the bankruptcy stay and failing to appear for the motions hearing.

- *Potts*, June 2018: Respondent filed an eleventh-hour, emergency petition containing misrepresentations and deficiencies, and he failed to respond to the court's show cause order, causing the court to dismiss the case.

- *Fitzgerald*, June 2018: Respondent filed a motion to extend his client's bankruptcy stay without a required notice; he failed to respond to the court's order to file the required notice; and he failed to appear for the motions hearing, causing the court to deny the motion and terminate his client's bankruptcy stay.

- *Clayton*, December 2018 to October 2019: over almost a year, Respondent never obtained a proper summons from the clerk; failed to comply with the court's rules and procedures; failed to keep his court contact information updated; failed to appear for at least three show cause hearings; and failed to respond to many court orders and warnings, causing the court to dismiss the case.

See Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC Br.") at 1-2. Disciplinary Counsel contends that Respondent committed all of the charged violations and should be suspended for at least one year and required to prove his fitness to practice prior to reinstatement. *Id*. at 3.

Respondent argues that Disciplinary Counsel failed to satisfy the burden of proof by clear and convincing evidence required in these disciplinary matters. In particular, Respondent asserts that Disciplinary Counsel underappreciated the complexity of bankruptcy matters and that its failure to present expert testimony to determine the standards of care for bankruptcy law and in particular Chapter 13 bankruptcy petitions illustrates the evidentiary weakness of Disciplinary Counsel's case. Respondent's Opposition Brief to Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendations as to Sanction ("Resp. Br.") at 2.[2]

[2] Respondent only addresses the D.C. Rules 1.1(a) and 1.1(b) and MD Rule 19-301.1 allegations and does not specifically brief the other charged Rules. *See* Resp. Br. at 2, 7.

As set forth below, the Hearing Committee concludes that Disciplinary Counsel has proven violations of D.C. Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), and 8.4(d), and MD Rules 19-301.1, 19-301.3, and 19-308.4(d) by clear and convincing evidence and recommends that Respondent be suspended from the practice of law for six months, with 90 days stayed in favor of a one-year period of probation with conditions. We recommend that if Respondent fails to successfully complete the probation, in addition to having his license suspended for the stayed 90 days, Respondent will have to establish his fitness to practice law before his bar license can be reinstated.

PROCEDURAL HISTORY

On December 30, 2021, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). Respondent moved to sever the charges against him, arguing that charges arising out of multiple disciplinary investigations should not be combined in a single Specification. Disciplinary Counsel opposed Respondent's motion. The motion was denied on May 2, 2022.[3]

A hearing was held from June 21 through June 23, 2022, before the members of Hearing Committee Number Six. The Office of Disciplinary Counsel was represented at the hearing by Assistant Disciplinary Counsel Sean O'Brien, Esquire,

[3] Respondent's motion to sever charges argued that the three counts should be tried separately before three separate Hearing Committees. Respondent also suggested in his motion that the Chair's recusal was required for the same reasons. The Hearing Committee's reasons for denying the motion are set forth in the Chair's May 2, 2022 Order.

and Respondent was present and represented by Johnny M. Howard, Esquire. During the hearing, Disciplinary Counsel called Respondent, former client Tony Robinson, and the Office of Disciplinary Counsel's Investigator Charles Anderson as witnesses. Respondent testified on his own behalf and did not call any other witnesses. The following exhibits were admitted into evidence: Disciplinary Counsel's Exhibits ("DCX") 1-74, 78.[4]

At the end of the violations phase of the hearing, the Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specifications of Charges. Tr. 687; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel and Respondent did not present any evidence, but both reserved their right to address mitigating and aggravating factors in their post-hearing briefing. *See* Tr. 688-89.

I. 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

[4] DCX 36, 44, 45, 73, 74, and 78 were admitted over Respondent's objection.

or conviction as to the facts sought to be established") (citation and quotation marks omitted).[5]

A. Background

1. Craig A. Butler ("Respondent") was admitted to the Bar of the District of Columbia Court of Appeals on June 3, 1996, and assigned Bar number 451320. Answer at 1, ¶ 1;[6] Tr. 325.

2. Respondent is licensed to practice law in D.C. and New York. Answer at 1, ¶ 2; Tr. 325. He is also admitted to practice in the United States District Courts and Bankruptcy Courts for the District of Columbia and Maryland, and a significant part of his practice involves handling federal bankruptcy cases. *Id.*

B. Tony Robinson's Bankruptcy Proceeding (Count I)

Mr. Robinson Hired Respondent

3. On March 3, 2017, Mr. Robinson met Respondent to discuss filing for bankruptcy to save his home, which was in foreclosure. Tr. 34, 37-38. At the meeting, Mr. Robinson signed a retainer agreement for Respondent to represent him in a Chapter 13 bankruptcy. *Id.*; Answer at 1, ¶ 3; DCX 1; Tr. 38-40.

4. Mr. Robinson did not understand bankruptcy law or procedures, and he relied on Respondent's expertise to represent him throughout the bankruptcy

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[5] Respondent's brief does not identify which of Disciplinary Counsel's numbered proposed findings of fact he objects to and it also did not present Respondent's own numbered proposed findings with citations to the record.

[6] All citations to the Answer refer to Respondent's "Response to the Specification of Charges" filed on February 8, 2022.

process. Tr. 33, 40, 41, 49, 50, 199, 231; *see, e.g.*, Tr. 41 (Mr. Robinson: "I was hiring someone to represent me in matters that I knew nothing about, I just assumed that [Respondent] being my legal counsel would handle these matters."). For example, Mr. Robinson did not understand the documents from the bankruptcy court, and he relied on Respondent to explain them. *See, e.g.*, *id.*; Tr. 214-15 ("I couldn't decipher . . . ."); DCX 25 at 33 (asking what it meant to "recommend confirmation" of his Chapter 13 bankruptcy plan).

5. Respondent specifically agreed to keep Mr. Robinson informed and to respond to any motion to terminate the bankruptcy stay. DCX 1. Given his unfamiliarity with the law, and specifically the bankruptcy process, Mr. Robinson expected Respondent to keep him informed about any developments in his case and to provide instruction on any steps he should take to protect his interests. *See, e.g.*, Tr. 49-52, 231.

The Bankruptcy Petition

6. On March 7, 2017, in the United States Bankruptcy Court for the District of Columbia, Respondent filed a Chapter 13 Voluntary Petition for Individuals Filing for Bankruptcy on behalf of Mr. Robinson. *In re Robinson*, No. 17-00114 (Bankr. D.D.C.); Answer at 1, ¶ 4; DCX 2; DCX 3.

7. The primary creditor was U.S. Bank National Association ("U.S. Bank"), which held the note for Mr. Robinson's home mortgage. Answer at 2, ¶ 5; DCX 10 at 3, ¶ 6; Tr. 612. Wells Fargo Home Mortgage was the loan service provider. Answer at 2, ¶ 5; DCX 10 at 3, ¶ 6.

8. Pursuant to 11 U.S.C. § 362, the filing of a bankruptcy petition triggered an automatic stay of Mr. Robinson's foreclosure proceedings. Answer at 2, ¶ 6; Tr. 351-52. Respondent understood the importance and significance of the stay to protect clients against foreclosure. Tr. 487-89 (Respondent: "[T]he automatic stay is important because it prevents creditors from engaging in any collection action, including foreclosing on someone's home."). As Respondent explained, the stay is intended to prevent lenders from foreclosing on a debtor's property (or home) so long as the debtor is pursuing non-bankruptcy loss mitigation efforts. Tr. 489. Depending on the case, the automatic stay might be "30 days or not at all," and a debtor may need to file a motion to have the automatic stay extended in order to prevent creditors from engaging in collection actions. Tr. 488. And, if a borrower/debtor fails to make post-petition payments or otherwise meet its non-bankruptcy mitigation obligations, a creditor may file a motion for relief from the automatic stay, which, if granted, can end the stay and subject the previously-protected borrower/debtor to foreclosure. *See, e.g.*, DCX 10.

9. Beginning in April 2017, pursuant to a repayment plan submitted by Respondent on behalf of Mr. Robinson, Mr. Robinson was required to make monthly $500 payments to the bankruptcy trustee in addition to monthly $1,971.25 mortgage payments to Wells Fargo. DCX 5 at 1-2; Tr. 68. Based on his mistaken belief that these payments were not due to begin until after his case was "approved," Mr. Robinson did not start making payments to Wells Fargo upon entry of the new repayment plan. Tr. 54-55, 67-68, 86-87, 207-08, 357-58.

10. During the Summer of 2017, the bankruptcy trustee met with Mr. Robinson at least once and held a meeting of creditors. DCX 2 at 5-6; Tr. 59, 85-87. Around the time of that meeting, Mr. Robinson realized that he should have been paying the Chapter 13 Trustee payments and his monthly mortgage payments. Tr. 86 (Mr. Robinson: "I was puzzled because the impression that I had during our [Respondent's and Mr. Robinson's] meeting in March was that I would make those payments once the plan was approved, but then Mr. Butler said, no, you should've been making those payments."); *see also* Tr. 210 (on cross-examination, Mr. Robinson reiterated that after his conversation with Respondent in March, he was under the mistaken impression that he was to make his payments after the plan was approved). Respondent told him that he should have been making both the Chapter 13 Trustee payments and the mortgage payments; Respondent came to realize that Mr. Robinson had not made his payments in April, May, June, July and August. Tr. 357-58.

11. Mr. Robinson informed Respondent that he could make the overdue trustee payments totaling $2,500 ($500 monthly), but he could not also make the overdue mortgage payments. Tr. 88-89; DCX 25 at 33 (Mr. Robinson's August 10, 2017 text message notifying Respondent that he had paid the overdue Chapter 13 Trustee payments for April through August 2017). Respondent received proof that Mr. Robinson had caught up on his trustee payments and that "he was working on his mortgage payments." Tr. 358.

12. Mr. Robinson expressed anxiety about possible legal exposure created by his delinquent payments, but Respondent reassured Mr. Robinson that his belated payments would likely not be an issue because Mr. Robinson could submit a revised payment plan and Respondent would likely be able to negotiate a consent order with the creditors. Tr. 213, 218-19 (Mr. Robinson explaining what Respondent told him about his overdue mortgage payments becoming part of the amended Bankruptcy Plan); *see also* Tr. 88 (Mr. Robinson: "I wasn't able to pay a lump sum of the Wells Fargo payments that I'd missed, so Mr. Butler amended the plan and so, in essence, those [overdue] payments were incorporated in the new payment structure, at least that[wa]s my understanding."). Respondent recalled that he tried to get the bank to agree to a consent order and tried to submit a loan modification, but neither was accepted by the bank. Tr. 359-360.

13. On August 10, 2017, Mr. Robinson paid his overdue trustee payments in a $2,500 lump sum. Tr. 86-88, 207-08; DCX 73 at 6; DCX 74.

14. On August 17, 2017, Respondent filed a Second Amended Chapter 13 Plan on behalf of Mr. Robinson. Answer at 2, ¶ 7; DCX 5 at 4-6. The plan, however, did not address Mr. Robinson's nearly $10,000 in overdue mortgage payments. *Id.* Respondent was not successful in obtaining U.S. Bank's agreement to a consent order. Tr. 359.

15. Starting in September 2017, Mr. Robinson began making his required monthly payments to the trustee ($500) and to Wells Fargo ($1,907.45).[7] DCX 73 at 7-14 (including a $2 service charge, $502 was debited from Respondent's bank account to pay the trustee from September 2017 to March 2018); DCX 73 at 1-5 (statements showing $1,907.45 withdrawn monthly and paid to Wells Fargo Bank from September 2017 to January 2018). He made all monthly mortgage payments until February 2018 (when he was in active foreclosure during which Wells Fargo Bank started refusing his payments) and made all the trustee payments which increased from $500 to $2,205 a month under the approved plan. Tr. 89-90, 137-39; DCX 5 at 4; DCX 16 at 1; DCX 73 at 1-5; DCX 74 at 1; DCX 2 at 11-12 (ECF Nos. 92-93 and entry dated 08/17/2020 noting completed bankruptcy discharge); Tr. 421-22 (explaining discharge).

<u>The Bank's Motion to Terminate the Automatic Stay</u>

16. After the filing of the August 17, 2017 amended plan, Respondent's communication with Mr. Robinson was "minimal," and Respondent did not follow up with Mr. Robinson about his overdue mortgage payments. *See* Tr. 90-91; DCX 25 at 33; DCX 30 (3-minute call on August 18; 3-minute call on November 14; no calls in December).

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[7] The Amended and Second Amended bankruptcy plans indicate that Mr. Robinson was to make monthly payments of $1,971.25 to Wells Fargo. *See supra* FF 9; *see also* DCX 5 at 2, 5. However, other evidence shows that Mr. Robinson made monthly payments of $1,907.45. *See* DCX 10 at 3 (motion by creditor acknowledging payment amount as $1,907.45); DCX 73 at 1-5. Nothing in the record before us accounts for this discrepancy, but it is of no import to our findings.

17. On December 12, 2017, U.S. Bank filed a motion for relief from the automatic stay, claiming that Mr. Robinson had missed his post-petition mortgage payments to Wells Fargo for August, September, October, November, and December 2017. DCX 10. The motion also claimed that Mr. Robinson "has not and cannot offer [U.S. Bank] adequate protection," and because there was "little to no equity in the Property, the Property is not necessary for an effective reorganization." *Id.* at 4, ¶¶ 11-12. U.S. Bank relied on Mr. Robinson's missed payments, the fact that he owed $374,138.32 in unpaid principal, and the fact that Respondent had valued the property (erroneously) at $296,063, which impacted the purported equity in the property. *Id.* at 3, ¶¶ 7-13; Tr. 601-613.

18. U.S. Bank's motion did *not* disclose that Mr. Robinson had begun to make regular mortgage payments to Wells Fargo in September 2017 through December 2017. *See* DCX 10 at 3, ¶ 8.

19. Respondent knew that, based on research conducted in April 2017, the D.C. Office of Tax and Revenue valued Mr. Robinson's house at $413,000, with a new proposed value of $455,000 for 2018. Tr. 604-05. Respondent's client file for Mr. Robinson included information that showed the Zillow website valued Mr. Robinson's home at $486,531 as of April 2017. Tr. 607-08. Respondent, however, claimed that he used the assessed value of $296,063 because "we always use[d] the most conservative value." Tr. 608.

20. Respondent was served with and received a paper copy and an electronic copy of the motion, as well as multiple related electronic filing notices.

See DCX 2 at 7-8; Tr. 432-34; *see also* Tr. 347-48. Respondent acknowledged that he received the letter titled "Subject: Urgent. Please forward enclosed documents to client" from Wells Fargo. Tr. 451. However, he was not sure if the document was ever forwarded to Mr. Robinson. Tr. 453 (Respondent: "Honestly, I'm not sure what steps were given. In my office, normally one of my paralegals opens the mail and will take action on those or file it accordingly, so I'm not sure what happened with this particular letter."). But he said he "missed" and just did not respond to the bankruptcy court's various notices and filings in the cases involved in this disciplinary matter. *See* Tr. 355 (Respondent: "[Y]ou know, we essentially missed the motion [to lift the stay], the hearing was still set for that day."); Tr. 364 (Respondent: "I missed it and this was at the time when my office was changing, so we missed it."); Tr. 365 ("[W]e see multiple filings. I didn't see it when it came in, in December, so I missed the email and I [also] didn't see the notice come in the mail."); Tr. 634 (Respondent: "During the time period in question, we were doing a lot of foreclosure defense cases in the District of Columbia. There was a tremendous amount of need and we were assigned a lot of cases. So, you know, honestly, I believe we—or I believe we just got overwhelmed just trying to keep up with all the emails, you know, from time to time, we missed them."); *see also* DCX 2 at 7-8; Tr. 347-48, 432-34.

<u>Respondent Fails to Oppose the Bank's Motion</u>

21. Respondent did not timely inform Mr. Robinson about the motion or file an opposition by the filing deadline, December 26, 2017, or before the court

ruled on the motion on January 18, 2018. *See* DCX 2 at 7-8; Tr. 116-18; *see also* Tr. 352-55, 364-65.

22. Between January 9 and January 18, 2018—before the court ruled on the motion—Respondent did not substantively respond to Mr. Robinson's requests for an update sent by text, phone, email, and voicemail. DCX 25 at 11, 33-34; DCX 12; Tr. 108-111, 113-14; *cf.* Tr. 429-431 (on or about January 12, Respondent signed and deposited the bankruptcy trustee's check for his fees).

23. On January 18, 2018, at 9:32 a.m.—still before the court ruled on the motion—Respondent emailed Mr. Robinson, saying he would call him at 5:30 p.m. He did not do so. DCX 12; Tr. 108-111, 113-14; *see also* DCX 2 at 7-8 (hearing scheduled for January 18, 2018 at 2:00 p.m.); DCX 11 (order entered at 2:46 p.m.).

24. On January 18, 2018, the bankruptcy court granted U.S. Bank's unopposed motion. DCX 11; DCX 2 at 7-8. The court's order terminated Mr. Robinson's bankruptcy stay, which allowed U.S. Bank to "proceed . . . to foreclose upon and obtain possession of the Property . . . ." DCX 11 at 2.

25. Had Respondent filed an opposition, he could have argued in opposition to U.S. Bank's motion that (1) U.S. Bank omitted the fact that Mr. Robinson had been making his regular plan payments the past four months (since September 2017), (2) U.S. Bank failed to meet its obligation to object to the bankruptcy plan before confirmation, and (3) Mr. Robinson's home was *not* "underwater" as the bank had alleged given its estimated value on the Zillow website of over $450,000. Tr. 359, 363, 442-43, 495-97, 610-12.

26. By not filing an opposition in support of Mr. Robinson before the court, Respondent deprived Mr. Robinson of his opportunity to negotiate with U.S. Bank to catch up on the overdue mortgage payments over time. DCX 27 at 2. Even if U.S. Bank had refused, Respondent deprived the court of its ability to order the same. *See* DCX 27 at 3 (U.S. Bankruptcy Judge Teel's Order noting that if Mr. Robinson had filed an opposition and the parties were unable to submit a consent order, "the court could have entered an order of the same kind permitting a cure of the post[-]petition defaults over what the court deemed was a reasonable period of time"); *cf.* Tr. 491-94 (his other client successfully negotiated a payment plan with U.S. Bank to cure a $21,000 post-petition arrearage around the same time); Tr. 495, 497.

<u>U.S. Bank Forecloses on Mr. Robinson's Home</u>

27. On January 19, 2018, without discussing the proposal with Mr. Robinson, Respondent emailed the lawyers for U.S. Bank and Wells Fargo and attempted to negotiate a consent order and reinstate the bankruptcy stay. DCX 13 at 4; Tr. 122-24, 150-51, 355-56; Tr. 643-44 (Respondent explaining in response to Committee member's question that he *purposely* did not tell Mr. Robinson because he was "trying to figure out what the plan was going to be"). Without consulting his client, he proposed that Mr. Robinson would cure his post-petition plan payments over nine months. *Id.* But U.S. Bank's lawyers—who had no incentive to negotiate anything less than an immediate repayment—did not substantively respond. DCX 13.

28. On February 2, 2018, Mr. Robinson—for the first time—learned that something was wrong when Wells Fargo rejected his monthly mortgage payment, and a bank representative informed him that he was in active foreclosure. DCX 14-DCX 16; Tr. 92 (Robinson discussing "the fateful February 2018 call"); Tr. 106-07 (Respondent told him "[a]bsolutely nothing whatsoever"), 118, 124-25.

29. Not until February 5 or February 6, 2018, did Respondent discuss Mr. Robinson's case with him over the phone. DCX 16; Tr. 127, 136-37.

30. Even then, Respondent did not disclose that the foreclosure was due to his failure to oppose the bank's motion to terminate the bankruptcy stay. *See* Tr. 128-29 (told him "nothing"); *cf.* DCX 29 at 4 (Respondent's letter to the Office of Disciplinary Counsel stating: "We properly represented Mr. Robinson"). Nor did he disclose that he had already tried to negotiate with the bank's lawyers. *See* Tr. 128-29. Instead, he suggested that he would contact Wells Fargo, and he asked Mr. Robinson to provide information about the payments he had been making since September 2017. *Id.*; DCX 16; DCX 73-DCX 74; Tr. 136-37, 141-42.

31. Respondent continued to ignore Mr. Robinson's calls, emails, and text messages. *See, e.g.*, DCX 16 at 5 ("I have minimal assurance as to where I stand . . . . I feel I am completely in the dark."); Tr. 142-43; DCX 25; DCX 30. Even when Mr. Robinson could communicate with Respondent, "it had gotten to a point where [Respondent] was talking, but saying nothing." Tr. 146. Accordingly, he went to the bankruptcy trustee for guidance on or around February 28, 2018. Tr. 117-19; *see* DCX 25 at 36 (Feb. 28, 2018). Mr. Robinson understood that the trustee explained

to him that he was in "active foreclosure" because Respondent had failed to file a required document. Tr. 117-19. By the hearing, Mr. Robinson came to understand that the document Respondent failed to file related to the court's order terminating the stay. Tr. 117.

32. As Mr. Robinson testified:

> I was receiving absolutely no information from [Respondent]. It was literally as if he had checked out and I was on my o[wn] I was the one inquiring about things. I was the one inquisitive and trying to, you know, keep track of things, and I literally had the impression as if he was somewhere twiddling his thumbs. He was literally watching this fall apart and he was not relating anything to me.

Tr. 143; *see also* DCX 25; Tr. 118-19 ("I felt lost and didn't know what to do."); Tr. 216 ("countless times where I asked for updates from [Respondent] and there w[as] no response" to text messages but "also emails and voicemail messages; and so it was a consistent pattern"). Mr. Robinson *twice* learned about foreclosure auctions on his home from the bank or third parties rather than from his lawyer. Tr. 156-57, 171-72.

33. Respondent testified he "was very concerned" about Mr. Robinson's foreclosure because he "treat[s] each case like it's [his] family, so [he] was very disappointed as well." Tr. 362. While Respondent may have been disappointed when the foreclosure occurred, the Committee does not credit his testimony that he treated each case "like it's . . . family." His conduct prior to the foreclosure, as explained above, evidences a surprising lack of care and attention toward a client during an urgent and critical period. *See, e.g.*, DCX 25 at 29-30, 42-43 (showing no texts for June before the scheduled foreclosure); DCX 30 at 1 (showing lack of phone

communication); *see also* Tr. 647-48 (Committee member questioning Respondent's claim about treating Mr. Robinson as family despite ignoring Mr. Robinson's urgent texts, and Respondent deflecting blame by pointing to Respondent's high case load: "[W]e probably had, you know north of 75 to a hundred cases.").

34. On July 10, 2018, Mr. Robinson's home was sold at a foreclosure auction. *See* DCX 25 at 43; DCX 29 at 3; Tr. 362. Respondent called Mr. Robinson to tell him that his house had been sold and Mr. Robinson confronted Respondent with the fact that he knew from Ms. Grigsby, the trustee for Mr. Robinson's bankruptcy case, that Respondent failed to file an essential document in his bankruptcy case that resulted in his losing his house. Tr. 174-75; DCX 4 at 1. Respondent admitted to Mr. Robinson during their phone conversation that if he had filed the motion opposing a lifting of the stay, Mr. Robinson would have still been in possession of his house at this point. Tr. 175; *see also* Tr. 358-59 (Respondent stating that he "definitely took responsibility" for his failure to oppose Wells Fargo's motion to lift the stay in an earlier telephone conversation with Mr. Robinson).

35. After learning that he had lost his house in the foreclosure sale, Mr. Robinson terminated Respondent and proceeded in his bankruptcy case with successor counsel, who helped him complete his bankruptcy case in May 2020. *See* DCX 2 at 2, 8, 11 (ECF Nos. 92-93); DCX 29 at 3; Tr. 362.

C. <u>Languel Jones's Foreclosure Proceeding (Count II)</u>[8]

36. On August 26, 2015, Languel Jones hired Respondent to defend him in his civil foreclosure case in the Superior Court, *Prospect Mortg. LLC v. Languel Jones*, 2015 CA 000515 R(RP). Answer at 4, ¶ 18; DCX 31. Respondent agreed to "provide a comprehensive set of legal services," including in "Judicial Foreclosure Litigation" and "Foreclosure Defense Litigation." DCX 31 at 1.

37. The retainer agreement provided, "This Agreement contains the entire agreement of the parties" and that the agreement could not be modified except "by an instrument in writing signed by both of them." *Id.* at 3.

38. On October 9, 2015, Respondent entered his appearance in Mr. Jones's case. *See* DCX 32 at 4. The parties moved forward with mediation, scheduling, and discovery. *Id.* at 4-6.

39. On August 22, 2017, Prospect Mortgage moved for summary judgment. DCX 34. Respondent received the motion, which was electronically filed and served on him through CaseFileXpress. *Id.* at 1 (Electronic Filing Stamp at 11:26 a.m.); DCX 32 at 7; Tr. 632-33 (Respondent received electronic notices for Superior Court cases at issue in this case). Respondent did not file an opposition to the motion. DCX 35 at 2; *see* DCX 32 at 7.

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[8] Mr. Jones died in February 2020. *See* Languel B. Jones Obituary, available at https://www.legacy.com/us/obituaries/washingtonpost/name/languel-jones-obituary?id=1976832 (last visited Apr. 26, 2023) (noting *Washington Post* obituary publication and date of death of February 1, 2020).

40. On October 3, 2017, with the motion unopposed, the court granted summary judgment for Prospect Mortgage and scheduled a post-judgment status hearing for January 12, 2018. DCX 35. On January 11, 2018, Mr. Jones filed a Motion to Vacate Default, claiming that Respondent had not informed him about the motion for summary judgment when it was filed. DCX 36 at 1-2. Mr. Jones also alleged that he only learned about the court's grant of the motion on November 30, 2017 when he checked the docket sheet. *Id*. at 2. Mr. Jones filed an Opposition to Motion for Summary Judgment in conjunction with his Motion to Vacate Default. *See* DCX 37.

41. Respondent admittedly had not told Mr. Jones about the summary judgment motion or the fact that the court had granted summary judgment, nor did he have a credible explanation for not filing anything in response to plaintiff Prospect Mortgage's motion. *See* DCX 32 at 7; DCX 41 at 3-8 (transcript of February 16, 2018 hearing before Judge Florence Pan); DCX 43; Tr. 518-19.

42. Respondent moved offices during the course of his representation of Mr. Jones, but Respondent did not update the court about his new office address "until the early part of 2018 . . . [and he] did not receive notices of [the] court hearing on January 12, 2018." DCX 43 at 2 (Respondent's July 16, 2018 letter to Disciplinary Counsel); *see* DCX 41 at 2. Respondent also did not provide an updated address to the court for Mr. Jones. *See* DCX 43 at 2, n.2 ("The improvements of [Mr. Jones'] property were demolished and, as a result, there is no way to deliver mail to this address.").

43. Through CaseFileXpress, the Superior Court e-filing system and the docket, however, Respondent received electronic notice of the court's order, judgment, and the January 12, 2018, hearing. *See* DCX 32 at 7 ("E-FILED & E-SERVED"); DCX 32 at 8 ("Notice of Hearing"); DCX 35 at 1 ("Next Hearing: January 12, 2018"); DCX 35 at 2, 6, 11; Tr. 632-33 (Respondent acknowledging to the Chair that he received his electronic notices in his Superior Court cases).

44. At the January 12, 2018 hearing, Mr. Jones appeared *pro se*, and Respondent did not appear. DCX 38 at 1-2. The court addressed claims raised in Mr. Jones' *pro se* Motion to Vacate Default, DCX 36; *see infra* FF 45, and Opposition to the Motion for Summary Judgment, DCX 37, regarding his lack of notice, and ordered Prospect Mortgage to file a response to Mr. Jones' opposition. DCX 38 at 12. The court vacated its prior order granting summary judgment. *Id*. at 11-12.

45. In the Motion to Vacate Default, Mr. Jones said that he had submitted a loan modification in May 2017, but he never received a response from Prospect Mortgage or Respondent. DCX 36 at 1-2. He complained about being unaware of the summary judgment motion when it was filed and being unable to reach Respondent. *Id.* ("Defendant made several phone calls to his attorney to ascertain the status of the case and the modification package with no response from defendant's attorney.").

46. During the January 12, 2018 hearing, Mr. Jones reiterated his claims. *See* DCX 38 at 9 ("He never told me about the court case being started again.");

DCX 38 at 9-10 ("I . . . assum[ed] that he was still reviewing my loan modification request."); DCX 38 at 11 (affirming that Respondent "never told [him] about the motion for summary judgment" and that Mr. Jones "only found out about the order when [he] checked the court docket").

47. Respondent asserted in a subsequent appearance before the court, *see infra* FF 48, that the person who appeared at the hearing on January 12 was *not* actually Mr. Jones. *See also* DCX 41 at 3. The court was skeptical of Respondent's claim: "Mr. Butler is telling me the person who made those representations is not Languel Jones. . . . I don't know what to do with what you've represented, Mr. Butler. I find it strange that somebody with no interest in these proceedings would start filing *pro se* filings pretending to be Languel Jones." DCX 41 at 9-10.

48. In its written response to Disciplinary Counsel's inquiry letter during its investigation, Respondent made the same assertion: "it is our understanding that Mr. Jones did not appear in court on January 12, 2018 and that it was someone else that was impersonating Mr. Jones." DCX 43 at 2-3.

49. At the January 12 hearing, Prospect Mortgage's counsel stated that it had scheduled a foreclosure sale for January 23, 2018, and would incur costs, including advertising costs, if the original summary judgment order were vacated. DCX 38 at 3-4, 6-7.

50. The court "regret[ted] the cost to [Prospect Mortgage and its attorney]" but still vacated its summary judgment order and set another hearing for February 16, 2018. DCX 32 at 8; DCX 38 at 7, 10-11. On January 12, the court filed a copy

of the letter it sent to Disciplinary Counsel regarding Respondent's conduct. DCX 32 at 8.

51. On January 17, 2018, Prospect Mortgage filed a response to Mr. Jones's *pro se* opposition. DCX 32 at 8. Respondent did not file a reply or any substantive pleading to supplement Mr. Jones' *pro se* filings. *See id.*

52. On January 18, 2018, Mr. Jones filed a certificate of service and praecipe to change his address. *Id.* Respondent received electronic notice. *See id.*; Tr. 632-33; *see also* DCX 41 at 3 (telling the court he got the praecipe).

53. On February 14, 2018, the court ordered Respondent to appear at the February 16, 2018, hearing, noting that even though his client had filed a *pro se* opposition, he had not withdrawn as counsel. DCX 39.

54. On February 16, 2018, Respondent updated his address with the court to his then-current address at 1455 Pennsylvania Avenue NW, Suite 400. DCX 40.

55. At the hearing on February 16, 2018, Mr. Jones did not appear. Respondent appeared on Mr. Jones' behalf, despite Respondent acknowledging that he had not been in contact with Mr. Jones since the summer of 2017. DCX 41 at 2-3 (The court: "Are you still representing [Mr. Jones]?" Respondent: "I do represent Mr. Jones."). He told the court, "I could not get in contact with [my client]. I only learned of his new address with the praecipe he filed" on January 18, 2018. *Id.* at 3.

56. Respondent argued none of the points or arguments raised in the *pro se* Motion to Vacate Default and Opposition to Summary Judgment, but only cast doubt

that the pleadings may not have been filed by Mr. Jones. He did not request more time to file pleadings himself. *See id.* at 4-8.

57. Before ruling on the motion for summary judgment, the court forewarned Respondent that it had not identified a single cognizable defense in the *pro se* opposition, and asked Respondent whether "there [was] anything else that [he] wanted to say on the motion for summary judgment . . . since [he was] representing Mr. Jones[.]" DCX 41 at 8. Respondent replied "No, Your Honor," and the court granted the motion for summary judgment a second time, finding that the arguments raised in the *pro se* opposition were not defenses to a valid action for judicial foreclosure. *Id.*; DCX 42 at 1, 3, 5-6.

58. The record before us is silent as to the reliability of Respondent's assertion that it was not Mr. Jones who appeared at the January 12 hearing.

D. <u>Biniam Geremew's First Bankruptcy Proceeding (Count II)</u>

59. On January 17, 2018, Respondent filed a Chapter 13 bankruptcy petition on behalf of Biniam Geremew. DCX 47 at 1.

60. On February 15, 2018, the bankruptcy trustee moved to dismiss. DCX 48. The trustee's motion said that the debtor had failed to provide required income documents; failed to provide required tax returns; failed to make any Chapter 13 plan payments; and failed to appear at the first meeting of creditors, without excuse, which "caused unreasonable delay which is prejudicial to creditors." *Id.* at 1-2. The trustee explained that she "ha[d] received no explanation for the Debtor's

failure to comply with these requirements." *Id.* at 2. She also noted that the debtor had missed his first two plan payments. *Id.*

61. Respondent's opposition was due by March 8, 2018. *See* DCX 48 at 3 (21-day deadline). The trustee filed a notice with her motion, warning: "IF YOU FAIL TO FILE A TIMELY OBJECTION, THE MOTION MAY BE GRANTED BY THE COURT WITHOUT A HEARING." *Id.* (emphasis in original).

62. Respondent was served with and received the motion electronically and by first-class mail. *Id.* (certificate of service); DCX 47 at 3 (five ECF docket entries for motion); Tr. 632-33.

63. Respondent failed to oppose the trustee's motion. DCX 45 at 2 (Respondent: "The delay . . . was inadvertent."); Tr. 512; *see* Tr. 632-33, 638-39.

64. On March 22, 2018, with no opposition filed, the court granted the trustee's motion, dismissing the case, and terminating Mr. Geremew's automatic bankruptcy stay. DCX 48 at 7-8.

65. On March 23, 2018, Respondent late-filed an opposition, claiming "[t]here were delays in gathering [Mr. Geremew's required documents] caused, in part, by [Mr. Geremew] being out of the country for a period of time." *Id.* at 4. Respondent asked that the case not be dismissed because the required documents, including tax returns, had been given to the trustee, and Mr. Geremew had made his required payments. *Id.* at 4-5. But Respondent did not seek leave to file his opposition out of time or provide cause for the late filing. *See id.*

66. Later the same day, without consideration of the late-filed opposition, the order, signed the day prior, was entered on the docket, which terminated Mr. Geremew's bankruptcy stay. *Id.* at 7-8. The court did not consider or address Respondent's late-filed opposition, which had been filed after the order had been signed. *See id.*

E. <u>Spencer Becton's Bankruptcy Proceeding (Count II)</u>

67. On April 25, 2018, Respondent filed a Chapter 13 bankruptcy petition on behalf of Spencer Becton, which triggered an automatic stay of Mr. Becton's foreclosure proceedings. DCX 50 at 1.

68. This was Mr. Becton's second bankruptcy case. DCX 49 (Case No. 17-00023-SMT, filed January 18, 2017); DCX 51 at 1.

69. Mr. Becton's automatic bankruptcy stay would expire 30 days after the petition was filed, unless Respondent moved to extend it. *See* 11 U.S.C. § 362(c)(3); Tr. 368, 374, 488.

70. Respondent waited until May 11, 2018, which left only two weeks for the court to hold a hearing and issue an order to extend Mr. Becton's bankruptcy stay. Tr. 368, 374; DCX 51 at 1; *see also* DCX 45 at 2 (Respondent: "The delay . . . was inadvertent."); DCX 51 at 3 (same); Tr. 509.

71. Because his delay shortened the available time to act, Respondent also moved to shorten the time for objections and requested an expedited hearing. DCX 51 at 8, 9 ("[A] shortening of the response time is appropriate and necessary,

as without the motion being granted the Debtor would lose the protections afforded under section 362.”).

72. When filing Mr. Becton’s motion to extend the automatic stay and motion to shorten time and for expedited hearing, Respondent failed to attach a notice required under the local court rules. *See* DCX 45 at 2; DCX 51 at 22; Tr. 364, 368-69, 374-75.

73. On May 14, 2018, the clerk issued an electronic notice of deficiency requiring “corrective action.” DCX 50 at 3 (Respondent was notified that “THE CERTIFICATE OF SERVICE REFERENCES A MAILING MATRIX IS ATTACHED BUT A MAILING MATRIX WAS NOT FILED”). The deficiency notice warned Respondent that the court could strike the motion to extend automatic stay and the motion to shorten time and for expedited hearing if the deficiency was not cured. *See id.*

74. Respondent failed to respond to the court’s notice. Tr. 375; DCX 45 at 2 (September 27, 2018 letter by Respondent to Disciplinary Counsel in response to its inquiry letter); *see* Tr. 511-12 (Respondent acknowledging the notice). In his letter to Disciplinary Counsel, Respondent asserted that his failure to cure the defect in the notice “was inadvertent” and due to his staff not making him aware of the Court’s notice to correct the defect. DCX 45 at 2. The automatic stay expired on May 25, 2018. The court did not consider Mr. Becton’s motion to extend the automatic stay or his motion to shorten time and for expedited hearing due to the uncorrected deficiency and dismissed both motions as moot. DCX 51 at 22-23 (June

26, 2018 Order dismissing motion to extend the automatic stay and motion for expedited hearing as moot);[9] *see also* DCX 45 at 2.

F. Biniam Geremew's Second Bankruptcy Proceeding (Count II)

75. On May 9, 2018, Respondent filed a second Chapter 13 bankruptcy petition on behalf of Biniam Geremew, *In re Biniam Geremew*, Case No. 18-00324-SMT (Bankr. D.D.C.). DCX 52 (Docket).

76. Because Mr. Geremew's previous bankruptcy case had been dismissed, the bankruptcy stay that applied as of the filing of the second petition would expire after 30 days under 11 U.S.C. § 362(c)(3). *See* Tr. 368, 374. To extend the stay, Respondent knew that he had to file a motion, provide proper notice to interested parties, and leave enough time for the court to hold a hearing and issue an order before June 8, 2018. *Id.*; DCX 53 at 5; Tr. 376-77, 488; *see also* DCX 53 at 25-26.

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[9] The Order also noted other serious problems in the case:

> Despite the expiration of the automatic stay, if the debtor obtains a confirmed plan, that plan will be binding on creditors. However, the debtor failed to file a plan until June 18, 2018, which was 54 days after the commencement of the case and 40 days after the deadline of May 9, 2018, for filing a plan (and the debtor has not moved the court for an order extending the time for filing a plan to June 18, 2018). Moreover, the debtor did not file schedules and so forth until the same date, June 18, 2018, thus subjecting the case to automatic dismissal under 11 U.S.C. § 521(i) if a creditor of the Chapter 13 trustee invokes that provision, which would result in dismissal of the case instead of confirmation of a plan.

DCX 51 at 23 n.1.

77. Respondent delayed filing the motion for 19 days after the commencement of the case. *See* DCX 45 at 2 (Respondent blaming staff for not placing the filing of the motion to extend the stay on his "tasks list" and describing the delay in filing the motion as "inadvertent"); DCX 53 at 1-2, 4-5; Tr. 376-77.

78. Respondent's delay "risked the court's denying the motion as not filed within a reasonable period of time," which jeopardized Mr. Geremew's automatic stay. DCX 53 at 25 (Order Reducing Debtor's Counsel's Agreed Attorney's Fees); *see also id.* at 26 ("[T]he extremely late pursuit of the § 362(c)(3) motion jeopardized his client's interests . . . ."); *id.* at 5 (Motion to Shorten Time and For Expedited Hearing filed by Respondent: "[W]ithout the motion being granted the Debtor would lose the protections afforded under section 362.").

79. On May 28, 2018, Respondent filed the motion to extend the automatic stay, and he simultaneously moved to shorten the period for objections and requested an expedited hearing. DCX 53 at 1-5. The motion to extend the automatic stay explained that Mr. Geremew's prior Chapter 13 case had been dismissed in March 2018 without any pending motion for relief from the automatic stay. *Id.* at 1-2 (referencing delays in securing information required by the Chapter 13 Trustee). In the motion to shorten time and for expedited hearing, Respondent acknowledged that the case commenced on May 9, described the delay in filing the motion to extend the automatic stay as being "inadvertent[]," and requested that the time period to respond to the motion to extend the automatic stay be shortened to June 6 and the hearing scheduled for June 7. DCX 53 at 4-5.

80. On May 30, 2018, the bankruptcy court granted the motion for expedited consideration "with changes." DCX 53 at 10. The court ordered creditors to file objections on or before June 5, 2018, and scheduled the motions hearing for June 6, 2018. *Id.*

81. Respondent was served with and received the court's order electronically and via first-class mail. *See* DCX 52 at 3; DCX 53 at 10-11; Tr. 364, 377-78, 514, 633, 638-39.

82. On June 6, 2018, Respondent failed to appear at the hearing. DCX 45 at 2; DCX 53 at 12; Tr. 377.

83. The court granted the motion to extend the automatic stay because it was unopposed. DCX 53 at 14, 17 (Respondent: "[T]he Court . . . grant[ed] the motion due to the fact that there was no opposition."); Tr. 378-79. But the court separately ordered Respondent to show cause why his attorney's fees should not be reduced. DCX 53 at 12-13.

84. On June 21, 2018, Respondent told the court that the delay in filing the motion to extend the automatic stay resulted from his having to go out of town "to assist with the serious illness of his father," and he missed the hearing because his office mis-calendared it. DCX 53 at 17. He "apologize[d] to the Court" and said, "I [*sic*] was inadvertent and [I] will make best efforts to manage these situations in a more efficient manner in the future." *Id.* at 18.

85. On July 2, 2018, the court sanctioned Respondent, reducing his potential fee from $4,500 to $4,000. DCX 53 at 25-26. The court found that

Respondent's conduct was an "inadequate representation of his client's interests" and that "[t]he client did not receive the level of representation to which the client was entitled." *Id.* at 26. The court noted that even if it credited Respondent's reasons for the delay and missing the hearing, the explanation would show that he did not have "an adequate backup plan to safeguard his client's interests . . . ." *Id.*

G. Theodore Potts's Bankruptcy Proceeding (18-00379) (Count II)

86. On May 29, 2018, Respondent filed a Chapter 13 bankruptcy petition on behalf of Theodore Potts. *See In re Theodore Potts*, No. 18-00379-SMT (Bankr. D.D.C.); DCX 54.

87. Respondent was representing Mr. Potts in his foreclosure case at the time. *See generally Wilmington Trust. NA v. Potts*, No. 2015-CA-002260 R(RP) (D.C. Super. Ct.).

88. According to Respondent, his office had assisted Mr. Potts previously in regard to Mr. Potts's property, and he became aware that Mr. Potts's home was scheduled for foreclosure sale on May 29, 2018. DCX 45 at 2 (September 27, 2018 letter by Respondent to Disciplinary Counsel). On the morning of May 29, 2018, he contacted Mr. Potts, who was unaware of the sale. *Id.* To stay the foreclosure, he helped Mr. Potts file an "emergency" petition just before the sale. *Id.* at 2-3; DCX 55 at 1-13.

89. The petition that Respondent prepared for Mr. Potts incorrectly stated that Mr. Potts did not have a prior bankruptcy case. DCX 45 at 3; DCX 55 at 3 (No. 9). Respondent told Disciplinary Counsel that he "determined that [Mr. Potts] *did*

have prior bankruptcy filings . . . [but he] inadvertently" checked the box indicating that he did not have any prior filings. DCX 45 at 3 (emphasis added).

90. Respondent also filed a request to waive the requirement that Mr. Potts file a certificate of completion of credit counseling, conditioned on Mr. Potts's certification that he "asked for credit counseling services . . . but was unable to obtain those services during the 7 days after [he] made [his] request." DCX 55 at 5, 13, 15.

91. On May 31, 2018, the court issued an "Order Denying Request for 30-Day Waiver of Credit Counseling and to Show Cause Why Case Ought Not Be Dismissed for Failure to File Certificate of Prepetition Credit Counseling." DCX 55 at 14-16. The court ordered that, within seven days, Mr. Potts must (1) file a certificate of completion of credit counseling, or (2) show good cause why the case should not be dismissed, *i.e.*, that Mr. Potts was entitled to a temporary waiver of the credit counseling requirement. *Id.* at 15-16.

92. Respondent was served with and received the court's order through the bankruptcy court's electronic filing system. DCX 45 at 2; DCX 54 at 2 (ECF No. 9), 3 (ECF No. 14); DCX 55 at 16; Tr. 364, 515-16, 633, 638-39.

93. Respondent did not respond to the court's order. DCX 55 at 17; Tr. 516; *see* DCX 45 at 2.

94. On June 8, 2018, because Respondent did not respond to its May 31 order, the court dismissed Mr. Potts's bankruptcy case, terminating the automatic stay of foreclosure proceedings. DCX 55 at 17.

H. Alexander Fitzgerald's Bankruptcy Proceeding (Count II)

95. On May 28, 2018, Respondent filed a Chapter 13 bankruptcy petition on behalf of Alexander Fitzgerald. *In re Alexander Fitzgerald*, No. 18-00377-SMT (Bankr. D.D.C.); DCX 56.

96. Respondent moved to extend Mr. Fitzgerald's automatic bankruptcy stay, which otherwise would expire after 30 days. DCX 57 at 1-2; Tr. 368.

97. The bankruptcy court's local rules, LBR 9013-1, required Respondent to file a notice of the opportunity to oppose the motion and notice of a hearing. DCX 57 at 5. Respondent did not file the required notice. *Id.*; DCX 45 at 1; Tr. 368-69, 507-08.

98. On June 1, 2018, the court issued an "Order Directing the Debtor to File Notice of Opportunity to Oppose and Notice of a Hearing," ordering the debtor to file and serve the notice by June 5, 2018, and scheduling a hearing for June 26, 2018, if necessary. DCX 57 at 5; Tr. 369-370. The Order was electronically filed on June 1 and Respondent received "e-notification" of the filing. DCX 57 at 5; Tr. 507-08, 633, 638-39.

99. Respondent did not file or serve the required notice as directed by the court, nor did he otherwise respond to the June 1 order. DCX 57 at 6; *see* Tr. 369-370, 507-08; DCX 57 at 9.

100. On June 19, 2018, the court issued an order *sua sponte* providing notice to creditors that it would hold a hearing on June 26, 2018, at 11:30 a.m., and creditors could appear at the hearing to object rather than filing a written opposition. DCX 57

at 6-7. The court explicitly ordered Mr. Fitzgerald to appear at the hearing or else it would deny the motion. *Id.* at 7. The court also ordered Respondent to personally appear at the hearing and show cause why his fees should not be reduced for his failure to file the required notice or respond to the court's notice. *See id.*

101. On June 19, 2018, the Order was electronically filed and Respondent received "e-notification" of the court's order. DCX 57 at 7; Tr. 633; *see* DCX 45 at 1.

102. In his September 27, 2018 letter to Disciplinary Counsel, Respondent blamed his staff for not telling him about the hearing scheduled for June 26, 2018 until the afternoon of June 26, after it had occurred. DCX 45 at 1. Accordingly, he could not have advised Mr. Fitzgerald about the date the hearing had been scheduled.

103. On June 26, 2018, neither Respondent nor Mr. Fitzgerald appeared at the hearing. DCX 57 at 8-10.

104. Because Respondent and Mr. Fitzgerald failed to appear at the hearing, the court denied the motion, effectively terminating Mr. Fitzgerald's automatic bankruptcy stay. *Id.*

105. The court sanctioned Respondent by reducing his potential fee from $4,500 to $4,000 based on his "failure to include a LBR 9013-1 notice with the *Motion to Extend the Automatic Stay*," "his failure, further, to comply with" the order to provide the required notice, and his failure to appear in accordance with the court's order. DCX 57 at 10-11.

106. On September 27, 2018, Respondent represented to Disciplinary Counsel that his conduct described in FF 1-105 was "temporary," in that he was hiring new staff and "implement[ing] systems" to ensure that he (although Respondent used the pronoun "we") responds timely to court notices going forward. DCX 45 at 3; Tr. 529-530. He said that he had replaced staff members, whom he blamed for what happened. DCX 45 at 1-3 (claiming his staff did not calendar or tell him when he had hearings, and his staff did not update his "task list" with necessary motions, necessary responses to court notices about deficiencies, or a necessary opposition to a motion to dismiss). He also said that he had taken remedial measures and implemented new practice management systems. *Id.*; *see also* Tr. 412-13 (discussing terminating two paralegals and "40 hours' worth of CLE, especially around practice management"). However, Respondent's reliance on his staff to open and review even his electronic mail was excessive.

I. George Clayton's Personal Injury Case (Count III)

107. On December 21, 2018, Respondent filed a personal injury complaint against Islas Transportation, LLC on behalf of George Clayton, in the United States District Court for the District of Maryland (Greenbelt Division). *See Clayton v. Islas Transp., LLC*, No. 18-CV-03964-PX (D. Md.); DCX 58; DCX 60.

108. Mr. Clayton alleged that on December 21, 2015, the defendant's truck, driven by the defendant's employee, caused $250,000 in damages to his car and person when it rear-ended his car. DCX 60 at 2-3; Tr. 406. Respondent filed the

complaint on the last day to file a claim under the statute of limitations. DCX 60; DCX 66 at 3; DCX 68 at 4.

109. Respondent needed to obtain a summons for the defendant signed by the clerk of the court and bearing the court's seal. Fed. R. Civ. P. 4(a)(1). To do so, he had to file a proposed summons with the complaint. DCX 58 at 1 (ECF No. 2); D. Md. Loc. R. 103.2(a).

110. Respondent had previously handled approximately 10 personal injury cases. Tr. 531. Despite his experience, however, he did not file a proposed summons in the Clayton matter, nor did he otherwise obtain a properly executed summons to serve the defendant. Tr. 533-36.

111. On December 27, 2018, the court notified Respondent that he had not filed the required proposed summons and told him to correct it. DCX 58 at 1 (ECF No. 2). The court also notified Respondent that he had 14 days to file a consent or declination to proceed before a magistrate and that failing to do so would "result in issuance of an Order to Show Cause." *Id.* at 1-2 (ECF No. 3).

112. On January 11, 2019, the court issued a Show Cause Order for failing to file the magistrate consent or declination and ordered Mr. Clayton to appear on February 22, 2019, at 2:00 p.m., or respond. *Id.* at 2 (ECF No. 5); DCX 61.

113. On March 5, 2019, the court issued a second Show Cause Order and ordered Mr. Clayton to appear on March 29, 2019, at 2:00 p.m., or respond. DCX 58 at 2 (ECF No. 6); DCX 62; DCX 66 at 3-4. Respondent did not appear or respond to any of the court's notices or orders. *See* DCX 66 at 3-4. His disregard of all but

the last of these court notices and orders to show cause occurred *before* his email virus, discussed below. *See* FF 144-145.

114. On March 29, 2019, Respondent failed to appear for the show cause hearing, and the case was reassigned to Judge Paula Xinis. DCX 58 at 2; DCX 66 at 4.

115. By June 2019—more than five months after filing the complaint—Respondent still had filed nothing, had not effected service, and had not responded to the court's various notices and show cause orders. *See* DCX 58 at 1-2.

116. On June 4, 2019, the court entered an order signed by Judge Xinis on June 3, 2019, which ordered Mr. Clayton to show cause within 14 days why the complaint should not be dismissed for failing to effect service within 90 days. DCX 58 at 2 (ECF No. 9); DCX 63 (citing Fed. R. Civ. P. 4(m) and D. Md. Loc. R. 103.8(a)).

117. On June 18, 2019, Respondent responded. DCX 65. He attached an *Affidavit of Attempted Service* from a process server, and he requested 30 days to effect service. *Id.* at 2, 4-5.

118. Respondent represented to the court that he "had not been receiving the email notifications from the Court in connection with this case," that he only "discovered the Order to Show Cause independently through his review of the case," and that he had not been receiving court notifications because his "email server was hacked" and "emails were being re-directed and automatic [*sic*] deleted." *Id.* at 2.

119. Respondent also attached a March 27, 2019, email that he had sent to notify third parties that (1) his email was hacked, and (2) the hacker had sent a fraudulent phishing email that purported to be from Respondent seeking password information. DCX 65 at 2, 6.

120. And Respondent represented that his PACER address had been wrong but that he had "updated PACER for the District Court for Maryland with [his] current address to ensure that [he] receive[d] all mailings in the case going forward." DCX 65 at 2; *see also id.* at n.2 ("Plaintiff's counsel's address has now been updated."); DCX 67 at 2.[10]

121. Respondent had a "continuing" obligation and duty to promptly notify the clerk of the court of any changes to his address and email address. D. Md. Loc. R. 102.1(b)(ii) ("[I]f counsel fails to comply, the Court may enter an order dismissing any affirmative claims for relief . . . ."); *see* D. Md. ECF Policies and Procedures Manual, II.D, p. 3-6; *id.* at II.E., p. 6-7 ("Registration . . . constitutes consent to receive and make electronic service Moreover, counsel is responsible for both regularly checking the email address . . . and for keeping a working email

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[10] PACER is an electronic filing service used by most federal courts, which the court uses in conjunction with the "CM/ECF case management system for accepting most court documents for filing, for entering orders from the court, and for otherwise managing the court's case docket." *See, e.g.*, Electronic Case Filing Information, https://www.mdd.uscourts.gov/electronic-case-filing-information (last visited April 26, 2023); D. Md. ECF Policies and Procedures Manual, II.A–E., at p. 1-7, https://www.mdd.uscourts.gov/sites/mdd/files/CMECFProceduresManual.pdf (last visited April 26, 2023).

address connected with the account."); Tr. 532 (Respondent: "Yes, I was familiar with the ECF Rules.").

122. On June 18, 2019, the court granted a 30-day extension to serve the defendant. DCX 64 at 2.

123. Despite representing to the court that he had corrected his address on file with the court, Respondent had not. DCX 67 at 2.

124. Respondent filed nothing in July or August 2019. *See* DCX 58 at 2-3; DCX 67 at 8-9 (Respondent: "inadvertence on my part").

125. On August 15, 2019, the court ordered Respondent to appear personally for a show cause hearing on August 29, 2019; he was served the order electronically. DCX 58 at 2 (ECF No. 12); *see also* D. Md. Loc, R. 102.5(a) ("electronic filing . . . of any order . . . shall constitute entry of that document on the docket . . . as well as notice to and service upon registered parties in the case . . . [and] are deemed to be the official court record "); D. Md. Loc. R. 102.5(c) ("[Paperless] orders shall have the same force and effect as any other order.").

126. On August 29, 2019, Respondent did not appear for the show cause hearing. DCX 66 at 1. At the hearing, the court cited Respondent's "chronic dereliction of his duty as counsel and as an officer of this court." *Id.* at 3; *see also id.* at 4 ("[Respondent] has not upheld his duties as an officer of the court or as the attorney for Mr. Clayton.").

127. The court noted that the order to appear was issued *after* Respondent confirmed that the court had his correct address to receive ECF notices. *Id.* at 4-5

(the court: "[A]t this point, it would stretch the bounds of reality that a practicing attorney would not have fixed his ECF problem, which he claims occurred back in March.").

128. The court clerk called Respondent on his listed phone number and spoke to his answering service. *Id.* at 5. The court clerk informed Respondent's answering service that Respondent had missed his hearing and that the court would take "action consistent with his failure to appear." *Id.*

129. The court concluded the hearing noting, "I'm at a loss for how a practicing attorney could run his business this way." *Id.*

130. After the hearing, the court issued an order noting that Respondent had "failed to attend a show cause hearing at which his personal appearance was required" and "failed to appear or respond to the Court's orders on three prior occasions and without adequate justification." DCX 66 at 1. The court ordered Respondent to appear in person one week later, on September 5, 2019, at 9 a.m., and "forewarned" that the court would hold him in contempt if he again failed to appear. *Id.* Respondent was served with the court's order electronically, and the court intended the order would also be served by certified mail. *Id.*

131. On September 5, 2019, Respondent failed to appear at 9 a.m. DCX 67 at 2.

132. The court and the court clerk conducted an "investigation" that revealed that Respondent had not updated his mailing address with the court. *Id.* at 2-3. The

court asked other members of the bench and located a cell phone number for Respondent. *Id.* at 3.

133. The court called Respondent's cell phone while on the record. *Id.* The court told Respondent that he needed to appear in person before the close of business or else the court would issue a warrant for his arrest. *Id.* at 3-4. Respondent appeared in court later that morning. *Id.* at 4.

134. At the hearing, the court noted, "under the rules . . . I'm constrained to dismiss this Complaint without prejudice, but [that] could prejudice your client. So, I want to hear from you as to where you are in this case." *Id.* at 5; *see also id.* at 9 (the court: "I also recognize that in this case, this Complaint was filed on the last day of limitations . . . and I am trying my best not to pour this case out, although you're giving me little to no choice.").

135. Respondent apologized, assured the court that "[t]his is not indicative of how I practice," and represented: "I've tasked my IT team and my staff to today make sure this doesn't happen." *Id.* at 5-6.

136. As to the status of the case, Respondent told the court that the process server had still not perfected service. *Id.* at 6. The court pointed out that Respondent still had never filed a proposed summons even after the court had instructed him to do so, which would make any service invalid. *Id.* at 6-8. Respondent requested to file a proper summons with the court within seven days. *Id.* at 10. The court "urge[d]" him to do so. *Id.*

137. The court asked Respondent what email he used to receive ECF notices. *Id.* at 11. Respondent said that he had "a few" and that one that was "not listed before this Court [wa]s cab.esq@gmail.com," which he had "put [] as an additional safeguard" after the problems with his cbutler@blgnow.com email address. *Id.* at 11-12. But he did not have the additional email address on file with the court. *Id.*; *cf.* DCX 68 (his motion filed one week later still used a signature line with the cbutler@blgnow.com address).

138. The court admonished Respondent for misrepresenting to the court that his contact information was updated when it was not, noting that the court "had to expend time and energy and resources" in response. DCX 67 at 14.

139. Respondent blamed his employees and the process server for what had occurred in the case. DCX 67 at 5-6, 12-13, 14 (As the court pointed out: "if you can't rely on your employees," then they should not be "tasked with this really important job of making sure that courts can get in touch with you"); *id.* at 18 ("I have grave reservations about what exactly is going on with your firm ").

140. The court characterized Respondent's handling of the case as "a cluster from the moment [he] filed this case." *Id.* at 14. "I just feel like this court has been, you know, a black cloud over your head. . . . We keep warning you. . . . And yet . . . we had to almost come to sending the marshals out for you." *Id.* at 15-16.

141. Despite assuring the court that he would file and secure a proper summons, he did not. DCX 70 at 4; Tr. 536-37 (testifying he did not file a proper

summons as the court urged him to do at the hearing because he was waiting to see what happened with the motion to extend the time for service first).

142. On September 12, 2019, Respondent moved to extend the time to serve the defendant for another 60 days. DCX 68. In support of the motion, he filed a memorandum that mostly cut-and-pasted his June 18 filing. *Compare* DCX 65 at 1-2, ¶¶ 1-6, *with* DCX 68 at 3-4, ¶¶ 1-6 (verbatim except for length of extension sought); *compare also* DCX 65 at 2, ¶ 7, *with* DCX 68 at 4, ¶ 9 (verbatim except for last sentence); *compare also* DCX 65 at 2, ¶ 8 ("Additionally, [*sic*] has updated PACER . . . ."), *with* DCX 68 at 5, ¶ 10 ("Additionally, [*sic*] has updated PACER . . . .").

143. The day after he filed his motion, Respondent submitted a revised affidavit from his process server and an affidavit from his employee, Hillard Wheeler. DCX 69. The process server's affidavit showed that he had made no attempts at service in over a month. DCX 69 at 2.

144. Mr. Wheeler's affidavit said that on March 4, 2019, the firm's email server was infected by a virus, causing incoming emails to be re-directed and deleted." *Id.* at 12. After about a week, however, "the virus was identified, quarantined and eliminated." *Id.* "This situation prevented the firm from receiving hundreds of incoming emails and still causes some lingering issues." *Id.* at 13.

145. Mr. Wheeler's affidavit did *not* certify that the virus caused any emails to be deleted *after* March 2019, when the virus was eliminated. *See id.* at 12-13.

Nor did he say that any of the notices from Mr. Clayton's case were not received. *See id.*

146. Mr. Wheeler's affidavit also said that Respondent tasked him to update his contact information with the court around June 15, 2019. *Id.* at 13. He (incorrectly) told Respondent that the information was updated. *Id.*

147. Respondent filed nothing else with the court from September 5, 2019 to October 1, 2019. *See* DCX 58 at 3.

148. On October 1, 2019, the court dismissed Mr. Clayton's case. *See* DCX 70 (Opinion); DCX 71 (Order). The court explained Respondent's history of "repeatedly miss[ing] a series of critical deadlines" and "ignor[ing] companion Court orders," DCX 70 at 1, including missing three show cause hearings and failing to take any action in the case from July 18, 2019 to September 5, 2019. *Id.* at 1-4. The court also noted that (1) Respondent never secured a properly executed summons despite saying that he would and despite the court urging him to do so, and (2) he had disclosed no attempt to effect service since August 7, 2019. *Id.* at 4.

149. The court concluded that, "[r]egrettably," Respondent had provided no justification to again extend the time for service. *Id.* at 5. "The failure to secure an executed summons, to make diligent efforts to serve the summons, and to timely seek extensions from this Court constitute extreme carelessness. Nothing in this record supports enlarging the time for service." *Id.* at 7.

150. Even considering the potential prejudice to Mr. Clayton, the court concluded that "[w]here, as here, counsel did nothing to obtain a proper summons

even after being specifically warned, or attempt service by any alternative means, or attempt service at all since counsel's last court appearance, the Court simply cannot extend service deadlines again." *Id.* The court noted that Respondent "knew at the time he filed the action that limitations expired the very next day. [Respondent], therefore, should have anticipated the consequences of untimely service, and cannot now use the statute of limitations to shield his chronic carelessness." *Id.*

Credibility

151. Mr. Robinson was a credible witness. Mr. Robinson's explanation of why he needed Mr. Butler's services and his testimony regarding his background with bankruptcy and law (*see* Tr. 31-34) was credible and supported by the record, *see, e.g.*, DCX 15. He testified in a forthright manner about his dealings with Respondent. His demeanor and responses to questions reflected thoughtful consideration of questions and candid answers. For example, Mr. Robinson's credibility was bolstered by his ability, without hesitation, to forthrightly admit when he did not recall details of events and particularly conversations concerning his agreement with Mr. Butler and documents presented to him during his testimony. *See, e.g.*, Tr. 37, 40-41, 49-50, 60. His testimony was clear, persuasive, and sufficiently detailed.

152. Respondent's testimony was credible as to his background and understanding of the law. In contrast, his testimony related to facts implicating the charges in this case was less credible. In particular, Respondent continually provided explanations for his allegedly violative conduct that were notably

understated and evasive. Respondent's testimony appeared to be consistently designed to deflect his personal responsibility for missing deadlines and for failing to communicate with his clients. For example, his testimony that he treated Mr. Robinson like "family," Tr. 362, thus implying he reasonably communicated with Mr. Robinson and used due care and competence during that representation, was wholly contradicted by the record. *See* DCX 15; DCX 25; DCX 30 (showing no communications). Respondent's implication that his staff was to blame for the issues resulting in this disciplinary action, without shouldering personal responsibility, undermined the credibility of his testimony. *See, e.g.*, Tr. 412-13, 453-54, 514, 534-35. *But see* Tr. 369 ("I'm ultimately responsible for myself and for my employees.").

Indeed, Respondent's recollection of events was at times contradicted by his own case files, his own prior statements to the court and Disciplinary Counsel, and his own testimony during other parts of the hearing. And while the Hearing Committee did not find his testimony to be credible in several instances, we do not find that his hearing testimony was intentionally false.

II. LEGAL CONCLUSIONS

Disciplinary Counsel argues that Respondent violated Rules 1.1(a) and (b) and Rules 1.3(a) and (c) in Counts I (Robinson) and II (Jones, Geremew, Becton, Potts, and Fitzgerald); that he violated Rule 1.4(a) in the Robinson matter; and that he violated Rule 8.4(d) in his conduct before the D.C. Superior Court in the Jones matter and before the U.S. Bankruptcy Court for the District of Columbia in the Geremew and Fitzgerald matters. As to Count III, Disciplinary Counsel argues that

Respondent's conduct violated MD Rules 19-301.1, 19-301.3, and 19-308.4(d) in his representation of Mr. Clayton and his conduct before the U.S. District Court in Greenbelt, Maryland. [11]

A. <u>Respondent Violated Rules 1.1(a) and 1.1(b) in Counts I and II.</u>

Rule 1.1(a) requires a lawyer to "provide competent representation to a client," which requires the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (lawyer who has requisite skill and knowledge, but who does not apply it for particular client, violates obligations under Rule 1.1(a)). Rule 1.1(b) requires a lawyer to "serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." The Rule is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report).

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

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of

[11] As is evident from the analysis for Counts I, II, and III below, the Hearing Committee independently considered the separately docketed matters on a case-by-case basis. The Hearing Committee's finding of a violation of any Rule is predicated on the allegations charged and evidence presented as it relates to the individual client matter.

> methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Rule 1.1, cmt. [5].

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

> To prove a violation [of Rule 1.1(a)], [Disciplinary] Counsel must not only show that the attorney failed to apply his or her skill and knowledge, but that this failure constituted a serious deficiency in the representation. . . . The determination of what constitutes a "serious deficiency" is fact specific. It has generally been found in cases where the attorney makes an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence. Mere careless errors do not rise to the level of incompetence.

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

Expert testimony is not required when an attorney's "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *In re Nwadike*, Bar Docket No. 371-00 at 28 (BPR July 30, 2004) (finding a violation of Rule 1.1(b) without expert testimony when, *inter alia*, the attorney not only failed to file a D.C. Super. Ct. Civil R. 26(b)(4) expert witness statement by the court-ordered deadline, but had also failed to obtain an expert's

opinion and was therefore unaware of whether or not there was proof to sustain the plaintiff's claim), *findings and recommendation adopted*, 905 A.2d 221, 227, 232 (D.C. 2006); *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00, at 12-13 (BPR Dec. 27, 2002) (noting, in a case where the respondent attorney failed to file an immigration appeal after the client paid the initial fee for the appeal, that Disciplinary Counsel need not "necessarily produce evidence of practices of other attorneys in order to establish a Rule 1.1(b) violation," but declining to find a Rule 1.1(b) violation where "Rule 1.3 better address[ed] the situation"), *recommendation adopted in relevant part*, 840 A.2d 657 (D.C. 2004) (remanding to the Board for further consideration of the appropriate sanction).

Here, Disciplinary Counsel argues that Respondent's incompetence is not based on lack of skill or knowledge but his "inability to attend to the needs of his clients' cases, adhere to court rules and procedures, respond to dispositive motions, file required court documents, appear for court hearings, and respond to court notices and orders—even in the face of repeated warnings." ODC Br. at 40.

Respondent argues generally that "Disciplinary Counsel should have produced expert testimony in an effort to show clear and convincing proof of the standards of care pertaining to this complex field of law, particularly as it relates to bankruptcy petitions filed under Chapter 13." Resp. Br. at 2. He also argues that Disciplinary Counsel failed to identify any specific serious deficiencies in his representation. As discussed below, the Committee finds that Respondent's failure to file responsive pleadings and failure to appear at scheduled proceedings was "so

obviously lacking" that expert testimony was not required to prove the Rule violations here.

1. Count I: Failure to Respond to the Motion to Terminate the Stay

The Hearing Committee finds that clear and convincing evidence supports a finding that Respondent violated Rules 1.1(a) and 1.1(b) in his representation of Mr. Robinson in a Chapter 13 Bankruptcy (Count I). *See* FF 3-35. Specifically, the evidence shows that Respondent failed to attend to the needs of representing Mr. Robinson when he failed to respond to the bank's motion to terminate Mr. Robinson's stay. *See* FF 17-26. Failing to oppose the Bank's motion to terminate deprived Mr. Robinson of an opportunity to negotiate with the Bank while the stay was still in effect and for the Court to consider the equities of Mr. Robinson's situation before granting the Bank's motion and exposing Mr. Robinson to foreclosure. FF 24-26. Instead, the stay was lifted, Respondent made a last second effort to negotiate with significantly less leverage than he might have otherwise had, and Mr. Robinson's house was foreclosed on as a result. *See* FF 27-34. Failing to oppose a motion to terminate a client's stay is clearly a serious deficiency in representation; it is clear that no lawyers working on similar matters would serve a client similarly unless there was a clear strategic reason, communicated clearly and in advance of the deadline to oppose the Bank's motion, to not oppose a motion to terminate a stay. The evidence here shows that Respondent had no such strategy and did not timely communicate with Mr. Robinson about any meaningful legal strategy in responding to the Bank's motion. *See* FF 21-23.

Pursuant to 11 U.S.C. § 362, the filing of a bankruptcy petition triggers an automatic stay of a debtor's foreclosure proceeding. *See* FF 8. The automatic stay is important because it prevents creditors from engaging in any collection action against a debtor's assets, including foreclosure on a debtor's home. *Id.* The automatic stay has a limited term, and, if not extended by motion of the debtor, once lifted or expired, a creditor is no longer prevented from engaging in a collection action, including foreclosing on someone's home. FF 8, 69. An automatic stay can expire or be terminated upon motion by a creditor—for example, a motion for relief from the stay or to terminate the stay—which is litigated in court and granted or denied by a judge. *See* FF 8, 17, 30. The evidence from this hearing clearly and convincingly shows that the automatic stay in bankruptcy proceedings is an absolutely vital protection of the debtor/homeowner's property interests and is often the only barrier preventing a debtor from losing their home or other property to foreclosure. Accordingly, the Hearing Committee also finds that the evidence—and particularly Respondent's testimony—clearly and convincingly shows that maintaining, protecting, and monitoring the automatic stay in a bankruptcy proceeding is a priority generally afforded to clients by lawyers practicing in the area of bankruptcy law. *See, e.g.*, FF 8 (Tr. 487-88 (Respondent: "[T]he automatic stay is important because it prevents creditors from engaging in any collection action, including foreclosing on someone's home.")). Similarly, the failure to monitor and reasonably protect a stay in a bankruptcy matter is almost always a serious deficiency in representation because losing the protection afforded by the stay would prejudice

or could prejudice the client's property interests. *See, e.g.*, *id.* In the same vein, failure to adequately protect a client's property interest in court, regardless of the existence of a stay, would almost always constitute a serious deficiency in representation in a bankruptcy proceeding.

2. Count II: Failure to Respond to Motions and Orders to Show Cause

The Hearing Committee also finds that clear and convincing evidence supports finding that Respondent violated Rules 1.1(a) and 1.1(b) during his representation of Languel Jones in a civil foreclosure proceeding (Count II). *See* FF 36-58. Specifically, the evidence shows that Respondent failed to attend to the needs of representing Mr. Jones when he failed to oppose the creditor's motion for summary judgment, *see* FF 39-40, failed to appear for a hearing in the matter on January 12, 2018, *see* FF 44, 46, failed to make any attempt to avoid the entry of summary judgment against his client, and was wholly unprepared when appearing at the hearing of February 16, 2018. *See* FF 55-57. The evidence shows that Respondent possessed the legal knowledge and skill to adequately represent Mr. Jones; however, Respondent did not represent Mr. Jones with the preparation reasonably necessary for the representation nor the skill and care commensurate with that generally afforded clients by other lawyers in similar matters. *See Drew*, 693 A.2d at 1132. Opposing dispositive motions, appearing at hearings, and defending your client's interests before the court are clearly rudimentary aspects of the skill and care generally afforded clients by attorneys practicing in any area of law,

including civil foreclosure, where properties and residences are often at stake. *See* Rule 1.1, cmt. [5].

The Hearing Committee finds that Respondent violated Rule 1.1(b) in his representation of Biniam Geremew in two matters. Respondent failed to apply adequate care for Mr. Geremew's first bankruptcy proceeding when he failed to oppose the bankruptcy trustee's motion to dismiss Mr. Geremew's bankruptcy and the stay protecting his property. *See* FF 59-66. Indeed, Respondent did not provide an adequate explanation for his failure to file a timely opposition. FF 63. The Hearing Committee finds that lawyers serving clients in similar cases would have opposed the motion to the extent there was any basis for opposition, and, as such, a violation of Rule 1.1(b) is satisfied. The Hearing Committee finds that the evidence from the hearing also supports finding that Respondent violated Rule 1.1(b) in Respondent's representation of Mr. Geremew in the second Chapter 13 bankruptcy petition. FF 75-85. After failing to oppose the trustee's motion to terminate Mr. Geremew's bankruptcy, Respondent "inadvertently" filed a delayed motion to extend Mr. Geremew's stay, which required an expedited schedule for creditors to object and for the court to rule on whether to sustain the stay protecting Mr. Geremew's property from foreclosure. *See* FF 76-79. However, the court granted a motion for "expedited consideration," ordered creditors to file objections on an expedited basis, and scheduled a hearing on June 6, 2018, ostensibly to aid the court in ruling on the motion. FF 79-80. Respondent failed to appear at the hearing, FF 82, and the court granted the motion to extend the automatic stay because there was no

opposition from the creditors. FF 83. Respondent missed the hearing due to the illness of his father. FF 84. Notwithstanding Respondent's circumstances, the court sanctioned Respondent for inadequate representation and failing to have "an adequate backup plan" to protect Mr. Geremew's interests. FF 85. While Respondent's failure to attend the hearing could rise to a violation of Rule 1.1(a) with additional factual development, the Hearing Committee finds that this misconduct more clearly fits within the ambit of Rule 1.1(b)'s requirement that counsel serve their clients with the skill and care generally afforded to clients by other lawyers in similar matters. Here, based on the evidence before the Committee and, in particular, the court's decision to sanction Respondent, the Committee finds that counsel in similar matters would either not have missed the hearing and would have either moved to participate telephonically, moved to reschedule the hearing, or had another attorney appear on behalf of Mr. Geremew at the hearing. *See* FF 85 (court sanctioning because there was no backup plan).

The Hearing Committee finds that Respondent violated Rules 1.1(a) and 1.1(b) during his representation of Spencer Becton. FF 67-74. In filing a defective motion to extend Mr. Becton's 30-day bankruptcy stay and failing to cure the defect before the stay's expiration, Respondent did not serve Mr. Becton with the legal thoroughness, skill, or care commensurate with that generally afforded to clients. FF 70-74. Respondent's admission that the failure to cure was inadvertent, *see* FF 74, supports this finding because it shows there was no underlying legal strategy that might have justified Respondent's actions. Moreover, as noted by the court in

its Order, Respondent had not filed a timely plan or the required schedules, which might have allowed a continuance of the stay. *See* FF 74, n.9.

The Hearing Committee finds that Respondent violated Rules 1.1(a) and 1.1(b) during his representation of Mr. Theodore Potts. FF 86-94. Respondent failed to serve Mr. Potts with the legal thoroughness, skill, or care commensurate with that generally afforded to clients when he filed an erroneous bankruptcy petition, which falsely claimed that Mr. Potts had no prior bankruptcy filings, *see* FF 89, and when Respondent failed to respond to the court's order to show cause why Mr. Potts's petition should not be dismissed for failure to file a proper petition. *See* FF 91-94. Respondent claims that the erroneous petition was a product of an "inadvertent" checking of the wrong box, and the Hearing Committee finds that the failure to confirm that material parts of an *emergency* petition for bankruptcy are correctly completed, coupled with the failure to cure any inadvertent mistake, *see* FF 89, shows that Respondent failed to use the skill and care afforded to clients by counsel in similar matters.

The Hearing Committee also finds that Respondent violated Rules 1.1(a) and 1.1(b) during his representation of Mr. Alexander Fitzgerald. FF 95-106. Respondent did not represent Mr. Fitzgerald with the competence, thoroughness, skill, or care commensurate with that generally afforded to clients when he failed upon filing the motion to extend Mr. Fitzgerald's automatic stay to file the requisite notice to creditors, affording them an opportunity to oppose Mr. Fitzgerald's motion; failed to file or serve that notice after the court entered an order for Respondent to

file the same; and failed to attend the June 26, 2018 hearing scheduled by the court, thus causing Mr. Fitzgerald's automatic stay to terminate. *Id*. Failing to file mandatory notices, failing to cure his failure to make such filings upon court order, and ignoring hearing dates (especially for hearings related to issues of significant consequence) represent conduct bereft of the skill and care expected of a bankruptcy attorney and evinces a level of thoroughness well below that expected by the Rule 1.1(b).

B. Respondent Violated Rules 1.3(a) (Diligence and Zeal) and 1.3(c) (Reasonable Promptness) in Counts I and II and Rule 1.4(a) (Communication) in Count I.

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." "Neglect [of client matters] 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) (citing *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc)). Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Board Docket No. 10-BD-073, at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam); *see also In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report)

(Rule 1.3(a) violated even where "[t]he failure to take action for a significant time to further a client's cause . . . [does] not [result in] prejudice to the client").

The Court has found neglect in violation of Rule 1.3(a) where an attorney persistently and repeatedly failed to fulfill duties owed to the client over a period of time. *See, e.g.*, *In re Ukwu*, 926 A.2d 1106, 1135 (D.C. 2007) (appended Board Report) (respondent violated Rule 1.3(a) when he repeatedly failed to inform his clients about the status of their cases, prepare his clients for hearings and interviews with immigration officials, or prepare himself for court appearances); *Wright*, 702 A.2d at 1255 (appended Board Report) (respondent violated Rule 1.3(a) by failing to respond to discovery requests, a motion to compel, and a show cause order); *In re Chapman*, Bar Docket No. 055-02, at 19-20 (BPR July 30, 2007) (respondent violated Rule 1.3(a) where he did virtually no work on the client's case during the eight-month term of the representation, failed to conduct any discovery, and did not respond to discovery requests from the opposing party), *recommendation adopted*, 962 A.2d 922, 923-24 (D.C. 2009) (per curiam).

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

needless anxiety and undermine confidence in the lawyer's trustworthiness," making such delay a "serious violation."

Here, Disciplinary Counsel argues that Respondent violated Rules 1.3(a) and 1.3(c) for substantially the same reasons that he violated Rule 1.1. *See* ODC Br. at 44.

Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *See, e.g.*, *In re Robbins*, 192 A.3d 558, 564-65 (D.C. 2018) (per curiam); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The purpose of this Rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Rule 1.4, cmt. [1]. In determining whether Disciplinary Counsel has established a violation of Rules 1.4(a) and (b), the question is whether Respondent fulfilled his client's reasonable expectations for information. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (citing Rule 1.4, cmt. [3]). Attorneys are obligated to respond to client requests for information even when there are no new developments to report. *See In re Lattimer*, 223 A.3d 437, 442-43 (D.C. 2020) (per curiam). In addition to responding to client inquiries, a lawyer must initiate communications when necessary. *See In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (citing Rule 1.4, cmt. [1]).

Here, Disciplinary Counsel argues that Respondent violated Rule 1.4(a) by failing to provide Mr. Robinson with necessary information and failing to respond

to reasonable requests for information. ODC Br. at 45-46. Respondent argues that Mr. Robinson knew all that he needed to know, and that any purported confusion regarding his obligations was disingenuous. *See* Resp. Br. at 2-6.

1. Count I: Failure to Protect Against Foreclosure and to Communicate

Based on the same evidence showing a violation of Rule 1.1(a) and (b), *see supra*, the Hearing Committee finds that Respondent violated Rules 1.3(a) and 1.3(c) while representing Mr. Robinson. In particular, the evidence is clear and convincing that Respondent persistently and repeatedly ignored Mr. Robinson's calls and communications, *see* FF 22, 31, and, by not opposing the Bank's motion to terminate the stay protecting Mr. Robinson's house, Respondent failed to take action necessary to further Mr. Robinson's interest in not having his residence foreclosed on. FF 25, 34. Had Respondent acted with reasonable promptness, the foreclosure could have been avoided and Mr. Robinson might still have his house. *Id.*

The Hearing Committee finds that the evidence is clear and convincing that Respondent violated Rule 1.4(a). Respondent failed to respond to Mr. Robinson's requests for information, *see, e.g.*, FF 22, 31, failed to keep Mr. Robinson reasonably informed about the status of the bankruptcy, *see, e.g.*, FF 21, 27, and, as a result, deprived Mr. Robinson from participating intelligently in decisions concerning the status of his bankruptcy and, in particular, whether there were legal safeguards (*i.e.*, a stay) preventing the bank from foreclosing on Mr. Robinson's residence. FF 25-26, 34.

2. <u>Count II: Jones, Geremew, Becton, Potts, and Fitzgerald</u>

The Hearing Committee finds that Respondent violated Rules 1.3(a) and 1.3(c) during his representation of Mr. Jones in the civil foreclosure action. The conduct in failing to appear at a hearing on behalf of Mr. Jones, failing to respond to the motion for summary judgment, and not being prepared to address the court at the hearing on the motion, shows clearly and convincingly that Respondent did not represent Mr. Jones with zeal, diligence, or reasonable promptness. *See, e.g.*, FF 39-40, 46, 57. From the creditor's August 22, 2017 motion for summary judgment, *see* FF 39, until Respondent's appearance at the February 16, 2018 hearing where he failed to even attempt to defend Mr. Jones' *pro se* opposition to summary judgment, *see* FF 55-57, the evidence shows that Respondent failed to take action for a significant time to further Mr. Jones's cause, and consistently failed to carry out the obligations that Respondent had assumed by agreeing to represent Mr. Jones in that matter.

The Hearing Committee also finds that Respondent violated Rules 1.3(a) and 1.3(c) while representing Mr. Geremew. Respondent failed to carry out the obligations that he assumed for Mr. Geremew when he repeatedly missed deadlines that could have been critical to Mr. Geremew's interests. *See* FF 63 (failure to file opposition to the trustee's motion to terminate Mr. Geremew's bankruptcy) and FF 82 (failure to attend hearing on Mr. Geremew's motion to extend the stay). These lapses are clear and convincing evidence of Respondent's failure to meet the ethical requirements of Rules 1.3(a) and (c).

The Hearing Committee finds that Disciplinary Counsel has not provided clear and convincing evidence that Respondent violated Rule 1.3(a) while

representing Mr. Becton. FF 67-74. There is not clear and convincing evidence to find that Respondent consistently, persistently, or repeatedly failed to fulfill duties owed to Mr. Becton. *See* FF 70-74. There is sufficient evidence, however, to show that Respondent violated Rule 1.3(c) in his representation of Mr. Becton, because Respondent clearly did not act with reasonable promptness when he failed to cure his filing to extend Mr. Becton's bankruptcy stay before it expired. FF 70-74. The Hearing Committee reiterates that the absence of any evidence that Respondent's failure to cure the motion was a product of legal strategy weighs heavily in this determination. FF 74 (Respondent admitting his failure to cure was "inadvertent").

Regarding Mr. Potts's matter, the Hearing Committee finds that Disciplinary Counsel did not prove a violation of Rule 1.3(a) by clear and convincing evidence because the evidence does not show that a sufficiently significant amount of time passed to establish the persistent and repeated failures that are hallmarks of Rule 1.3(a) violations. *See, e.g.*, *Ukwu*, 926 A.2d at 1135 (appended Board Report). However, the Hearing Committee finds that clear and convincing evidence supports finding that Respondent's representation of Mr. Potts did violate Rule 1.3(c). Specifically, Respondent clearly did not act with reasonable promptness when he failed to respond to the court's order to show cause why Mr. Potts petition should not be dismissed. FF 91-94.

The Hearing Committee finds that clear and convincing evidence supports finding that Respondent violated Rules 1.3(a) and 1.3(c) during his representation of Mr. Fitzgerald. FF 95-106. Between June 1, 2018 and June 26, 2018, Respondent persistently and repeatedly failed to respond to the court's order to provide notice to creditors and the court's order to appear at a hearing. FF 98-103. Respondent also

failed to communicate with Mr. Fitzgerald, did not file or serve a notice on creditors, and failed to request that the court's deadlines or hearing be rescheduled to accommodate any scheduling issues that might have existed for Respondent or Mr. Fitzgerald. FF 98-104. Indeed, this conduct clearly shows that Respondent failed to act with reasonable promptness, thus adequately supporting the Hearing Committee's finding that Respondent violated Rule 1.3(c).

C. Respondent violated D.C. Rule 8.4(d) (Serious Interference with the Administration of Justice) in the Jones, Geremew, and Fitzgerald Representations (Count II).

Disciplinary Counsel argues that "Respondent's neglect of his clients' cases went hand-in-glove with his disregard of court orders, court deadlines, and court appearances." ODC Br. at 48. D.C. Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of D.C. Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e*., that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must at least potentially have had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996).

Rule 8.4(d) can be violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). Failure to respond to orders of the court also constitutes a

violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *In re Carter*, 11 A.3d 1219, 1223 (D.C. 2011) (per curiam) (failure to respond to notices of an investigation from Disciplinary Counsel, failure to comply with court orders requiring compliance with Disciplinary Counsel's investigation, and dishonesty to the court about why he had missed filing deadlines); *In re Askew*, Board Docket No. 12-BD-037 (BPR July 31, 2013), appended Hearing Committee Report at 28-29 (failure to comply with a court orders requiring her to file a brief and to turn over client files), *recommendation adopted in relevant part*, 96 A.3d 52 (D.C. 2014) (per curiam). The Rule covers both affirmative actions by attorneys and failure to correct wrongful actions by their agents. *See Bailey*, 283 A.3d 1199, (D.C. 2022) (finding a violation of Rule 8.4(d) where the respondent "was made aware of his failures to comply with the initial subpoena and took no meaningful steps to personally remediate that failure or to ensure that his attorney did so").

The Hearing Committee finds that Respondent violated Rule 8.4(d) when he failed to oppose a summary judgment motion filed by Prospect Mortgage against Mr. Jones, FF 39-40, failed to show for a hearing on that motion for summary judgment, FF 44, and caused opposing counsel to incur costs when Mr. Jones compelled the court to vacate entry of summary judgment based on Respondent's inadequate representation. FF 45-50. Respondent's conduct was clearly improper in that he should have opposed the motion for summary judgment (or otherwise justified his failure to oppose the motion) and he should have appeared for the hearing on that motion. FF 39-50. Respondent's conduct bore directly on the judicial process because the court was compelled to vacate its entry of default summary judgment in light of Mr. Jones' explanation—in a hearing Respondent

failed to attend—that Respondent's improper conduct led to Mr. Jones' failure to oppose summary judgment. FF 48. As a result, the creditor incurred additional costs, and the judicial process was extended to accommodate for Respondent's unexplained failure to properly represent Mr. Jones. FF 49-50. Respondent's conduct clearly had more than a *de minimis* impact upon the process in Mr. Jones' proceeding, including the court's entry of default summary judgment, vacating summary judgment, and scheduling of an additional hearing once Respondent failed to appear at the January 12, 2018 hearing where Mr. Jones convinced the court to vacate its entry of summary judgment. FF 46-48.

The Hearing Committee finds that Respondent's failure to appear at a hearing in Mr. Geremew's second bankruptcy matter, *see* FF 82, violated Rule 8.4(d). Without any evidence justifying his failure to attend the hearing, we find it was improper for Respondent to miss a hearing on whether Mr. Geremew's automatic stay should be extended. The hearing and Respondent's failure to appear bore directly on Mr. Geremew's case, and, as noted by the court, it potentially had more than a *de minimis* impact on Mr. Geremew because, without a backup plan, the court could have denied Respondent's request to extend the stay protecting his assets. FF 85 (sanctioning Respondent for inadequate representation and failing to have "an adequate backup plan to safeguard his client's interests . . .").

Respondent's failure to respond was egregious in Mr. Fitzgerald's bankruptcy case. Respondent failed to respond to two court orders. FF 98-103. When Respondent did not comply with the first order, the court issued an order *sua sponte* providing notice to creditors that it would hold a hearing on June 26, 2018, at 11:30

a.m., and the court explicitly ordered Respondent to advise Mr. Fitzgerald that his appearance was required, but Respondent did not do so. FF 99-100, 103. The court also ordered Respondent to personally appear at the hearing and show cause why his fees should not be reduced for his failure to file the required notice or respond to the court's notice. FF 100. On June 26, 2018, neither Respondent nor Mr. Fitzgerald appeared at the hearing. *See* FF 101-103. *See generally* Rule 8.4, cmt. [2].

D. Respondent Violated MD Rules 19-301.1, 19-301.3, and 19-308.4(d) in Count III.

With regard to the Clayton matter, FF 107-150, the Hearing Committee finds that Disciplinary Counsel proved by clear and convincing evidence that Respondent violated MD Rules 19-301.1 (Competence) and 19-301.3 (Diligence), the Maryland rules that roughly parallel D.C. Rules 1.1(a), 1.1(b), 1.3(a), and 1.3(c).

MD Rule 19-301.1 "requires an attorney to provide competent representation to his/her client by applying the appropriate knowledge, skill, thoroughness, and preparation to the client's issues." *Attorney Grievance Comm'n v. Shakir*, 46 A.3d 1162, 1167 (Md. 2012) (per curiam); *see also Attorney Grievance Comm'n v. Framm*, 144 A.3d 827, 842 (Md. 2016) ("The essence of competent representation . . . is adequate preparation and thoroughness in pursuing the matter." (citation omitted)). This requires "inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." *See* MD Rule 19-301.1, cmt. [5]. Consequently, "[a]ttorneys remain potentially susceptible to violating [Maryland Rule] 1.1 notwithstanding they possess the requisite skill or knowledge to represent a client."

Attorney Grievance Comm'n v. Adams, 109 A.3d 114, 125 (Md. 2015). In *Attorney Grievance Comm'n v. Zdravkovich*, 762 A.2d 950 (Md. 2000), the respondent was found to have not acted with the required competence, skill, and care because he filed a Petition for Removal without researching the applicable laws or rules: "Respondent possessed the ability to conduct the research, [but] he inexplicably failed to do so." 762 A.2d at 961-62. In addition, the MD Rule can be violated where the respondent undertakes a representation where the "likelihood of success with [the client's] claim was limited" because failing to explain the limited likelihood of success demonstrates a lack of competence. *See Attorney Grievance Comm'n v. Sutton*, 906 A.2d 335, 341-42 (Md. 2006); *see also Attorney Grievance Comm'n v. White*, 136 A.3d 819, 833 (Md. 2016).

Here, Respondent failed to provide competent, skilled, or careful representation to Mr. Clayton when he failed to properly file a proposed summons in Mr. Clayton's civil case, FF 109-111; then failed to comply with the court's multiple orders for a show cause hearing or otherwise file a proper summons for over five months, FF 112-115; then, after filing an affidavit of attempted service (but not a proposed summons, *see* FF 117, 136, 141), failed to appear for yet another show cause hearing, FF 126, and only appeared in court after the court called his cell phone while on the record. FF 131, 133. Even after these extraordinary efforts by the court, Mr. Clayton's case was dismissed because, by October 1, 2019, 10 months after Respondent filed Mr. Clayton's complaint, Respondent chronically missed deadlines, failed to take any action from July 18, 2019 to September 5, 2019, and

failed to adequately justify his conduct. FF 148-150. The Hearing Committee credits the court's assertion that Respondent was extremely careless, FF 149, and takes particular note that the court went through great lengths to obtain Respondent's email address, FF 137, and to give Respondent multiple opportunities to right Mr. Clayton's case, particularly because it was filed on the last day of the relevant statute of limitations period. FF 127-137. Clear and convincing evidence shows that Respondent's representation of Mr. Clayton was not competent, skillful, or careful, and was therefore in violation of Maryland Rule 19-301.1.

MD Rule 19-301.3 provides an attorney "shall act with reasonable diligence and promptness in representing a client," and the "same rationale supporting the conclusion that an attorney violated [MD Rule] 19-301.1 may also support a Rule 19-301.3 violation." *Attorney Grievance Comm'n v. Kaufman*, 220 A.3d 316, 323 n.7, 328 (Md. 2019). A "failure to 'advance the client's cause or endeavor'" may violate MD Rule 19-301.3, including when it leads to dismissal of the client's case. *Id.* at 328 (quoting *Attorney Grievance Comm'n v. Edwards*, 202 A.3d 1200, 1232 (Md. 2019)); *see also Attorney Grievance Comm'n v. Jacobs*, 185 A.3d 132, 136, 140 (Md. 2018) (finding a violation of MD Rule 19-301.3 where case was dismissed eighteen months after filing because respondent failed to timely serve the defendant); *Attorney Grievance Comm'n v. Fox*, 11 A.3d 762, 769, 773, 777-78 (finding violations of MD Rule 19-301.3 in two matters where respondent failed to diligently pursue active cases due to his "inattentiveness" and his "insufficient" and "grossly ineffective" system for monitoring client matters).

Based on the clear and convincing evidence described above, the Hearing Committee also finds that Respondent violated Maryland Rule 19-301.3, because he failed to act with reasonable diligence and promptness through his entire representation of Mr. Clayton. In particular, Respondent's failure for months to serve or otherwise file the proper summons, or proposed summons, with the court shows his utter failure to diligently or promptly satisfy his obligations to Mr. Clayton. FF 115, 124, 136, 148-150. Respondent's failure to respond to court orders, *see, e.g.*, FF 112-115, failure to correct his contact information with the court (to the extent it needed correcting), *see, e.g.*, FF 118, 120, 123, 132, 136, and his failure to meet a series of "critical" deadlines clearly and convincingly shows that Respondent failed to act with reasonable diligence and promptness. *See* FF 148 (court stating that Respondent "repeatedly missed a series of critical deadlines").

Finally, Respondent engaged in conduct that prejudiced the administration of justice in violation of MD Rule 19-308.4(d). MD Rule 19-308.4(d) provides that "[i]t is professional misconduct for an attorney to . . . engage in conduct that is prejudicial to the administration of justice." "Failure to attend hearings, pursue [the] client's objectives, and . . . abide by the [o]rders of the . . . Court all represent conduct that is prejudicial to the administration of justice. *Attorney Grievance Comm'n v. Storch*, 124 A.3d 204, 208 (Md. 2015); *see also, e.g.*, *Attorney Grievance Comm'n v. Barton*, 110 A.3d 668, 698-99 (Md. 2015); *Attorney Grievance Comm'n v. Dominguez*, 47 A.3d 975, 985 (Md. 2012).

The Hearing Committee finds that Respondent violated Maryland Rule 19-308.4(d) during his representation of Mr. Clayton before the United States District

Court for Maryland. FF 107-150. Respondent's failure to properly effect service or satisfy the requirement that he file a proposed summons clearly and convincingly impacted the judicial proceedings for Mr. Clayton's case and the general administration of justice and judicial procedures in that matter. *See id.* Specifically, Respondent failed to comply with an order to file a consent or declination to proceed before a magistrate, FF 111, which caused the court to order on two occasions Mr. Clayton (and ostensibly Respondent) to appear for a show cause hearing. FF 112-113. Respondent failed to appear for either hearing, FF 113-14, and Respondent failed to make any filings in response to the court's order for over five months. FF 115. Only after the court once again ordered Respondent to show cause, FF 116, did Respondent make a responsive filing, FF 117. After the court gave Respondent a 30-day extension to serve the defendant, FF 122, Respondent failed to effect service and once again failed to appear for a show cause hearing before the court, FF 125-26, at which point the court took the extraordinary step of calling Respondent on the record, later remarking how shocking his conduct was and noting that he had "failed to appear or respond to the Court's orders on three prior occasions and without adequate justification." FF 128-30. Subsequently, Respondent again failed to appear for a hearing, FF 131, at which point the court, again, called Respondent on the record and requested that he appear that day to avoid dismissal of the complaint. FF 133. Ultimately, Mr. Clayton's complaint was dismissed by the court for failure to serve the defendant. In dismissing the case, the court noted Respondent's repeated failure to meet deadlines and court orders. FF 148-150. The extraordinary time and effort devoted by the court in this matter clearly reflected the impropriety of Respondent's conduct, was directly related to the judicial process underlying Mr.

Clayton's case, and had a prejudicial impact upon the judicial process underlying the case and, importantly, diverted the court's time and energy from other matters, in order to chase Respondent down—even calling him on the phone two times on the record. The evidence clearly and convincingly shows that Respondent violated Maryland Rule 19-308.4(d) during his representation of Mr. Clayton.

III. RECOMMENDED SANCTION

Disciplinary Counsel argues that Respondent should be suspended for at least 12 months with reinstatement conditioned on proof of fitness to practice law. Respondent argues that the case should be dismissed. For the reasons described below, we recommend that Respondent be suspended for six months from the practice of law, with 90 days of the suspension stayed in favor of a one-year period of probation with the conditions.

A. Standard of Review

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

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

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent's misconduct was serious and often jeopardized his clients' ability to keep their homes or other properties during bankruptcy. Missing hearings, failing to respond to dispositive motions, and failing to communicate with clients are examples of the serious misconduct repeatedly perpetrated by Respondent.

2. Prejudice to the Client

Respondent's conduct was very prejudicial to his clients. While some clients might have lost their residence regardless of Respondent's conduct, the evidence is clear and convincing that Respondent's derelictions prejudiced his clients' ability to negotiate, oppose motions that a court might have denied or otherwise amended, and to keep their property or, in the case of Mr. Clayton, maintain their action in court.

3. Dishonesty

The Hearing Committee finds that there is inadequate evidence to find that Respondent's misconduct was knowingly dishonest. While we credited Mr. Robinson's testimony, we did not find Respondent's testimony to be intentionally dishonest. We only found that Mr. Robinson's retelling of past events was more credible.

4. Violations of Other Disciplinary Rules

As discussed above, Respondent violated many rules in several matters for different clients over the course of several years. This factor weighs against Respondent receiving a short suspension.

5. Previous Disciplinary History

The Hearing Committee is unaware of any previous disciplinary history.

6. Acknowledgement of Wrongful Conduct

Even where Respondent acknowledged his wrongful conduct, he consistently provided excuses, often blaming his staff or technology. *See, e.g.*, FF 20, 106, 135, 144-45. His lack of accountability and inability to correct mistakes, even when

courts had made him directly aware of the deadlines and filings that he had missed, weighs against Respondent receiving a short suspension.

7. Other Circumstances in Aggravation and Mitigation

The Hearing Committee does not find any other circumstances in aggravation or mitigation.

C. Sanctions Imposed for Comparable Misconduct

The Hearing Committee largely agrees with Disciplinary Counsel's assertion that this case is "most comparable to *In re Lyles*." ODC Br. at 55. Indeed, the Hearing Committee agrees with *Lyles*' discussion of comparable cases and resulting suspensions. *See In re Lyles*, 680 A.2d 408, 418 (D.C. 1996) (per curiam) (appended Board Report). In particular, the Hearing Committee agrees that suspensions in analogous cases have ranged from 30 days to two years, depending on variables including the type of misconduct, the number of violations, and the respondent's disciplinary history. *Id.* The fewer instances of misconduct coupled with no disciplinary history generally result in shorter suspensions, *see, e.g.*, *In re Foster*, 581 A.2d 389 (D.C. 1990) (per curiam) (30 days), while increased instances of misconduct and disciplinary history tend to result in longer suspensions, especially for violations that involve dishonesty. *See, e.g.*, *In re Mintz*, 626 A.2d 926 (D.C. 1993) (per curiam) (two years); *see also In re Alexander*, 513 A.2d 781 (D.C. 1986) (per curiam) (one year and one day). Here, as in *Lyles*, there are multiple serious violations—albeit none that involve dishonesty—and no history of prior disciplinary violations. *See Lyles*, 680 A.2d at 418 (appended Board Report). And while there

are more violations at issue here than in *Lyles*, the Hearing Committee sees no occasion to multiply the six-month suspension in *Lyles* to directly correlate the suspension length on a violation-by-violation basis. *See also In re Untalan*, 174 A.3d 259, 259-260 (D.C. 2017) (per curiam) (six-month suspension with all but 60 days stayed in favor of a one-year probation for violations of Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(c), 3.4(c), and 8.4(d)); *In re Murdter*, 131 A.3d 355, 357 n.2, 358 (D.C. 2016) (per curiam) (six-month suspension with all but 60 days stayed in lieu of one-year probation with conditions for violations of Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(c), 3.4(c), and 8.4(d)); *Speights*, 173 A.3d at 103 (six-month suspension for violations of Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c)).

Accordingly, the Hearing Committee finds that a six-month suspension is appropriate here. Additionally, we recommend that 90 days of the suspension be stayed in favor of a one-year period of unsupervised probation, during which Respondent would be required to consult about his case management system with the D.C. Practice Management Advisory Service (PMAS) within the first 30 days of his one-year probationary period, provide Disciplinary Counsel with written confirmation of the consultation and confirmation that he has implemented the recommendations made by PMAS, and sign a limited waiver permitting the program to confirm compliance with this condition and cooperation with the assessment process. Additionally, we recommend that Respondent be required to attend a minimum of six hours of continuing legal education related to office management and/or legal ethics as approved by Disciplinary Counsel. We further recommend

that, during his period of probation, Respondent shall not commit any additional Rule violations in this or any other jurisdiction. If during the one-year period of probation, Respondent fails to comply with any of these conditions, we recommend that the stayed 90 days be imposed and that Respondent be required to establish his fitness to practice law upon any application to reinstate his bar license, for the reasons discussed below.

D. <u>Fitness</u>

A fitness showing is a substantial undertaking. *Cater*, 887 A.2d at 20. Thus, in *Cater*, the Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id*. at 6. Proof of a "serious doubt" involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "'real skepticism, not just a lack of certainty.'" *Id.* (quoting *Cater*, 887 A.2d at 24)

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

> The fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct. In contrast, the open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run. . . .

> . . . [P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement . . . .

Cater, 887 A.2d at 22.

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

> (a) the nature and circumstances of the misconduct for which the attorney was disciplined;
>
> (b) whether the attorney recognizes the seriousness of the misconduct;
>
> (c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;
>
> (d) the attorney's present character; and
>
> (e) the attorney's present qualifications and competence to practice law.

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

The Hearing Committee finds that Respondent's apparent qualifications and competence, and Respondent's present character, weigh against imposing a fitness requirement. While the nature and circumstances of Respondent's repeated misconduct and his marginal (at best) recognition of the seriousness of the misconduct both raise concerns, his clear understanding of bankruptcy law and absence of prior disciplinary history guide the Hearing Committee away from imposing a fitness requirement here. In other words, at this stage in the proceedings, we do not have a serious doubt as to Respondent's continuing fitness to practice law.

Further, the basis for imposing a fitness requirement in *Lyles* is not present here. *See Lyles*, 680 A.2d at 418-19. Specifically, in *Lyles*, a fitness requirement was imposed largely based on the Hearing Committee's concern with the Respondent's psychological condition. *Id.* In particular, the Respondent in *Lyles* had "volunteered" that "she suffered from serious depression" and "made no showing that she ha[d] recovered from that illness." *Id.* Further, the Respondent in *Lyles*, appearing *pro se*, never filed a substantive brief responding to the allegations against her—not before the Hearing Committee, the Board, or the Court in response to a motion for her temporary suspension. *Id.* at 419. As the Board observed, "her own defense echoes some of the issues of delay and indifference raised by her representation of clients." *Id.* In contrast, none of those elements are present here. While Respondent did suggest he was struggling with taking care of his ill parent, FF 84, and blamed his employees for his misconduct, *see, e.g.*, FF 106, 135, his defense in this matter, albeit through counsel, did not reflect the same elements present in the charges against him. Accordingly, the Hearing Committee does not find sufficient evidence to impose a fitness requirement.

If, however, Respondent is unable to comply with the provided conditions we have recommended during his one-year period of probation, his failure to comply would make us have a serious doubt as to his continuing fitness to practice law. Accordingly, if Respondent does not successfully complete his probation, we believe that a fitness requirement would be appropriate upon any application for reinstatement.

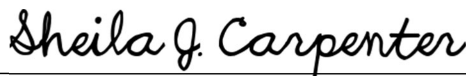
IV. CONCLUSION

The Hearing Committee concludes that Disciplinary Counsel has proven violations of Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), and 8.4(d) and MD Rules 19-301.1, 19-301.3, and 19-308.4(d) by clear and convincing evidence. We recommend that Respondent be suspended from the practice of law for six months, with 90 days stayed in favor of a one-year period of unsupervised probation with the conditions noted above.[12] If Respondent does not successfully complete his probationary period, we recommend that the stayed 90 days be imposed and that Respondent be required to establish his fitness to practice law upon any application for reinstatement. 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).

HEARING COMMITTEE NUMBER SIX

Seth I. Heller, Chair

William Hindle, Public Member



Sheila J. Carpenter, Attorney Member

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[12] Given the recommended conditions of his probation, we do not recommend requiring that Respondent inform any new clients of the fact that he is on probation. Of course, Respondent's current clients would be advised of his initial suspension, which term would not begin to run until Respondent has filed his affidavit in compliance with D.C. Bar Rule XI, § 14(g).