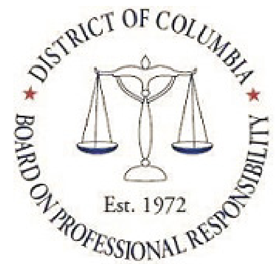
THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*



Issued
July 30, 2024

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
KISSINGER N. SIBANDA,	:	
	:	
Respondent.	:	Board Docket No. 23-BD-024
	:	Disciplinary Docket No. 2022-D170
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 1017426)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

An Ad Hoc Hearing Committee recommended that Respondent, Dr. Kissinger Sibanda, be suspended for thirty days and be required to show fitness before reinstatement for three violations of New York Rule 1.18(b) (disclosing information learned in consultation with prospective client), arising from a dispute with the complainant, Karim Annabi, who had consulted with Respondent before deciding not to hire him. Respondent filed an exception to the Hearing Committee Report, in which he contends that he did not disclose information he learned from his consultations with Mr. Annabi, that he felt ethically obligated to make the disclosures, and that the Hearing Committee mischaracterized his motives and conduct surrounding the hearing, which it cited in support of a fitness requirement. Disciplinary Counsel did not file an exception, but argues that the Hearing

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

Committee erred in not finding a violation of New York Rule 8.4(d) (conduct prejudicial to the administration of justice). The parties waived oral argument.[1]

For the reasons discussed below, the Board finds that Respondent violated New York Rule 1.18(b), though on a more limited basis than the Hearing Committee found, and recommends that he receive a thirty-day suspension, with reinstatement conditioned on his completion of six hours of CLE courses on legal ethics, including at least three hours focused on protection of client confidences and secrets, during or before the period of suspension.

II. FINDINGS OF FACT

We adopt the Hearing Committee's factual findings because they are supported by substantial evidence in the record as a whole. *See* Board Rule 13.7.

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[1] On March 25, 2024, the same day he filed his Reply Brief, Respondent filed a separate pleading informing the Board that he and Disciplinary Counsel agreed to waive oral argument. Accordingly, on March 27, 2024, the Board canceled the previously-scheduled oral argument and stated that the matter would be decided on the available record. Since then, Respondent has filed three additional pleadings, each purporting to update the Board on new information but not requesting any relief: (1) On April 30, 2024, he filed a Notification of Defamation Against Him Using the [Hearing Committee Report]," in which he accuses Mr. Annabi of defaming him in a court pleading; (2) On May 17, 2024, he filed an "Update: Present Practice," in which he informs the Board that he was admitted to practice before the United States Court of Appeals for the D.C. Circuit; and (3) On June 21, 2024, he filed an "Update on Background Facts Regarding Past and Prescent [sic] Arab Muslim and Black African Tensions in Africa," in which he contends that recent killings of black Africans in Sudan, as reported in the media, "further support [his] generally held view of complainant's underlying motive and on-going harassment towards Respondent." Notwithstanding the fact that Respondent did not file a motion to supplement the record, the Board finds that none of those pleadings provided information that was relevant to the issues presented in this case.

We summarize those findings below and instances where we have made additional findings of fact by clear and convincing evidence that are supported by citations to the record. *See id.*

A. Respondent's Consultation with Mr. Annabi

Respondent works in a virtual office in New Jersey, but, at the time of the hearing, he was only licensed to practice law in the District of Columbia, and was admitted to practice in the U.S. Court of Appeals for the Second Circuit and the U.S. Supreme Court. Finding of Fact ("FF") 3. On April 16, 2022, Respondent responded to a Craigslist advertisement posted by Mr. Annabi, who sought an attorney to assist him with filing a federal complaint against New York University. FF 4. After they exchanged emails, Respondent conducted an initial consultation with Mr. Annabi by Zoom, for a fee of $200. FF 5-7. Respondent had offered to reduce the fee to $125 based on an affinity for Mr. Annabi's cultural background—Dr. Sibanda, who is from South Africa, explained that Nelson Mandela had a connection to Algeria, Mr. Annabi's home country—but Mr. Annabi paid the full $200. FF 6.

In advance of the consultation, Mr. Annabi requested that Respondent accept a contingency fee, and Respondent stated that he would be open to the idea, depending on the strength of the case. FF 5. Afterward, however, Respondent proposed a hybrid fee agreement, whereby he would charge flat fees for specific tasks, which would be deducted from a one-third contingency fee in the event of a recovery. FF 8; Disciplinary Counsel's Exhibit ("DCX") 13. Mr. Annabi did not

agree to a hybrid fee arrangement and accused Respondent's proposal of being a "deceptive and bait and switch," since he had been expecting a straightforward contingency fee. FF 9-10. Mr. Annabi demanded a refund of the consultation fee, but Respondent refused, insisting that he had earned it. FF 9. Mr. Annabi threatened legal action, stating:

> You clearly got me in the door with saying you may do it on contingency and once I had paid you added fees and contingency as the only option, which is deceptive. PayPal will have their say and then if that is not resovled [sic] I will see you in NY small claims in person once [sic] day and we can see who is in the wrong and who is in the right.

DCX 14 at 1. Respondent again refused, stating that he would "show them the evidence of our business dealings and zoom video," adding that he "believe[s] in divine justice and you will be rewarded for what you put out there." *Id.*

Later that day, Respondent proposed that he and Mr. Annabi "resolve their dispute like two noble Africans who believe in Allah/Hashem" and offered Mr. Annabi an alternative fee structure, but the parties never came to an agreement. FF 9-10. Instead, on May 9, 2022 (three weeks after Respondent's last offer), Mr. Annabi filed a complaint against NYU *pro se* in the U.S. District Court for the Southern District of New York, alleging breach of implied contracts and deceptive business practices. FF 12.

B. <u>Post-Consultation Dispute and Disclosures</u>

On August 2, 2022, Mr. Annabi filed a small claims action against Respondent *pro se* in New York state civil court, alleging breach of contract and seeking $1,000 in damages. FF 14; DCX 45. Given that Mr. Annabi had only paid $200,

Respondent viewed the lawsuit as a form of harassment. FF 15. Respondent responded by email later that day, advising Mr. Annabi to focus on responding to NYU's motion to dismiss, which he characterized as "on point," adding that Mr. Annabi should expect sanctions because his complaint was frivolous, and he lacked standing. FF 16; DCX 16 at 2. Mr. Annabi responded by advising Respondent to "spare me your garbage legal opinion [and f]ocus on your own defense." *Id.*

Shortly thereafter, Respondent replied with a lengthy email, on which he copied NYU's attorney, Joseph DiPalma. The email asserted, in relevant part:

> Your lawsuit against NYU, referenced above, has fundamental flaws in law and fact - and *I brought that to your attention when I conferenced with you* via zoom.
>
> Bearing that you keep emailing me even though I have started [sic] that the consultation fee of $200 was agreed upon at the time of consultation, I will be forced to bring this issue to the federal judge handling this case as it speaks to your credibility in this lawsuit. There are many inconsistencies with your claim against NYU.
>
> . . . .
>
> Your fight is with NYU, not me, and they [sic] SDNY will decide accordingly. However, *as I stated during our consult*, your legal assertions are mostly frivolous and not based on any established or existing law. . . .

FF 16; DCX 16 at 1-2 (emphasis added). Mr. Annabi interpreted Respondent's email as an attempt to sabotage his case against NYU. FF 17.

The following day, Respondent filed a pleading in the NYU case titled "Letter: Request for Addition as Interested Party on Docket." FF 18; DCX 21 at 1.

In his pleading, he made the following statements that referred to information Mr. Annabi had provided to him during their consultation:

- Respondent had informed Mr. Annabi that his legal assertions are "unfounded in law and frivolous";
- the NYU lawsuit and his fee dispute with Mr. Annabi "share the same nexus of facts and call to question the frivolous nature of Mr. Annabi's lawsuit and current legal assertions";
- NYU's "well-written" motion "echoes and sums up my concerns and the warnings I shared with Mr. Annabi during our consultation."

FF 18; DCX 21 at 2-3 (emphasis in original). Respondent also encouraged the court to question Mr. Annabi's legal residency and assertion of diversity citizenship because he had filed suit against Respondent in New York civil court[2], relying on his New York address, but was using an address in the United Kingdom in his case against NYU. FF 18; DCX 21 at 4. Respondent asserted that he felt compelled to disclose information about Mr. Annabi's legal residency "as an officer of this court." DCX 21 at 3. Later that day, the court denied Respondent's request without prejudice due to his failure to satisfy procedural and substantive requirements for intervention and instructed him to not file pleadings through electric court filing

[2] The Motion asserted that Mr. Annabi had filed the civil action against him in Queens. DCX 21 at 3. While Mr. Annabi had initially told Respondent he would be filing in Queens, DCX 21 at 7, he ultimately filed in Manhattan, using a Manhattan address. *See* DCX 45; Hearing Transcript ("Tr.") 109.

("ECF"); due to an apparent error, however, Respondent was listed as an interested party on the electronic docket. FF 20.

The following morning, Mr. Annabi emailed Respondent, threatening to sue him for slander based on his filing, objecting to "additional damaging remarks to my character, such as being racist" that Respondent had made in private emails, and recommending that Respondent "settle with me and disappear out of my sight." DCX 24 at 2; *see* HC Rpt. at 41 n.27. Respondent responded to the email, adding Mr. DiPalma on the "cc" line, defending the merits of his filing, asking Mr. Annabi to stop emailing him, and stating that he stood by "100%" his statement that Mr. Annabi was "racist and anti-semitic." *Id.* at 1. Part of the basis for his belief, he explained, was that "even though I told you I will not refund the $200 because I earned it[,] you think I am not entitled to earn a living." FF 23. In subsequent emails over the next two weeks, in which he continued to copy Mr. DiPalma, Respondent reiterated his accusations of racism and anti-Semitism, accused Mr. Annabi of committing perjury, and threatened sanctions for Mr. Annabi's filings in the small claims action. FF 22-25. At one point, Respondent explained that his opinion that Mr. Annabi was a racist and anti-Semite was based in part on Mr. Annabi's allegations that Respondent had engaged in a "bait and switch" by saying he would be open to a contingency fee but later proposing a hybrid agreement. FF 25. Mr. Annabi also leveled insults against Respondent during those email exchanges and subsequently filed complaints with PayPal and Disciplinary Counsel. FF 26. After learning of the disciplinary complaint, Respondent warned Mr. Annabi that there

were "exceptions to attorney-client privilege, including fraud and crime," and that he would be filing a second motion in the NYU case, which would be "the nail in your case."[3] FF 27. He forwarded that email to Mr. DiPalma. *Id.* Three months later, on November 19, 2022, Respondent sent Mr. Annabi another email, copying Mr. DiPalma and Disciplinary Counsel, in which he reiterated his intention to file a motion in the NYU case in order to "defend myself." FF 28; DCX 29 at 1.

On February 4, 2023, Mr. Annabi sent Respondent an unfiled motion for sanctions, alleging that Respondent had harassed him, made frivolous claims, committed perjury, and engaged in fraud before the court. FF 30. In response, Respondent electronically filed via ECF, and contrary to the court's previous order (FF 20), a letter to the judge in the NYU case requesting an opportunity to respond to the sanctions motion if it were filed. FF 31. The court struck the filing, reminding Respondent that his request to be an interested party had been denied and admonishing him not to file additional pleadings. FF 34. Despite that instruction, Respondent emailed the judge, copying Mr. Annabi and Mr. DiPalma, arguing that his docketing privileges should not be blocked. FF 35. Mr. Annabi then sent Respondent a proposed motion for sanctions against Mr. DiPalma, DiPalma's co-counsel, his law firm, and NYU, in addition to Respondent, and asked the court for

[3] Respondent used the word "nail" in response to Mr. Annabi's statement that a disciplinary complaint from a federal judge would be a "nail in your coffin for your 'career.'" DCX 27. Respondent stresses the importance of this context, *see* R. Br. at 20, but while Mr. Annabi's email might explain Respondent's decision to send an email or his choice of words, it does not explain or justify his decision to reveal information about Mr. Annabi to Mr. DiPalma or the court.

leave to file it. FF 36; Respondent's Exhibit ("RX") 356; RX 393. Mr. Annabi argued, in part, that Mr. DiPalma had attempted to deprive the court of jurisdiction in bad faith by remaining silent in response to emails from Respondent on which he was copied and then basing an argument for the lack of subject matter jurisdiction on confidential information received from Respondent. RX 374-75.[4] In response, Mr. DiPalma stated that he had based his argument regarding subject matter jurisdiction on Mr. Annabi's complaint, the exhibits attached thereto, and other filings made in the case and denied receiving confidential information from Respondent.[5] FF 37; RX 394.

The NYU case was dismissed in September 2023; the opinion did not mention Respondent's efforts to be added as an interested party or any information he revealed to the court. RX 426[6]; HC Rpt. at 49-50.

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[4] Because Respondent assigned separate Bates numbers to each page of his exhibits, RX 374 and RX 375 are pages 18 and 19 of the Exhibit starting at RX 356, which was admitted into evidence. Tr. 304.

[5] Respondent continues to rely on Mr. DiPalma's letter to the court as proof that he never disclosed confidential information to Mr. DiPalma. *See* R. Br. at 18. As the Hearing Committee points out, Mr. DiPalma's statement concerned information about Mr. Annabi's domicile and residence, an issue that is outside the scope of the Rule 1.18 allegation. *See* HC Rpt. at 21 n.17.

[6] There are two documents in the record marked RX 426. The first is the second page of RX 425, due to Respondent's approach of assigning separate Bates numbers to each page of his exhibits. *See* note 2, *supra*. Respondent subsequently moved to supplement the record with a new document marked RX 426: the Opinion and Order in *Annabi v. New York University*, dated September 29, 2023. The Hearing Committee granted Respondent's motion and admitted RX 426 into the record on October 20, 2023. The citation to 426 in this Report refers to the Opinion and Order.

C. Respondent's Conduct During Disciplinary Proceeding

The Hearing Committee made additional findings of fact regarding Respondent's conduct during the disciplinary proceeding, which it cited in support of its recommendation of a fitness requirement. Specifically, it found that Respondent failed to follow proper procedures for sending subpoenas[7]; filed a motion for leave to file a motion to dismiss the proceedings, and to continue the hearing in the interim, one week before the hearing was scheduled to begin and then, after the Hearing Committee denied his motion and notified him that Board Rule 7.16(a) requires it to recommend a disposition of a motion to dismiss in its report to the Board, renewing his motion to dismiss before the Board two days before the

[7] Respondent contends that his attempt to send a subpoena outside of the 25-mile radius set by D.C. Superior Court Rule 45 was permitted under the Uniform Interstate Depositions and Discovery Act ("UIDDA"), going so far as to suggest that the Hearing Committee's failure to consider the UIDDA "calls into question [its] knowledge base [sic] of law," R. Br. at 27-28, and is an "example of the general lack of legal acumen to address the facts and legal issues in this matter." R. Br. at 37 n.27. In fact, the Hearing Committee denied Respondent's "Request for Subpoenas and Assistance from Hearing Committee," in which he sought to compel the testimony of Mr. Annabi's purported property manager and a subpoena duces tecum for Mr. Annabi's driver's license, without prejudice, because he had not first applied for a subpoena in New York, as permitted under D.C. Bar Rule XI, § 18(f), or represented that a D.C. subpoena would be required. *See* HC Rpt. at 3-4; Hearing Committee Order dated August 9, 2023. Respondent did not argue that a D.C. subpoena was necessary under New York's version of the UIDDA (N.Y. CPLR § 3119) in his Request or his Reply to Disciplinary Counsel's opposition, instead arguing that the 25-mile range should not apply to Zoom hearings. Respondent ultimately issued New York subpoenas directly and did not renew his request.

hearing was scheduled to begin[8]; filed a motion to continue the hearing one day in advance because he had assumed his motion to dismiss would be granted and he was unprepared[9]; failed to file complete exhibit lists before the hearing; failed to mark exhibits with exhibit numbers, instead identifying exhibits by page number; failed to keep track of exhibits that were admitted into evidence; refused to sign the list of exhibits after the hearing; and repeatedly failed to seek the consent of opposing counsel before filing procedural motions in violation of Board Rule 7.13. FF 42. Respondent also asserted without support that Disciplinary Counsel and the Hearing Committee Chair were rude, unfair to him, and racist.[10] FF 44-45.

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[8] Respondent contends that the fact that the Hearing Committee did not find violations of Rules 1.6(a) and 8.4(d) vindicated his decision to file a motion to dismiss. R. Br. at 28-29. That argument does not address the Hearing Committee's valid criticisms of the timing and format of his motion.

[9] Respondent blames the Hearing Committee's decision to deny his eleventh-hour motion for a continuance for his disorganized presentation of exhibits at the hearing. R. Br. at 30. The Board notes that the Hearing Committee issued its July 10, 2023 Order setting hearing dates and filing deadlines two-and-one-half months in advance of the hearing, and fifty-three days before the deadline for filing exhibit lists, based on Respondent and Disciplinary Counsel's jointly proposed schedule.

[10] Respondent clarifies his allegations of racism in his brief to the Board:

> Lack of respect for Respondent's defense, his Good Samaritan motive, the distortion of his *legal pedigree as entitlement to unethical conduct towards clients now and the future* - based on a singular instance, supports this accusation of racial undertones in how [the Hearing Committee] and [Disciplinary] Counsel have treated Respondent, outside of the give and take expected in any adversarial proceedings.

R. Br. at 4 n.3 (emphasis in original); *see also id.* at 36-37 ("Respondent never stated that the 'entire disciplinary system,' is racist but that the interaction of [Disciplinary]

III. DISCUSSION

Respondent contends that the Hearing Committee erred in finding a violation of New York Rule 1.18(b), primarily because none of the disclosures he made were learned during the consultation period (*i.e.*, between his initial contact with Mr. Annabi and the decision not to proceed with the representation.). *See, e.g.*, R. Br. at 17-18. Disciplinary Counsel contends that the Board should find a violation of New York Rule 8.4(d)[11], but otherwise agrees with the Hearing Committee's recommendations. *See* ODC Br. at 14-16.

A. Standard of Review

The Board may make its own findings of fact, but it "must accept the Hearing Committee's evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record." *See In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam) (quoting *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam)); *see also In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam) (defining "substantial evidence" as "enough evidence for a reasonable mind to find sufficient to support the conclusion reached"). The Board reviews *de novo*

Counsel Foster and Chair Mary Soller with Respondent had, in certain instances, undertones of racism . . . .").

[11] Respondent contends that Disciplinary Counsel waived its right to object to any of the Hearing Committee's findings because it did not file a notice of exception to the Hearing Committee Report. *See* R. Reply Br. at 1-5. Board Rule 13.3, however, states that when a party opts to take no exception to a Hearing Committee Report, it "does not waive a party's right to argue in opposition to any findings of fact and conclusions of law in the event that the opposing party files an exception to the Hearing Committee Report or briefing is otherwise ordered."

the Hearing Committee's legal conclusions and its determinations of ultimate fact. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194 (Board owes "no deference to the Hearing Committee's determination of 'ultimate facts,' which are really conclusions of law and thus are reviewed *de novo*"). "Subsidiary findings of basic fact," which, "taken together, lead to an ultimate fact/legal conclusion," but do not themselves have a "legal consequence," are still reviewed under the "substantial evidence" standard. *See In re Krame*, 284 A.3d 745, 752-53 (D.C. 2022) (quoting *Washington Chapter of the Am. Inst. of Architects v. D.C. Dep't of Employment Servs.*, 594 A.2d 83, 86-87 (D.C. 1991)).

B. Choice of Law

D.C. Rule 8.5(b) provides:

> In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows:
>
> (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, and
>
> (2) For any other conduct,
>
> > (i) If the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and
> >
> > (ii) If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

Because Respondent is only licensed to practice in D.C., the D.C. Rules would apply to any conduct not in connection with a matter pending before a tribunal.

The Hearing Committee concluded that the New York Rules applied to the conduct at issue because it was all connected to a matter pending before the U.S. District Court for the Southern District of New York. HC Rpt. at 27-28; *see* Joint Local Rules, S.D.N.Y. and E.D.N.Y., Local Civil Rule 1.5 (providing that violations of the New York State Rules of Professional Conduct are grounds for discipline). Neither party has contested the application of the New York Rules; however, recognizing that the Specification of Charges charged both the New York and D.C. Rules in the alternative, the Hearing Committee addressed both sets of Rules.[12] HC Rpt. at 1.

The Board agrees with the Hearing Committee that the New York Rules apply to all of the alleged misconduct in this case. Clearly, the facts underlying the alleged Rule 8.4(d) violation—Respondent's filings in Mr. Annabi's then-pending case in New York federal court—were "in connection with" that proceeding, and thus New York Rule 8.4(d) applies.

It is a closer question whether the New York Rules apply to the disclosure of information Respondent learned from Mr. Annabi. Although Respondent made those disclosures while a case was pending before a New York tribunal, he learned

[12] Respondent takes issue with the Hearing Committee's alternative analysis of the D.C. Rules, stating that "[i]t is irrelevant what the [Hearing Committee] would do under [the] DC Rule[s] because this matter happened in New York under a different standard of law and Respondent would have taken a different advocacy approach." R. Br. at 15 (emphasis in original).

the underlying information—and thus assumed the duty to hold it in confidence—before there was any pending case. Because "any particular conduct of an attorney shall be subject to only one set of rules of professional conduct," *see* D.C. Rule 8.5, cmt. [3], we must determine whether Respondent's disclosure of information he learned from Mr. Annabi took place in connection with a case pending before a New York tribunal or whether it was "other conduct," to which the D.C. Rules would apply. On balance, we find that there is a substantial connection to the New York case. From the outset of their relationship, Respondent and Mr. Annabi were discussing filing a specific claim against NYU. FF 4. Mr. Annabi's Craigslist advertisement, to which Respondent replied, had stated specifically that he was "[l]ooking for a litigation lawyer to help file a complaint in NY Federal court." DCX 5. Thus, even though the case was not yet "pending" during their consultation, there was already a specific cause of action at issue, and the information Mr. Annabi disclosed related to that cause of action was protected by New York Rule 1.18(b). *Accord In re Ponds*, Board Docket No. 17-BD-015, at 35-36 (BPR June 24, 2019) (applying the Virginia Rules to its consideration of whether client funds were handled appropriately because they were received "in connection with" a case to be filed in Virginia), *decided on other grounds without discussion*, 279 A.3d 357 (D.C. 2022) (per curiam).

C. New York Rule 1.18(b)[13]

New York Rule 1.18(b) provides: "Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client." There is no dispute that Mr. Annabi was a prospective client.[14] New York Rule 1.9(c), in turn, prohibits disclosure of confidential information of former clients except as permitted by New York Rule 1.6, as well as "when the information has become generally known." New York Rule 1.6(b) provides that a lawyer may reveal confidential information:

> (1) to prevent reasonably certain death or substantial bodily harm;
>
> (2) to prevent the client from committing a crime;
>
> (3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud;

[13] Disciplinary Counsel argued to the Hearing Committee that Respondent's disclosures also violated New York (and/or D.C.) Rule 1.6 (revealing client confidences and secrets). The Hearing Committee found that New York Rule 1.6(a) was inapplicable, because Mr. Annabi was never Respondent's client. HC Rpt. at 30-32. Disciplinary Counsel has not taken exception to that conclusion. The Hearing Committee also noted that, if the D.C. Rules applied, Comment [9] to D.C. Rule 1.6 suggests that both Rules 1.6 and 1.18 would apply to interactions with prospective clients. *Id.*

[14] A prospective client is "a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter." N.Y. Rule 1.18(a).

> (4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer's firm or the law firm;
>
> (5) (i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or (ii) to establish or collect a fee; or
>
> (6) when permitted or required under these Rules or to comply with other law or court order.

Whereas New York Rules 1.6 and 1.9 only cover information that is protected by attorney-client privilege, that is likely to be embarrassing or detrimental to the client if disclosed, or that the client has requested be kept confidential, *see* N.Y. Rules 1.6(a) and 1.9(c)(1), *any* information learned from the prospective client is protected under New York Rule 1.18.[15]

Disciplinary Counsel alleged, and the Hearing Committee found, that Respondent disclosed information he learned from Mr. Annabi during their consultation period—that is, between their initial contact and the decision not to proceed with the representation—on three occasions:

(1) copying Mr. DiPalma on an email stating that he had told Mr. Annabi that his lawsuit had fundamental flaws in law and fact and that his legal assertions were mostly frivolous (FF 16);

[15] Contrary to Respondent's position, nothing in New York Rule 1.18 requires Disciplinary Counsel to prove that a recipient of a disclosure acted on the information. *See* R. Br. at 18-19. The question is what Respondent disclosed, not how it was received.

(2) disclosing the same information in his filing requesting to be added as an interested party in Mr. Annabi's case, while adding that NYU's motion to dismiss echoed his advice (FF 18); and

(3) copying Mr. DiPalma on emails describing Mr. Annabi as racist and an antisemite (FF 22, 25, 27).

See HC Rpt. at 37-43. As discussed below, the Board agrees with the Hearing Committee that Respondent learned the information underlying the first two disclosures during the consultation period[16] and that no applicable exceptions to Respondent's duty of confidentiality existed.

1. Respondent revealed information learned during the consultation period.

The Hearing Committee relied on the following evidence in concluding that the information Respondent disclosed was learned during the consultation period:

- Respondent's negative assessment of the NYU case: Respondent sent an email to Mr. Annabi, copying Mr. DiPalma, in which he stated that he that he had "brought this [assessment] to your attention when I conferenced with you via zoom." HC Rpt. at 37 (quoting DCX 16 at 1). In his request to be added as an interested party, he said that Mr. Annabi

[16] Respondent acknowledges that this is the correct standard and that his disagreement with the Hearing Committee is a factual one. *See* R. Br. at 26 (arguing that "[u]nless the Board is satisfied that the impressions – *racist and antisemitic; frivolous lawsuit* – existed during the consult," the Hearing Committee was wrong to find clear and convincing evidence to support a violation of Rule 1.18 (emphasis in original)).

had been unsatisfied with his legal advice, specifically, that the basis for the lawsuit was "unfounded in law and frivolous," adding that he had shared his concerns "during our consultation." *Id.* at 38 (quoting DCX 21 at 2-3).

- Respondent's impression of Mr. Annabi as a racist and anti-Semite: Respondent offered Mr. Annabi a discount on his consultation fee because he was Algerian and, when a dispute arose during the consultation period, he suggested that they "resolve our dispute like two noble Africans who believe in Allah/Hashem" instead of using "a Christian small claims court or PayPal." HC Rpt. at 40-41 (citing Tr. 29 (Respondent); DCX 14 at 7). Respondent testified at the hearing that he believed he was being "wrongly accused of bait and switch" because he is Black, African, and Jewish; Mr. Annabi had made the "bait and switch" accusation during the consultation period. *Id.* at 42 (citing Tr. 36 (Respondent)).

As Respondent points out, common sense dictates that he would not have offered to file a complaint he viewed as frivolous and he would not have offered to represent a client he viewed as racist or anti-Semitic. *See* R. Br. at 25-26; R. Reply Br. at 15. The Board agrees that it is unlikely that Respondent would have entertained the idea of representing Mr. Annabi if he had already developed a negative impression of him, but, as stated above, the Hearing Committee found that

Respondent developed that impression based in part on events that took place after he offered a proposed engagement agreement.

In support of his argument, Respondent quotes the Court opinion in *In re Gonzalez*:

> The Committee concluded that Gonzalez had not revealed a "secret" of his clients because, in the Committee's view, the principal facts disclosed by Gonzalez "should not be deemed information gained in the professional relationship between Gonzalez and his clients."

R. Br. at 2 (quoting *In re Gonzalez*, 773 A.2d 1026, 1030 (D.C. 2001)). Respondent neglects to mention that the Court *overturned* that finding; the very next sentence of the opinion states: "We are unable to agree with this analysis." *Gonzalez*, 773 A.2d at 1030. Whereas the hearing committee had limited its inquiry to whether the respondent learned the information "as a part of his fact-gathering for the case he was handling," the Court held that if the words "gained in the professional relationship" (under Virginia Rule 1.6) are "read literally and accorded their everyday meaning, then there can be no doubt that the information . . . disclosed . . . was so 'gained.' If there had been no professional relationship, then the [information disclosed] would not have existed." *Id.* Therefore, consistent with *Gonzalez*, the Board considers whether Respondent would have learned the information disclosed but for his consultation with Mr. Annabi.

(i) Respondent's assessment of Mr. Annabi's case

Respondent does not contest the Hearing Committee's findings that he informed NYU's counsel about weaknesses in Annabi's case, and that he had learned about the merits of the case (regardless of whether he formed an impression

about them) during the consultation period. Those findings are supported by substantial evidence.[17] Nor does Respondent contend that his opinion changed after reading Mr. Annabi's complaint against NYU—an argument that would be at odds with Respondent's assertions to Mr. Annabi and Mr. DiPalma. *See* FF 16; DCX 16 at 1-2 ("[A]s I stated during our consult, your legal assertions are mostly frivolous and not based on any established or existing law."). Therefore, the Board agrees with the Hearing Committee that the information Respondent disclosed by informing Mr. DiPalma and the court of his assessment of Mr. Annabi's case was gained during the consultation period.

(ii) Respondent's accusations of racism and anti-Semitism

Respondent does not contest the Hearing Committee's finding that he learned of and discussed Mr. Annabi's ethnicity during the consultation period, even as their relationship began to sour. *See* FF 7. That finding is supported by substantial evidence. But it is not clear that accusing Mr. Annabi of racism and anti-Semitism "use[d] or reveal[ed]" information "learned . . . from a prospective client," as prohibited by New York Rule 1.18(b)—a question of ultimate fact that the Board reviews *de novo*.

In the emails on which he copied Mr. DiPalma, Respondent linked his accusations of racism and anti-Semitism to Mr. Annabi's reaction to Respondent's

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[17] Challenges to the Hearing Committee's factual findings, including its findings as to the dates on which Respondent learned any particular information, are upheld if they are supported by substantial evidence. *See* Section III.A, *supra*. Mixed questions of law and fact are reviewed *de novo*. *See In re Szymkowicz*, 124 A.3d 1078, 1085 (D.C. 2015) (per curiam).

proposed fee agreement, in which Mr. Annabi accused him of a “bait and switch,” and his refusal to refund the $200 consultation fee after the representation did not move forward. *See* FF 23-25; DCX 25 at 1-3. The existence of those disputes is the only “information” respondent revealed by sharing his opinion of Mr. Annabi’s character, and, unlike the facts bearing on the strengths and weaknesses of Mr. Annabi’s case, it was not the sort of information that Respondent “learned . . . from” Mr. Annabi. Contrary to the Hearing Committee’s framing of the issue, *see* HC Rpt. at 39-43, it makes no difference whether Respondent developed his impression of Mr. Annabi’s character during or after the consultation period because Respondent did not reveal information protected by New York Rule 1.18(b).

2. Respondent’s disclosures were not otherwise justified.

Before the Hearing Committee, Respondent argued in the alternative that he was permitted to reveal confidential information regarding Mr. Annabi based on New York Rule 1.6(b)(2) (to prevent the client from committing a crime) because Mr. Annabi was allegedly defrauding the court by using a false address. *See* HC Rpt. at 42. The Hearing Committee rejected the arguments because the alleged crime had already occurred and Respondent’s services had not been used. *See id.* at 43. Respondent appears to have abandoned his New York Rule 1.6(b)(2) defense before the Board, instead invoking Mr. Annabi’s alleged fraud to show that he was acting as a Good Samaritan, rather than seeking revenge. *See* R. Br. at 36 (“Any lawyer is under an obligation to correct misleading information presented to courts by a prospective or current client known to him.”); R. Reply Br. at 17 (“Annabi’s conduct

(filing of lawsuits with false addresses) cannot be ignored as irrelevant to Respondent's articulated Good Samaritan defense."). Respondent cites no authority to support the obligation to correct information provided by prospective clients, or that recognizes a "Good Samaritan defense." We know of no authority that supports Respondent's arguments, and we agree with the Hearing Committee that Respondent's disclosures did not fall under any exception to New York Rule 1.18(b).

D. New York Rule 8.4(d)

New York Rule 8.4(d) provides that a lawyer "shall not . . . engage in conduct that is prejudicial to the administration of justice." Comment [3] to the Rule[18] explains that it is

> generally invoked to punish conduct, whether or not it violates another ethics rule, that results in substantial harm to the justice system comparable to those caused by obstruction of justice, such as advising a client to testify falsely, paying a witness to be unavailable, altering documents, repeatedly disrupting a proceeding, or failing to cooperate in an attorney disciplinary investigation or proceeding . . . [and] must be seriously inconsistent with a lawyer's responsibility as an officer of the court.

[18] Though the Comments are part of the official version of the New York Rules of Professional Conduct published by the New York State Bar Association, only the Rules themselves have been adopted by the Appellate Division of the New York State Supreme Court, while the Comments were adopted by the New York State Bar Association for the purpose of providing "guidance for attorneys in complying with the Rules." *See* https://nysba.org/attorney-resources/professional-standards (last visited July 26, 2024). "The Comments are intended as guides to interpretation, but the text of each Rule is authoritative." N.Y. Rules of Professional Conduct, Scope ¶ [13].

By contrast, D.C. Rule 8.4(d) only requires a "*potential*[] impact upon the process to a serious and adverse degree." *In re Hopkins*, 677 A.2d 55, 61 (D.C. 1996) (emphasis added) (citing *In re Thompson*, 478 A.2d 1061, 1061-62 n.1 (D.C. 1984)).

The Hearing Committee found that while Respondent's conduct would violate D.C. Rule 8.4(d) (serious interference with the administration of justice), the New York Rule (conduct prejudicial to the administration of justice) is narrower, and Disciplinary Counsel failed to prove the violation. *See* HC Rpt. at 48-50 & n.32. The Hearing Committee relied on Comment [3] to the New York Rule, quoted above. *See id.* at 48. It appears that Comment [3] has not been cited in any New York Appellate Division cases, though it has been cited in several legal ethics opinions. *E.g.*, New York State Bar Ass'n Comm. on Pro. Ethics, Ethics Op. 1048 at 10 & n.16 (2015) (noting that Rule 8.4(d) "is generally meant to address flagrantly improper kinds of conduct").

Disciplinary Counsel contends that the New York Rule is in fact broader than the D.C. Rule because analogous conduct has been found to be prejudicial to the administration of justice. *See* ODC Br. at 14-16 (citing *In re Moran*, 42 A.D.3d 272, 275 (N.Y. App. 2007) (per curiam) (posting on the attorney's website information concerning a confidential disciplinary investigation into alleged misconduct by a rival law firm)[19], *In re Lee*, 32 A.D.3d 74, 75 (N.Y. App. 2006) (per curiam) (continuing to reveal confidences and secrets of a former client after a court held

[19] Based on the limited factual summary in the *Moran* opinion, it is unclear to what degree the respondent harmed the confidential investigation into the rival firm.

him in contempt for doing so, and violating court orders eighty-three times), and *In re Chatarpaul*, 271 A.D.2d 76, 77-79 (N.Y. App. 2000) (per curiam) (threatening to reveal confidences and secrets of a client in order to secure payment of legal fees and sending confidential information about the client's criminal matter to a bank representative)). The legal analysis in those opinions is very limited, however, and the underlying fact-finding decisions are confidential. *See* N.Y. Judiciary Rules for Att'y Discipline Matters, 22 NYCRR § 1240.18(b) (2016).

Furthermore, the three cases cited by Disciplinary Counsel applied the predecessor to New York Rule 8.4(d): DR 1-102(a)(5).[20] While the former Rule also prohibited "conduct prejudicial to the administration of justice," it did not include comments, and thus the Appellate Division may not have considered whether those attorneys caused "substantial harm to the justice system" as provided in Comment [3] to the current Rule 8.4(d) or whether a different standard should apply. Disciplinary Counsel does not directly address Comment [3] but nevertheless contends that the Hearing Committee applied the wrong standard. *See* ODC Br. at 8 ("*In the Hearing Committee's view*, the New York rule is violated only when the conduct is comparable to obstruction of justice." (emphasis added)).

Still, the cases cited by Disciplinary Counsel may be reconciled with Comment [3]. The New York City Bar Association, in its Ethics Opinion 2017-3,

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[20] The New York Code of Professional Responsibility (including DR 1-102(a)(5)) was repealed and replaced by the New York Rules of Professional Conduct in April 2009. *See* https://nysba.org/attorney-resources/professional-standards/ (last visited July 26, 2024).

opined that threatening unrelated legal action against an opposing party could, in rare cases, violate New York Rule 8.4(d), even though it "may not appear as egregious as paying a witness to be unavailable." Whereas threats to take additional action related to a specific issue already in dispute would not violate the Rule, threats that are unrelated to the merits of issues in dispute could be seen as "extortionate in nature," even if they do not rise to the level of criminal extortion. *Id.* Furthermore, "using matters extraneous to the substantive and procedural merits of the case to derail the fair adjudication of [a] plaintiff's claims and deprive him of his day in court" would cause comparable harm to the egregious conduct cited in Comment [3]. *Id.*

Although the Hearing Committee found that "Respondent's actions had the potential to derail Mr. Annabi's case," it found that he ultimately only "required extra work for [the court], for Mr. Annabi, and for his opposing counsel." HC Rpt. at 50 n.32 (citing FF 30-35, 38). It is not clear from the Hearing Committee's analysis or the factual findings it cited how Respondent's actions "had the potential to derail Mr. Annabi's case." And Disciplinary Counsel does not contend that an unsuccessful effort to "derail Mr. Annabi's case" violates New York Rule 8.4(d). Rather, it contends that he *actually* "disrupted the case by requiring the court to rule on his frivolous motion to intervene, and later by leading the court to issue a mistaken order admonishing Annabi for sending a motion he had not sent and then a second order to correct the original." ODC Br. at 15-16. Notably, the court in Mr. Annabi's

case did not mention or cite Respondent's conduct in its decision to dismiss Mr. Annabi's case. *See* RX 426.

The Board concludes that any "disruptions" Respondent caused did not have the potential to derail Mr. Annabi's case or deprive him of his day in court, and thus concludes that Disciplinary Counsel failed to prove a violation of New York Rule 8.4(d) by clear and convincing evidence.

IV. SANCTION

The sanction imposed in an attorney disciplinary matter must protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted). The sanction must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1).

A. Suspension

The Hearing Committee acknowledged that revealing client confidences and secrets typically results in a non-suspensory sanction; however, it found that a thirty-day suspension was appropriate here, particularly due to Respondent's retaliatory motive and continuing efforts to blame Mr. Annabi for his behavior. HC Rpt. at 53-

61 (citing *In re Paul*, 292 A.3d 779, 788 (D.C. 2023) (imposing a thirty-day suspension based on the retaliatory nature of the respondent's disclosure of client secrets)). The Board agrees that a suspensory sanction is appropriate based on the retaliatory motive, as in *Paul*, as well as Respondent's continuing denial of wrongdoing.

Respondent contends that the Hearing Committee misinterpreted his motivation as an effort to harm Mr. Annabi, when he merely tried to act as a Good Samaritan by reporting alleged fraud to the court and defending himself against harassment by adding Mr. DiPalma as a "witness" on his email chains with Mr. Annabi. *See* R. Br. at 23. Respondent would have been entitled to reveal information learned during his consultation with Mr. Annabi to the extent reasonably necessary to prevent Mr. Annabi from committing a crime, or to stop a crime in progress in which his legal services had been used. *See* N.Y. Rule 1.6(b)(2); *id.* cmts. [6A], [6D]. He also would have been entitled to defend himself, only to the extent reasonably necessary, against allegations of wrongdoing by responding directly to Mr. Annabi's claims in the small claims action against him. *See* N.Y. Rule 1.6(b)(5); *id.* cmt. [10]. But Respondent did not avail himself of these narrow exceptions to his duty of confidentiality toward Mr. Annabi. To the extent he felt compelled to report an ongoing crime to the court, *see* R. Br. at 36, that issue was unrelated to the protected information he also disclosed.

Instead, Respondent's misconduct began after he was notified of Mr. Annabi's lawsuit against him. *See* FF 14-16. He transparently betrayed Mr.

Annabi's trust as he declared his willingness to disclose confidential information if Mr. Annabi would not back down. *See, e.g.*, DCX 26 at 1-2 (stating, in a response to Mr. Annabi's email about a document request from Disciplinary Counsel, that "there are many exceptions to attorney-client privilege, including fraud and crime"); DCX 27 at 1-2 (after telling Mr. Annabi that he would be filing a second motion in the NYU case, stating that he would "repeat th[e] accusation to both the DC Bar and to Judge Liman" that Mr. Annabi was "a racist antisemite and a liar as well"). As a whole, Respondent's August 2022 emails, on which he copied Mr. DiPalma, displayed an effort to threaten or embarrass Mr. Annabi by revealing information he learned during their consultation—a situation the confidentiality rules are designed to prevent.

Even if Respondent's motives were altruistic—which is unlikely given the context of his ongoing fee dispute with Mr. Annabi—that would not override his ethical responsibility to safeguard information he learned from his prospective client. Accordingly, the Board adopts the Hearing Committee's finding of a retaliatory motive and its conclusion that a thirty-day suspension is warranted.

B. Fitness

In *In re Cater*, 887 A.2d 1, 6 (D.C. 2005), the D.C. Court of Appeals 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." 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).

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

> (1) the nature and circumstances of the misconduct for which the attorney was disciplined;
>
> (2) whether the attorney recognizes the seriousness of the misconduct;
>
> (3) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;
>
> (4) the attorney's present character; and
>
> (5) the attorney's present qualifications and competence to practice law.

Cater, 887 A.2d at 21, 25. We address each factor below.

1. <u>Nature and Circumstances of the Misconduct</u>

The Board agrees with the Hearing Committee that the misconduct was serious, relative to cases involving client confidences and secrets. *See* HC Rpt. at 63. On the other hand, Respondent committed a single Rule violation whereas most cases in which a fitness requirement has been imposed included multiple violations.

2. <u>Recognition of the Seriousness of the Misconduct</u>

Respondent regrets some of his actions, but denies engaging in misconduct. *See id.* The fact that Respondent continues to view Mr. Annabi's alleged fraud as

justifying his behavior indicates that he does not fully understand his obligation to protect confidential information.

3. Steps Taken to Remedy Past Wrongs and Prevent Future Ones

Respondent's misunderstanding of aspects of the charges against him—namely, his failure to recognize that the issue of whether Mr. Annabi misrepresented his legal residency is irrelevant to the question of whether he revealed confidential information[21]—creates some doubt as to whether Respondent will avoid similar behavior when confronted with difficult clients or prospective clients in the future. *See* HC Rpt. at 64-65; ODC Br. at 20 ("If Sibanda truly believes his conduct was justified—revealing legal advice he gave to a potential client; accusing him of racism and antisemitism; attempting to intervene in the lawsuit; and filing documents in violation of a court order—there is no reason to think he would not do so in the

[21] Respondent continues to raise this defense throughout his briefs to the Board, adding that to find that Mr. Annabi's alleged fraud is not a defense to the charges amounts to condoning his behavior. *See* R. Br. 44; R. Reply Br. at 13 n.6. He contends that the Board's role to protect clients from ethical misconduct by members of the Bar is "equally balanced by its role to protect the public from Annabi type fraud." R. Reply Br. at 17. He contends that the Hearing Committee should not have viewed his accusations of fraud against Mr. Annabi as irrelevant because they were "at the center and core of Respondent's defense to these charges and [were] a relevant issue *for Respondent*." R. Br. at 41 (emphasis added); *see also* R. Reply Br. at 8 ("[Disciplinary Counsel] was supposed to show that either diversity jurisdiction allows for what Annabi has done *or* that there is impeachment evidence against Respondent that the fraud articulation was never presently held by Respondent at occurrence of the dispute." (emphases in original)). The Board agrees with the Hearing Committee that this defense was not relevant to the charged violations of Rules 1.18 and 8.4(d), as neither Rule provides for such an exception. *See* Sections III.C.2 and III.D, *supra*.

future."). Indeed, Respondent continues to assert that he "acted ethically correct, by sounding the warning bells to various people, including the [Hearing Committee]," about Mr. Annabi's alleged criminal conduct. R. Br. at 46; *see also* HC Rpt. at 73 ("Respondent's ultimate position is that he did nothing wrong and that any flaw in his conduct should be excused because of Mr. Annabi's conduct."). But Respondent deserves some credit for expressing a need to pay closer attention to the rules in general. *See* HC Rpt. at 65-66. Respondent also asserts that he "has edited his retainer and adjusted the language appropriately," R. Br. at 38, but he does not cite any evidence or describe the changes he has made.

4. Present Character

Like the Hearing Committee and Disciplinary Counsel, we are concerned that Respondent's focus on protecting his reputation over respecting his ethical obligations toward prospective clients, regardless of how those clients later behave toward him, might lead to similar misconduct in the future. *See* HC Rpt. at 66-67. And Respondent's over-the-top, personal criticisms of Disciplinary Counsel and the Hearing Committee Chair reflect negatively on his present character. *E.g.*, R. Br. at 8 ("The Board should take [the Hearing Committee Report] for what it is: a partisan expert opinion that ignores facts, context and is motivated by animus[] towards Respondent . . . ." (emphasis in original)), 37 (explaining that he "does not respect" the Hearing Committee Chair or the Assistant Disciplinary Counsel because they are "people who unfairly prosecute others or seek excessive punishment of others based on ignoring relevant facts"), 43 (accusing the Hearing Committee of "outright lies");

see also, e.g., note 7, *supra* (discussing Respondent's subpoena request). But unlike the Hearing Committee, we do not view Respondent's impulsive arguments and filings during these proceedings as a significant factor. *See id.* at 66-67.

While Respondent's defenses to the disciplinary charges are not considered in aggravation of sanction, he goes farther and continues to cite Mr. Annabi's alleged harassment as necessitating his behavior, portraying himself as the victim. *See* HC Rpt. at 63; R Br. at 36 ("The [Hearing Committee] does not even suggest an alternative way Respondent could have addressed this fraud by Annabi and his harassment."). Blaming a former client for one's own misconduct is a serious aggravating factor that can weigh in favor of a fitness requirement. *See In re Klayman*, Board Docket No. 17-BD-063, at 32-33 (BPR Oct. 2, 2020) ("While a respondent has every right to vigorously defend herself in a disciplinary matter, disparaging one's client to avoid taking responsibility for her misconduct is simply a bridge too far."), *recommendation adopted*, 282 A.3d 584 (D.C. 2022) (per curiam). Respondent cites no authority to support his argument that Mr. Annabi's conduct justified Respondent's disclosures. *Cf.* N.Y. Rule 1.6(b) (identifying instances in which client allegations warrant disclosure of confidences or secrets).

5. Present Qualifications and Competence to Practice Law

While Respondent has the requisite qualifications to practice law, the Hearing Committee expressed serious concerns about his competence. It was concerned that Respondent's proposed engagement agreement referenced the ABA Model Rules of Professional Conduct, rather than those of the District of Columbia (where he is

licensed).[22] *See* HC Rpt. at 69 (citing DCX 13 at 1 ("Pursuant to Model Rule 1.5.b[,] Mr. Karim Annabi retains Attorney Kissinger N. Sibanda . . . .")). The proposed fee agreement, however, does list Respondent's Bar memberships, *see* DCX 13 at 1, so there was no apparent attempt to mislead, and the Hearing Committee's statement that "[t]here is no indication that he informed his prospective clients that he was licensed only in the District of Columbia," HC Rpt. at 69, is incorrect. The Hearing Committee was also concerned that Respondent's reference to himself as "head of litigation with the Law Offices of Kissinger N. Sibanda" was misleading in that it falsely implied that he worked with a law firm with other attorneys or staff, rather than as a solo practitioner. *Id.* (citing FF 3, DCX 21, and Tr. 130). Such statements might violate D.C. Rule of Professional Conduct 7.1[23], which prohibits misleading communications about the lawyer or lawyer's services, including the structure of the lawyer's firm. *See* D.C. Bar Legal Ethics Op. 332 (Nov. 2005). Disciplinary Counsel did not allege a violation of Rule 7.1, however. Although the Board may consider uncharged misconduct in aggravation of sanction if proven by clear and

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[22] Respondent contends that he gave Mr. Annabi a copy of his resume, which listed his bar memberships, before their consultation. *See* R. Br. at 11. But the exhibit Respondent cites (DCX 14, an email exchange with Mr. Annabi) makes no reference to his resume. DCX 6 shows that Respondent purported to send his resume before the consultation, but the resume itself was not introduced into evidence, so it is not clear whether it listed his Bar memberships. Respondent cites his current website as proof that he discloses his Bar memberships to potential clients, *see* R. Br. at 12; however, there is no evidence as to the contents of his website during the time-period in question.

[23] Mr. Annabi made that accusation (invoking ABA Model Rule 7.1) in his motion to sanction Respondent. RX 362.

convincing evidence, *see* Order, *In re Schwartz*, Board Docket No. 13-BD-052, at 6-9 (BPR July 31, 2017), *aff'd*, 221 A.3d 925 (D.C. 2019) (per curiam), we decline to do so when the allegation is first raised in the Hearing Committee Report and Respondent has not been afforded an opportunity to present evidence in his defense. *Accord In re Crawford*, Board Docket No. 15-BD-108, at 25 n.10 (BPR Dec. 9, 2022), *recommendation adopted after no exceptions filed*, 290 A.3d 934 (D.C. 2023) (per curiam); *see In re Fay*, 111 A.3d 1025 (D.C. 2015) (per curiam) ("The due process requirement is . . . satisfied by adequate notice of the charges and a meaningful opportunity to be heard."); *see also* R. Br. at 14 (criticizing the Hearing Committee's "attempt to add new charges by accusation in their [Report] at the last minute").

The Hearing Committee devoted most of its discussion of Respondent's competence to his conduct as a *pro se* litigant in these proceedings. *See* HC Rpt. at 67-73 ("Throughout these proceedings, Respondent has shown a lack of understanding of the charges against him and the procedural rules that apply to disciplinary proceedings in the District of Columbia."); Section II.C, *supra*. It recounted Respondent's numerous but relatively minor procedural missteps, then repeated its criticism that Respondent fundamentally misunderstood the nature of the charges against him, particularly his insistence that Mr. Annabi's use of different residential addresses in New York court proceedings should result in dismissal of this matter. HC Rpt. at 64-65; *see also id.* at 68 ("Even after Disciplinary Counsel – in its opening statement – clarified that Respondent's accusation of fraud by Mr.

Annabi was not a basis for the charges of Rules 1.6 and 1.18 violations, and that the substance of Respondent's disclosures to the court about Mr. Annabi's address were not at issue, Respondent, in his defense, proceeded to present evidence intending to show that his accusations of fraud and false pretenses against Mr. Annabi were true.").

The Court has considered a *pro se* respondent's behavior during a disciplinary proceeding that demonstrated a continuation of a pattern of misconduct when imposing a fitness requirement. *See, e.g.*, *In re Yelverton*, 105 A.3d 413, 430-31 (D.C. 2014) (noting that the respondent was "using the same playbook that brought him into the disciplinary proceedings"); *see also, e.g.*, *In re Stuart*, 290 A.3d 20, 27 (D.C. 2023) (per curiam) (denying a petition for reinstatement and citing the petitioner's failure to abide by procedures and deadlines, "reliance on 'inapposite precedent' and voluminous, duplicative, and largely irrelevant evidence" (quoting Hearing Committee Report)). Unlike in *Yelverton*, however, Respondent's many deficiencies only partially mirrored the underlying facts, and those facts related to the unproven charge of New York Rule 8.4(d). And unlike in a reinstatement case, a respondent defending himself against disciplinary charges is not required to prove his competence to practice law. We agree with Respondent that the stress and challenges of representing himself present a "logical explanation to any observer for some of the mistakes," and his "lack of experience in disciplinary matters should [not] aggregate disciplinary action against him for a first-time offence." *See* R. Br. at 42.

Accordingly, while we share the Hearing Committee's concerns about Respondent's ability to follow procedural rules and to understand the nature of the charges against him, we do not share its "serious doubt" about his continuing fitness to practice law. Rather, consistent with Respondent's observation that the disciplinary proceeding presented a "teachable moment," *see* R. Br. at 51-52 (citing Tr. 429), the Board concludes that its concerns can be addressed through the less onerous requirement of continuing legal education.

V. CONCLUSION

For the foregoing reasons, the Board finds that Respondent violated New York Rule 1.18(b) and should receive the sanction of a thirty-day suspension with reinstatement conditioned on his completion of six hours of CLE courses on legal ethics, including at least three hours focused on protection of client confidences and secrets. The Board further recommends that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14 and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By:

Sundeep Hora, Vice Chair

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