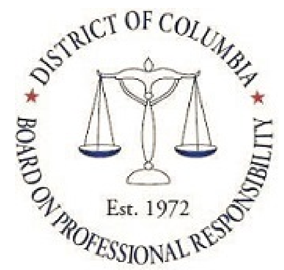
THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*



Issued
November 1, 2024

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
LYNN BURKE, ESQUIRE	:	
	:	Board Docket No. 21-BD-009
Respondent.	:	Disciplinary Docket Nos. 2014-D303,
	:	2017-D266, 2018-D102, 2018-D325,
An Administratively Suspended	:	& 2022-D134
Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 1006423)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

In connection with five different matters, the Ad Hoc Hearing Committee found that Respondent Lynn M. Burke violated the following disciplinary rules: D.C. Rules 1.5(a) (unreasonable fee), 1.5(b) (failure to provide fee agreement), 1.15(a) (failure to keep records and commingling), 1.15(b) (failure to keep client funds in a trust account), 1.16(d) (failure to return unearned fees and client files), 5.5(a) (unauthorized practice of law), 7.1(a) and 7.5(a) (misleading communications concerning a lawyer's services), and 8.4(c) (dishonesty); North Carolina Rules 1.4(a) and (b) (failure to communicate), and 7.1 (misleading communications concerning a lawyer's services); and Maryland Rule 19-301.3(a) (diligence and zeal). In two of the matters at issue, the Hearing Committee also concluded that Disciplinary Counsel failed to prove violations of D.C. Rules 1.15(a) and (e)

* 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.

(misappropriation)[1], 1.15(d) (failure to segregate funds), and 8.4(c) (dishonesty).[2] The Hearing Committee recommended that Respondent be suspended from the practice of law for two years, with a fitness requirement prior to reinstatement, and that she be ordered to pay restitution with interest to Betty Parker.

Neither Disciplinary Counsel nor Respondent took exception to the Hearing Committee's report.[3] Accordingly, "the Board shall take action based on the

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[1] In connection with her representation of Pedro Osorio-Aparicio in an immigration matter, Disciplinary Counsel argued that Respondent accepted an advanced fee and subsequently misappropriated those funds by spending the money before she had performed any services, causing the balance of her account to drop below the amount she was required to hold in trust. Disciplinary Counsel's Post-Hearing Brief at 26. Having conducted an exhaustive review of the record, the Hearing Committee agreed with Disciplinary Counsel that Respondent had not filed the relevant immigration applications before she spent the advanced fees. FF 30. However, it did not agree that Respondent had done no work before depleting the account, as Disciplinary Counsel had alleged. The Hearing Committee's review of the record revealed that Respondent "actively engaged" in work on the matter before spending the advanced fees. FF 30. It concluded that Disciplinary Counsel failed to prove that Respondent had not earned the advanced fees before spending them and, as a result, it could not conclude that she had misappropriated those fees. HC Rpt. at 28.

During the pendency of this case before the Board, the Court issued its decision in *In re Alexei*, 319 A.3d 404, 411 (D.C. 2024) and held that, in future cases, "as a default rule, attorneys earn funds advanced on a flat-fee payment only when all the legal services pertaining to the flat fee are complete." Had the conduct at issue taken place after the *Alexei* decision, the Board may have reached a different determination on this matter.

[2] The Board consolidated the two sets of charges underlying this matter on July 17, 2023: Specification of Charges for Disciplinary Docket No. 2022-D134 (filed April 11, 2023) and the amended Specification of Charges in Disciplinary Docket Nos. 2014-D303 *et al.* (filed April 25, 2023).

[3] The Hearing Committee Report was issued on June 6, 2024, and on June 17, 2024, Disciplinary Counsel filed a letter indicating that it did not take exception.

record." Board Rule 13.5. Having reviewed the record in this matter, the Board concurs with the Hearing Committee's factual findings, as supported by substantial evidence in the record.[4] *See In re Thompson*, 583 A.2d 1006, 1007-08 (D.C. 1990)

Respondent never filed a notice of exception in this matter. *See* Board Rule 13.3 (within ten days of the Hearing Committee Report's issuance, a party may file any notice of exception).

[4] Disciplinary Counsel argued before the Hearing Committee that Respondent misappropriated advanced costs paid to her by her client, Mr. Osorio-Aparicio. In rejecting this argument, the Hearing Committee relied upon a letter that Respondent submitted in response to Disciplinary Counsel's earlier investigation, and concluded that although Mr. Osorio-Aparicio originally gave the funds to Respondent as advanced costs, the client later agreed that Respondent could convert the funds to advanced fees. FF 28. The Hearing Committee thereby concluded that Disciplinary Counsel "failed to prove that Mr. Osorio's $1,070 payment, which initially constituted an advance payment for costs, was not converted on consent to an advance payment of legal fees." HC Rpt. at 28.

The Hearing Committee reasoned that:

> Respondent's account of the conversion of monies from advance costs to advance fees was explained to ODC in its investigation and supported by a third-party affidavit. FF 28; DCX 25 at 405-06. Under those circumstances, Respondent sustained her production burden of proof, and it is wholly appropriate to expect ODC to refute it with contrary evidence.

HC Rpt. at 28 n.20.

A Hearing Committee may admit any evidence that is "relevant, not privileged, and not merely cumulative" and must "determine the weight and significance to be accorded all items of evidence upon which it relies." Board Rule 11.3. "It may additionally be 'guided by, but shall not be bound by the provisions or rules of court practice, procedure, pleading, or evidence.' For this reason, [the] court has concluded that the Hearing Committee may consider hearsay evidence." *In re Wilde*, 299 A.3d 592, 604 (D.C. 2023) (quoting Board Report) (citing *In re Kennedy*, 605 A.2d 600, 603 (D.C. 1992)). Notwithstanding the wide latitude afforded hearing committees in assessing the credibility of evidence upon which it relies, we caution

(per curiam) (defining "substantial evidence" as "enough evidence for a reasonable mind to find sufficient to support the conclusion reached"). The Board reviewed *de novo* the Hearing Committee's legal conclusions and determinations of ultimate fact and concurs with them as well. *See In re Klayman*, 228 A.3d 713, 717 (D.C. 2020).

For the reasons set forth in the Hearing Committee's Report and Recommendation, which is attached hereto and adopted and incorporated by reference, we agree that there is clear and convincing evidence that Respondent violated D.C. Rules 1.5(a) (unreasonable fee), 1.5(b) (failure to provide fee agreement), 1.15(a) (failure to keep records and commingling), 1.15(b) (failure to keep client funds in a trust account), 1.16(d) (failure to return unearned fees and client files), 5.5(a) (unauthorized practice of law), 7.1(a) and 7.5(a) (misleading communications concerning a lawyer's services), and 8.4(c) dishonesty; North Carolina Rules 1.4(a) and (b) (failure to communicate), and 7.1 (misleading communications concerning a lawyer's services); and Maryland Rule 19-301.3(a) (diligence and zeal).

Notwithstanding the foregoing, the Hearing Committee's report raises an issue concerning the formation of an attorney-client relationship that merits further

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that future hearing committees should closely consider the propriety of relying upon a respondent's unsworn hearsay statements when the respondent neither substantively participates in the proceedings nor is subject to cross-examination at a hearing. *See In re Godette*, 919 A.2d 1157, 1164 (D.C. 2007) ("An appellate body's duty to defer to the findings of the trier of fact is obviously at its zenith where that trier of fact had the opportunity to hear the testimony and observe the demeanor of the witness."). Here, the Hearing Committee relied upon such evidence after determining that the relevant contents were corroborated by other reliable evidence.

support. The Hearing Committee found that Jesse and Sharon Battle engaged and paid Respondent to pursue a timely motion under 28 U.S.C. § 2255 (the "Simmons Motion") attempting to reduce a 30-year federal prison sentence of their adult son, David Stewart. FF 5-6. Respondent provided no written engagement for the matter. FF 6. For several months thereafter, Respondent communicated with the Battles about legal strategies, remedies, and her progress on the Simmons Motion. *See generally* DCX 6 at 8-18, 21-31 (series of email and text communications between Respondent and the Battles, including communications concerning strategy).[5] During that same period, Respondent had only a single phone call with the incarcerated Mr. Stewart. FF 7.

Just prior to the deadline for filing the Simmons Motion for which the Battles had engaged Respondent, she suddenly advised them that she would not pursue the motion herself, but intended to have Mr. Stewart proceed *pro se* since, in her view, courts give "more latitude to *pro se* litigants." FF 10. The Battles opposed that approach and insisted that Respondent sign, file, and pursue the Simmons Motion on Stewart's behalf. FF 11. Respondent responded by telling the Battles—for the first time—that she did not represent them: Mr. Stewart alone was her client. HC Rpt. at 6 n.5. The Battles challenged that assertion, contending that they were Respondent's clients along with their son. *Id.* Respondent ignored the Battles' protests and arranged to have Mr. Stewart sign the Simmons Motion *pro se*, without further discussion with either Mr. Stewart or with the Battles.

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[5] "DCX" refers to Disciplinary Counsel's exhibits.

The Hearing Committee found that Respondent violated North Carolina Rules 1.4(a) and (b) in connection with this representation.[6] The Hearing Committee concluded that

> In her representation of the Battles' son, Respondent utterly failed to keep either him or the Battles reasonably informed about the status of the representation or respond to their reasonable requests for information. When Respondent was retained by the Battles, she agreed to visit their son in prison as part of the representation, but she never did so. FF 7. Respondent spoke to the son just once, on the phone. PFF 17. She also failed to keep him reasonably informed about the representation by failing to discuss the motion in his case or her recommendation that he file the motion pro se. *See* FF 7, 10, 12-13. Providing the motion for his *pro se* signature, without concomitantly explaining it, denied him "sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued . . . ." N.C. Rule 1.4, cmt. [5]. She also failed to keep the Battles informed or respond to their

[6] In accordance with D.C. Rule 8.5(b)(1) (choice of law), the Hearing Committee applied the North Carolina disciplinary rules in the *Battle* matter because Respondent's misconduct occurred "in connection with" a motion filed in the United States District Court for the Middle District of North Carolina, although Respondent did not appear in that court, but simply couriered Mr. Stewart's Simmons Motion to the court. That court has adopted the Code of Professional Responsibility, as adopted by the Supreme Court of North Carolina. *See* M.D.N.C. Civ. R., LR 83.10e.

North Carolina Rule 1.4(a) requires attorneys to

> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

> reasonable inquiries about the motion and its filing. PFF 14-15, 18-24. Clear and convincing record evidence demonstrates that Respondent violated North Carolina Rules 1.4(a) and (b) as charged.

HC Rpt. at 47-48.

While we agree that Respondent violated Rule 1.4(a), since that rule governs an attorney's obligation to communicate with her clients, our conclusion necessarily rests upon our further determination that, in addition to Mr. Stewart, the Battles were also Respondent's clients. The Hearing Committee found that "the Battles reasonably considered themselves and their son to be Respondent's clients." HC Rpt. at 6 n. 5. While a relevant factor in the analysis, the client's view alone cannot resolve the question whether an attorney-client relationship has been formed. *See N.C. State Bar v. Merritt*, 877 S.E.2d 892, 901 (N.C. Ct. App. 2022) ("'[T]he relation of attorney and client may be implied from the conduct of the parties, and is not dependent on the payment of a fee, nor upon the execution of a formal contract.' Whether an attorney-client relationship exists depends on whether the 'relationship could reasonably be inferred' from the attorney's conduct." (citations omitted)); *In re Dickens*, 174 A.3d 283, 296 (D.C. 2017) (quoting *In re Fay*, 111 A.3d 1025, 1030 (D.C. 2015)); *In re Robbins*, 192 A.3d 558, 563 (D.C. 2018) ("Whether an attorney-client relationship existed depends on the circumstances of each case."). "[A]n attorney-client relationship may arise in the absence of a written agreement, payment of fees, or even delivery of actual legal advice. 'All that is required ... is that the parties explicitly or by their conduct, manifest[ed] an intention to create the attorney[-]client relationship.'" *In re O'Neill*, 276 A.3d 492, 500 (D.C. 2022)

(alteration in original) (citations omitted). "Although the client's perception of the relationship is relevant, it is not dispositive." *Robbins*, 192 A.3d at 563-64 (upholding Hearing Committee's finding supported by substantial evidence, even where evidence may support a contrary view).

Though this matter presents unique facts, there is clear and convincing evidence that Respondent acted as the Battles' attorney. The Battles retained and paid Respondent's fee over the course of several months.[7] And most of Respondent's legal advice about the engagement was conveyed to the Battles. *See supra*, DCX 6 at 8-18, 21-31. The Battles discussed their son's case with Respondent on many occasions, receiving updates about Respondent's legal research and strategies, and asserted (unrebutted) that they believed Respondent was serving as their attorney. Respondent did not provide the Battles with an

[7] We recognize that the payment of a legal fee by a third party does not create an attorney-client relationship. Indeed, an attorney accepting the payment of her fee by a third party is required to obtain her client's informed consent and must endeavor to ensure that there is no interference with her professional judgment and that her client's confidential information remains protected. North Carolina Rule 1.8(f) ("A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by Rule 1.6 [confidentiality]."); *see also* North Carolina Rule 5.4(c) ("A lawyer shall not permit a person who recommends, engages, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."); North Carolina Rule 1.6(a) (prohibiting an attorney from "reveal[ing] information acquired during the professional relationship with a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is [otherwise] permitted . . . .").

engagement agreement or otherwise explain, at the outset of the representation, that she did not represent them.[8] Based on these unique facts, we agree with the Hearing Committee that an attorney-client relationship arose between Respondent and the Battles—in addition to Mr. Stewart—and Respondent was therefore obliged to exercise all ethical duties arising out of the relationship with the Battles. Respondent failed to meet those duties and thereby violated North Carolina Rule 1.4(a).[9]

The Board agrees with the Hearing Committee's recommendation that Respondent be suspended for two years with a fitness requirement prior to reinstatement and conditioned upon payment of restitution to Ms. Parker. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar

[8] As the Hearing Committee recognized, North Carolina does not require written fee agreements. HC Rpt. at 34; *see also* North Carolina Rule 1.5(b) ("When the lawyer has not regularly represented the client, the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, ***preferably in writing***, before or within a reasonable time after commencing the representation." (emphasis added)). Of course, District of Columbia rules *do* require written fee agreements, and for good reason—as this case amply demonstrates. *See* D.C. Rule 1.5(b).

[9] As a consequence of her actions, Respondent may have blundered into further violations of the disciplinary rules, to the extent that she shared Mr. Stewart's confidential information without his consent, *see* North Carolina Rule 1.6, or that the representations involved a conflict of interest, *see* North Carolina Rule 1.7. But Respondent was not charged with violations of either rule and these issues are not before us.

R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: *Thomas Gilbertsen*
Thomas E. Gilbertsen

All members of the Board concur in this Report and Recommendation.

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

FILED

Jun 6 2024 12:35pm

Board on Professional Responsibility

In the Matter of	:	
	:	**Board Docket No. 21-BD-009**
LYNN BURKE, ESQUIRE,	:	
	:	**Disciplinary Docket Nos. 2014-D303, 2017-D266, 2018-D102, 2018-D325, & 2022-D134**
Respondent.	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 1006423)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

INTRODUCTION

Respondent Lynn Burke lives and works in North Carolina but has never been licensed to practice law there. She is licensed only in the District of Columbia.

From 2014 through 2022, Respondent provided legal services to clients in North Carolina and Maryland. During those representations, Respondent violated twelve Rules of Professional Conduct. As a result, we recommend that Respondent be suspended from the practice of law for two years, with a fitness requirement, and that she be ordered to pay restitution, with interest, to Betty Parker.

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

I. PROCEDURAL HISTORY

This matter involves two sets of charges: (1) the Specification of Charges in Disciplinary Docket No. 2022-D134, filed on April 11, 2023; and (2) the amended Specification of Charges in Disciplinary Docket Nos. 2014-D303, *et al.*, filed on April 25, 2023. DCX 1, DCX 42.[1] The Board consolidated the matters on July 17, 2023. DCX 4.

Respondent was personally served with the specification in Docket No. 2022-D134 on April 28, 2023, but did not file an answer. DCX 43. She was personally served with the amended specification in Docket Nos. 2014-D303, *et al.*, on May 5, 2023. DCX 2. Again, she failed to respond.

The Hearing Committee held an initial prehearing conference on August 23, 2023. Respondent did not attend, and the conference was postponed to afford her an additional opportunity to participate. A second prehearing conference took place on September 19, 2023; Respondent was not present.

Respondent was provided with both prehearing conference transcripts, and the evidentiary hearing (which was held over Zoom to facilitate Respondent's ability to attend) took place on October 10, 2023. Once again, Respondent did not participate. At the conclusion of the merits phase of the hearing, the Hearing Committee made a preliminary, non-binding finding that Respondent had violated at least one Rule.

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[1] "DCX" refers to Disciplinary Counsel's exhibits; "Tr." refers to the transcript of the hearing on October 10, 2023; "PFF" refers to Disciplinary Counsel's Proposed Findings of Fact; "ODC Br." refers to Disciplinary Counsel's post-hearing brief.

II. FINDINGS OF FACT

1. Respondent was admitted to the D.C. Bar on March 9, 2012, and assigned Bar number 1006423. DCX 5.

A. Letterhead

2. Respondent lives and practices law in North Carolina but is not a member of the North Carolina Bar. She claims that her practice is limited to federal administrative law. DCX 15 at 2.

3. Respondent used professional letterhead that identified her as an attorney with a business address in North Carolina, but it typically did not list jurisdictional limitations on her practice or disclose that she was not licensed to practice law there. DCX 7, 13; Tr. 90 (Anderson).

4. In June 2016, the D.C. Office of Disciplinary Counsel ("ODC") questioned the deficiencies in her letterhead. DCX 14 at 2. In response, Respondent claimed that she had updated it to include "Licensed to practice law in Washington, DC [and] the Fourth Circuit Court of Appeals [–] Not licensed to Practice North Carolina Law." DCX 15 at 2; Tr. 90 (Anderson). She thereafter occasionally included that (or other) letterhead disclaimers but did not do so consistently. Respondent also continued to use letterhead that listed a North Carolina address without disclosing any jurisdictional limitations on her practice. *Compare, e.g.*, DCX 18; DCX 25 at 1; DCX 34 at 3; DCX 40 at 2 (containing disclaimers), *with*

DCX 21; DCX 25 at 409; DCX 29 at 4; DCX 30 at 6; DCX 47 at 1; DCX 49 at 1, 16 (no disclaimers).[2]

B. The Battle Matter (2013-2014)

5. In November 2013, Jesse and Sharon Battle engaged Respondent to represent their son David Stewart (then serving a 30-year sentence in federal prison) in his attempt to reduce that sentence. Tr. 20-21 (J. Battle); Tr. 38 (S. Battle).Respondent agreed to prepare and file a motion for sentence relief. Tr. 21 (J. Battle).

6. Respondent told the Battles that her fee was $1,500 but did not provide them with a written statement describing the fee arrangement. The Battles paid the fee in installments over the course of several months. DCX 13 at 1; Tr. 21-22 (J. Battle); Tr. 38-39 (S. Battle).

7. Respondent repeatedly promised the Battles that she would personally visit and consult with their son in South Carolina, where he was detained. DCX 6 at 11; Tr. 24-25 (J. Battle). However, she never visited Mr. Stewart and ultimately had only one telephone conversation with him. DCX 6 at 17; Tr. 24-26 (J. Battle); Tr. 39-40 (S. Battle).

8. In the Spring of 2014, as Respondent investigated alternative theories of relief, the Battles became more concerned about meeting an August 3, 2014

[2] ODC contends that Respondent's website (no longer active) was similarly deficient. ODC Br. at 5. Because ODC cites no evidence to support that claim, we do not sustain it.

deadline for filing the sentence-reduction motion. Tr. 41-42 (S. Battle); DCX 6 at 17.[3]

9. Respondent communicated with Mr. Battle through various means, including by email. *See* Tr. 23 (J. Battle). Though her emails included a signature block containing a North Carolina address, they failed to disclose that she was not licensed in North Carolina and that she was not authorized to practice law in North Carolina. *See*, *e.g.* DCX 6 at 24, 28. Mr. Battle learned that Respondent was not admitted to the U.S. District Court for the Middle District of North Carolina, where the motion was to be filed. On July 1, 2014, he asked Respondent whether she could represent his son in that court since she was not licensed there. DCX 6 at 23; Tr. 23-24, 30 (J. Battle). Respondent, who had earlier told Mr. Battle that she was licensed in the Fourth Circuit Court of Appeals and in the District of Columbia and thus could do "all federal appeal work," replied that she could be admitted "prohaviche [sic]" to the District Court if necessary. Tr. 21-23, 30 (J. Battle); DCX 6 at 9, 23.[4]

10. On July 30, 2014, Respondent told Mr. Battle that she would visit his son on Friday August 1, 2014. She said that she would have him sign the motion

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[3] The record is unclear when the filing was actually due. Respondent first advised that the deadline was August 3, 2014. DCX 6 at 7. However, she also said it was due "90 days from May 3, 2014" (or August 2, 2014) (DCX 6 at 20) and later told the Battles that it was due August 5. DCX 6 at 27. She filed the motion on Monday, August 4. DCX 7 at 8.

[4] The Middle District of North Carolina allows out-of-state attorneys to make a "special appearance" and to practice in a particular case only "in association with a member of the bar" of that court, and only after registering with the Court's CM/ECF system and paying an appearance fee. *See* M.D.N.C. Civ. R., LR 83.1(d).

pro se because the courts "give alot [sic] more latitude to *pro se* litigants" and the court would appoint an attorney to represent him if necessary. DCX 6 at 27, 28.

11. The Battles vigorously opposed the *pro se* tactic, insisting that Respondent sign and file the motion on their son's behalf. DCX 6 at 26-27; Tr. 27-28 (J. Battle).[5]

12. On August 1, 2014, Respondent went to the prison facility housing the Battles' son but did not meet him or discuss the motion with him. Instead, she had prison staff obtain his signature on the motion and return it to her. Tr. 31-32 (J. Battle); DCX 7 at 20.

13. Without the consent of the Battles or their son, on August 4, 2014, Respondent filed the document as a *pro se* motion. She did not sign the document (crossing out the "attorney of record" signature line) and did not seek to make a special appearance in the case. DCX 7 at 8, 20.

14. The Battles filed a complaint with ODC on September 9, 2014. Tr. 23 (J. Battle); DCX 6. In response, Respondent admitted that she had agreed "to write and file [the motion] on behalf of the[ir] son." DCX 7 at 1.

15. On November 6, 2014, the North Carolina State Bar Authorized Practice Committee issued a Letter of Caution to Respondent, finding that there was

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[5] At that time, Respondent told the Battles "although you guys hired me, your son is my client." DCX 6 at 27. In reply, Mr. Battle asserted that he, his wife and their son were all clients of Respondent. DCX 6 at 26-27. The record on this issue is imprecise but (especially in the absence of a written retainer agreement specifying the contrary) the Battles reasonably considered themselves and their son to be Respondent's clients.

probable cause to believe she engaged in the unauthorized practice of law with respect to her representation of the Battles and their son and another, unrelated client. The Committee advised her not to "engage in activities in the future that violate the unauthorized practice of law statute . . . ." DCX 9 at 2-3; Tr. 43 (S. Battle).[6]

C. The Baah Matter (2015)

16. Sometime between October and December of 2015, Cynthia Baah retained Respondent to represent her in an immigration matter. DCX 17 at 6; DCX 18 at 3. Respondent undertook the work but did not provide Ms. Baah with a written fee agreement or other writing setting forth the basis or rate of her fees. DCX 18 at 2; Tr. 93-94 (Anderson).

D. The Osorio Matter (2015-2017)

17. On June 26, 2014, undocumented minors K.O.F. and her cousin B.Q.O. fled to the United States from El Salvador to escape gang violence. They resided with K.O.F.'s father, Pedro Osorio-Aparicio. DCX 25 at 206. On July 19, 2015, Mr. Osorio (with the aid of North Carolina counsel) filed for sole custody of B.Q.O. in state court. DCX 25 at 184-195. The court granted custody on November 18, 2016. DCX 25 at 209; Tr. 48 (Osorio).

18. At the end of 2015 or in early 2016, Mr. Osorio retained Respondent to represent his two daughters "for immigration [matters]." Tr. 47 (Osorio). Respondent agreed to represent K.O.F and B.Q.O. However, she did not provide

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[6] Almost two years later, on September 2, 2016, that Committee issued a second Letter of Caution to Respondent for violating unauthorized practice statutes, noting its "disappoint[ment]" in her repeat violation. DCX 25 at 34-35.

Mr. Osorio with a written agreement setting forth the basis for her fees or the scope of the representation. Tr. 47-48 (Osorio). The parameters of that engagement are utterly unclear from the record in this case, although it is apparent that Respondent worked for more than two years on multiple immigration issues.

19. In addition to paying filing fees, Mr. Osorio variously understood that he would be charged $500 each time Respondent "went to court," and that Respondent would represent one of the minors *pro bono* and charge $3,500 "for the case" of the other minor.[7] Tr. 48-50 (Osorio). On "several" occasions Mr. Osorio paid her cash, and once made a deposit into Respondent's bank account. Tr. 49 (Osorio); *see, e.g.*, DCX 26 at 7-8. With one exception, Mr. Osorio did not testify as to the dates, amounts or reasons for those multiple payments and ODC has not otherwise sought to explain them.

20. On September 22, 2016, Mr. Osorio paid Respondent $2,070 in cash, and Respondent provided him with two receipts:

a. the first receipt, for $1,070, was designated "To USCIS" and "For Immigration fee to USCIS I-485/I-765/I-864;"[8]

b. the second receipt, for $1,000, was designated "Flat Fee" and "For application I-485/I-765/I-864."

DCX 19 at 7; DCX 25 at 6; Tr. 48-52 (Osorio); Tr. 97-98 (Anderson).

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[7] Respondent contends that she appeared in immigration court on behalf of the minors thirteen times. *See* DCX 25 at 3 (Letter from Respondent to ODC, dated December 31, 2018). It is unclear what Mr. Osorio understood the "case" to be.

[8] "USCIS" refers to the United States Citizenship and Immigration Services.

21. These amounts represented prepayment of a $1,000 flat fee for completing an I-485 (green card) application and $1,070 for attendant filing fees. DCX 25 at 6. Respondent did not obtain Mr. Osorio's informed consent to treat the advanced fee or expenses as her own and did not explain the risks and consequences of doing so. Nor did she offer Mr. Osorio the option of depositing the advanced fee and expenses in an IOLTA or other trust account. Tr. 49-50 (Osorio).

22. Respondent did not have an IOLTA trust account. Instead, on the day Mr. Osorio paid her $2,070, she deposited $1,500 cash into her Wells Fargo operating account ("Wells Fargo account"). DCX 28 at 19.

23. When questioned by ODC during its investigation about the $1,500 cash deposit, Respondent claimed that it was a payment made to her by another client. DCX 38 at 3, 10. That client, however, had paid her almost two weeks earlier, on September 12, and had paid by check – not in cash. DCX 28 at 40; DCX 38 at 10.[9] Respondent's representation to ODC was deliberately false.

24. Respondent also represented to ODC that "[t]he entire business transaction and work done for Mr. Osorio and his family was completed in one business day and did not require depositing monies." DCX 37 at 3; Tr. 106-108 (Anderson). That claim, unsupported elsewhere in the record, was palpably untrue. The I-485 petitions in the Osorio matter were not completed until approximately

[9] Although there was no testimony on this point, the Wells Fargo bank record for the check deposit confirms it took place on "20160912," or September 12. DCX 28 at 40.

March 15, 2017, and were filed April 11, 2017. DCX 25 at 38 (I-485 rejection notice); DCX 25 at 440, 487 (signed I-485 petitions).

25. ODC contends that the September 22 cash deposit of $1,500 was the greater portion of the $2,070 advance given to her by Mr. Osorio on that day. PFF 41; Tr. 98, 100 (Anderson). Considering its cash nature, its sizeable amount and its close proximity to Mr. Osorio's payment – and in light of Respondent's misrepresentation as to its source – we agree: on September 22, 2016, Respondent deposited into her operating account $1,500 of Mr. Osorio's advance of fees and expenses. At the time of that deposit, Respondent had not yet earned any legal fees for preparing I-485 petitions and had not paid any filing fees.

26. Respondent's Wells Fargo operating account was not a D.C. IOLTA, although it held entrusted funds. DCX 28; Tr. 98-99 (Anderson). Following the September 22 deposit, the balance in the account was $12,054.98, and included funds belonging to Respondent which she used to pay personal expenses. DCX 28 at 20; Tr. 100-101 (Anderson).

27. The next day, September 23, 2016, Respondent deposited $800 cash into her Wells Fargo account. DCX 28 at 20. ODC's investigator surmised that that deposit included the remainder ($570) of the cash given to her by Mr. Osorio. PFF 43; Tr. 100-101 (Anderson). Respondent claims the $800 deposit was provided to her by another client. DCX 37 at 5. ODC did not explain why Respondent would delay depositing the remaining portion of the cash Mr. Osorio had given her a day earlier (or combine it with $230 in additional cash), and there is nothing directly

linking those funds to Mr. Osorio. ODC has not clearly and convincingly proved that the $800 cash deposit on September 23 included $570 in funds from Mr. Osorio.

28. Respondent claims that on September 23, 2016, she spoke with Mr. Osorio on the telephone. DCX 25 at 6. A translator who had worked with Respondent and Mr. Osorio for almost a year interpreted the conversation. *Id.*; DCX 25 at 405-06. Respondent says she told Mr. Osorio that USCIS fees were going to increase, and recommended that she prepare and file fee waiver applications with the anticipated I-485 filings.[10] DCX 25 at 6, 406. Respondent claims that Mr. Osorio agreed that she could treat the entire $2,070 he had given her the day before as a fixed fee for filing not only the I-485 forms but for "complet[ing] all the required applications" for both minors. DCX 25 at 6-7. Notably, Respondent's account is corroborated by an affidavit of the interpreter (DCX 25 at 405-06) and by the fact that Respondent did file fee waiver applications, signed by Mr. Osorio, in connection with the I-485 petitions. DCX 25 at 464-474, 379-400, 409-410; DCX 19 at 9-10. Neither Mr. Osorio nor ODC attempted to refute that narrative of this modification agreement. Accordingly, after having weighed the evidence (and in light of Mr. Osorio's flawed recollection of a closely related topic (*see infra* FF 31)), we conclude that ODC failed clearly and convincingly to prove that the $1,070, initially

[10] The date of birth of both minors was in 1998, so both were over 13 years old and were required to pay filing fees. *See* DCX 25 at 435, 444, 447, 494.

paid to Respondent as an advance of filing fees, was not converted (on consent of the client) to an advance payment of legal fees.[11]

29. A little more than a month later, on November 29, 2016, the balance in Respondent's Wells Fargo account was only $90.97, less than the $1,500 advance fee of Mr. Osorio that Respondent had deposited into it. DCX 28 at 41. ODC contends that, as of that date, Respondent "had not completed the filings . . . or paid the filing fees" (PFF 44) and thus had spent the funds "for her own purposes without regard to whether and how much she had earned." ODC Br. at 41; PFF 45-46; *see also* DCX 28 at 41; Tr. 105 (Anderson).

30. ODC correctly notes that the I-485 applications were not filed until April 16, 2017, well after depletion of Respondent's Wells Fargo account. *See* DCX 25 at 330. But the implication in ODC's assertion – that Respondent did nothing between September 22 and November 29, 2016 to earn her fee – is simply not correct. The record shows that Respondent was actively engaged in immigration matters on behalf of the two minors during the month of November 2016, preparing and filing I-360 petitions (DCX 25 at 216-257) and filing a motion in the Immigration Court on behalf of both. DCX 25 at 4. Custody of one minor was also awarded by the State court during that time. DCX 25 at 205. There is no proof in the record (and ODC points to none) demonstrating that Respondent failed to earn

[11] Respondent did not testify about the modification, but did describe it to ODC during its investigation. The unusual combination of factors discussed in this finding lead us to credit her account.

$1,500 in advance legal fees (deposited on September 22) prior to November 29, 2016.

31. On April 28, 2017, USCIS rejected the I-485 applications as premature because neither minor was eligible for the relief requested at that time. DCX 19 at 9-10; Tr. 53 (Osorio). The form rejection notices implied that filing fees were being returned along with the notices. *See* DCX 19 at 8-10*; see, e.g.*, DCX 19 at 8 ("Your I-485, fees, and any supporting documentation is being returned to you for the following reason(s) . . . ."). Mr. Osorio testified that, along with the I-485 rejection notices, he received two $495 uncashed checks, drawn from Respondent's account and payable to Department of Homeland Security. Tr. 52-53 (Osorio). ODC emphasized that point during the hearing and in post-hearing filings. Tr. 58-61; *see* ODC Br. at 30 ("[The] filing fees were returned by USCIS when the petitions were rejected . . . ."). However, Mr. Osorio clearly misremembered that event (which took place six and a half years before his testimony before the Hearing Committee). No filing fees were "returned" to Mr. Osorio by USCIS at that time because fee waiver applications had been filed and no fees had been paid to USCIS. Indeed, the two uncashed $495 checks could not have been returned to Mr. Osorio at that time because they were dated June 2, 2017, more than a month after the USCIS rejection notices issued.[12] *Compare* DCX 19 at 8 (checks dated June 2, 2017), *with* DCX 19 at 9-10 (rejection notices dated April 28, 2017).

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[12] Respondent explained to ODC that on June 2, 2017, she filed I-765 employment applications that required two separate filing fees of $495, and that she advanced those fees on the minors' behalf "in an effort to help them get a work

32. On June 26, 2017, Mr. Osorio asked Respondent to return to him "documents and everything in money" that he had given her. DCX 22 at 3. Between August 7 and August 15, Respondent and Mr. Osorio exchanged text messages in which she claimed to have left the materials outside her office for his retrieval. DCX 22 at 4-6. When Mr. Osorio said they had not been made available (Tr. 56) (Osorio), Respondent shipped them to him on August 14 and they arrived on August 15. Tr. 57 (Osorio); DCX 22 at 4-6; DCX 25 at 311-12.[13]

33. Mr. Osorio retained successor counsel who also requested Respondent's file on December 15, 2017, and Respondent provided it on December 21. DCX 25 at 363-366.

E. The Alvarenga-Gomez Matter (2017)

34. In April 2017, Mr. Cesar Alvarenga-Gomez retained Respondent to represent him *pro bono* in his pending immigration proceedings. DCX 48 at 1.

35. As a part of her representation, Respondent sought to challenge Mr. Alvarenga-Gomez's conviction in the Circuit Court for Montgomery County,

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permit while they waited to re-adjust their status." DCX 25 at 7. No evidence refutes that explanation.

[13] ODC states that the file was not returned to Mr. Osorio until four months after being requested. PFF 51. The record, however, shows a gap of at most seven and a half weeks between the time the file was requested and delivered to Mr. Osorio, during which Respondent continued actively to represent the minors. *See* DCX 19 at 6 (Mr. Osorio's complaint against Respondent notarized July 25, 2016); DCX 25 at 303 (July 18, 2017 order granting Respondent's motion to withdraw from the Osorio matter), 311 (August 12, 2017 withdrawal letter to Mr. Osorio), 323 (Respondent's August 12, 2017 motion to withdraw before USCIS).

Maryland. DCX 47 at 1-3. Respondent is not and has never been licensed to practice law in Maryland. DCX 49 at 3.

36. In the summer of 2017, Respondent contacted Mr. Alvarenga-Gomez's original Maryland immigration attorney and asked him to file a motion to admit her *pro hac vice*. DCX 47 at 3-4. The attorney agreed, and asked Respondent to draft the motion and send it to him for review and filing. *Id*. Although Respondent drafted the motion, she did not forward it and no Maryland attorney ever moved to admit Respondent *pro hac vice* in Mr. Alvarenga-Gomez's criminal matter. DCX 47 at 1, 3; DCX 48 at 2.

37. Respondent nevertheless filed a Petition for Writ of Actual Innocence on behalf of Mr. Alvarenga-Gomez in the Circuit Court for Montgomery County, Maryland. DCX 47 at 1-2. Respondent was the only lawyer who signed the petition. *Id*. The State moved the court to deny the petition. DCX 48 at 2. On October 9, 2017, Respondent filed a reply and again was the only lawyer who signed that pleading. *Id*.; DCX 47 at 2. The court denied the petition. DCX 48 at 2.

38. On September 24, 2018, the Attorney Grievance Commission of Maryland publicly reprimanded Respondent for engaging in professional misconduct, finding that among other things she engaged in the unauthorized practice of law. DCX 48; Tr. 116 (Anderson). Respondent stipulated to the Maryland violations. DCX 48.

F. The Taylor Matter (2020-2022)

39. In or about May 2020, Robert Taylor, a North Carolina prison inmate who claimed to be innocent, learned of Respondent from other inmates whom she had previously represented. Tr. 64-65 (Parker); DCX 35 at 4 (Ms. Sullivan's meeting notes).

40. Mr. Taylor felt that if he could meet with Respondent "for just an hour," he could convince her of his innocence, and she would then represent him. Tr. 65 (Parker). On May 30, 2020, Mr. Taylor's girlfriend, Betty Parker, used her credit card to pay Respondent $500, and in exchange Respondent agreed to personally visit Mr. Taylor in prison and consult with him. Tr. 65-66 (Parker). Ms. Parker's credit card payment was made to Respondent using "Square," a commercial payment processing service. Tr. 65-66 (Parker); Tr. 110-113 (Anderson); DCX 31 at 4 (Ms. Parker's credit card statement); DCX 45 at 3 (screenshot of Square payment from Ms. Parker to Respondent); DCX 46 at 3 (showing a $482.35 Square deposit into Respondent's account).

41. Respondent sent a letter to Mr. Taylor, dated November 20, 2020, stating that she needed certain additional information in order for her to move forward with his case. The letterhead failed to disclose that she was not licensed in North Carolina or that she was not authorized to practice law in North Carolina. *See* DCX 29 at 4. Respondent never visited Mr. Taylor. Tr. 66 (Parker).

42. ODC claims that Respondent deposited the advance $500 fee into her Wells Fargo account. PFF 68. The only evidence on that point is the testimony of ODC's investigator:

> Q Okay. Let's look at page 2 of Disciplinary Counsel's Exhibit 46. And towards the bottom, the fourth entry, *on May 19th*. Mr. Anderson, can you identify the $500 payment made by Ms. Betty Parker to Respondent?
>
> A Yes. That is the deposit of $486.90 that appears on *May 19th*. And that is the $500, minus the processing fee by for Square.

Tr. 112 (Anderson) (emphasis added); DCX 46 at 2. Ms. Parker's credit card payment was made on May 30, however, and thus could not have been deposited into Respondent's operating account eleven days earlier, on May 19. ODC failed clearly and convincingly to prove that Respondent deposited Ms. Parker's $500 fee payment into her operating account.[14]

43. On March 28, 2021, Ms. Parker paid Respondent another $4,800 to review the Taylor criminal conviction. DCX 31 at 5; DCX 46 at 10; Tr. 112-113 (Anderson); Tr. 69-70 (Parker). Respondent told Ms. Parker that after her review of the documents, she "was gonna have to get" a North Carolina attorney (who had been her law professor) to help her. Tr. 69-70 (Parker); DCX 36 at 3; Tr. 111-113 (Anderson). Ms. Parker paid the $4,800 payment (which she "assumed" was

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[14] DCX 46 at 3 appears to show a Square deposit of $482.35 on June 1, 2020. While that deposit is closer in time to Ms. Parker's initial credit card transaction, there is no evidence explaining its source, or why the deposit occurred two days after the Parker credit card charge, or why its net amount differs from that calculated by ODC's investigator in connection with the May 19 deposit.

intended for the former professor)[15] through Square, and $4,631.85 (the net amount of the fee less Square's administrative charge) was deposited into Respondent's Wells Fargo operating account. DCX 31 at 5 (Ms. Parker's credit card statement); DCX 31 at 6 (screenshot of the Square payment); DCX 46 at 10 (Respondent's bank statement); Tr. 112 (Anderson). At the time of that deposit, Respondent's operating account contained $144.94 in Respondent's personal funds.[16] Respondent did not provide Mr. Taylor or Ms. Parker with a written statement setting forth her fee. Tr. 66-67 (Parker).

44. By April 13, 2021, the balance in Respondent's operating account was $982.39. DCX 46 at 16. Although ODC states (PFF 80) that Respondent "had done nothing" in the interim, ODC failed to direct this Hearing Committee to evidence to support that contention. We stress that the Hearing Committee has no obligation to comb through a comprehensive record to unearth evidence overlooked or ignored by the parties, but we nevertheless undertook an independent review of the record on

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[15] *See* Tr. 69 (Parker). Respondent told ODC that the $4,800 payment was made for her to continue further research and to "interview witnesses, obtain public records, autopsy reports, investigative reports, and travel to McDowell County, NC to view the reported areas of the crime." DCX 34 at 7. In light of Ms. Parker's ambiguous testimony as to the purpose of the fee, ODC has failed to disprove Respondent's characterization.

[16] We find that these funds belonged to Respondent because (i) she paid a series of personal expenses from the account in the days prior to the deposit of Ms. Parker's payment (e.g. payments to a credit card company, Target, a fast-food restaurant, and for a life insurance premium), *see* DCX 46 at 10; and (ii) having reviewed the operating account statement, we have identified no evidence that the funds belonged to anyone other than Respondent.

this point, the results of which were inconclusive. We therefore find that ODC failed to prove that Respondent had not earned $4,800 in fees between March 28 and April 13, 2021.

45. Ms. Parker testified that she asked Respondent the name of the law professor/attorney but that Respondent refused to do so, complaining that Ms. Parker was asking too many questions and did not need to know that information. *See* Tr. 70 (Parker) ("[Respondent] said, you ask too many questions, blondy. She said, you know, I didn't need to know that information, basically."). Respondent denied to ODC that Ms. Parker ever requested the name of the professor and insisted that she "knew and understood the Attorney(s) would be presented . . . ***AFTER*** [sic] we finished researching the case." DCX 34 at 8-9. Although we credit Ms. Parker's testimony that Respondent said she would engage another attorney in the matter, it is unclear when that engagement was to occur, and there is no evidence that Respondent lied about her intent to do so.

46. On August 23, 2021, Mr. Taylor wrote to Respondent and asked for a fee refund and a detailed accounting for the $4,800 advance fee and $500 consultation fee. DCX 29 at 6. Respondent did not provide either a refund or the accounting requested by Mr. Taylor, and never filed anything in any court on Mr. Taylor's behalf. Tr. 72-74 (Parker); Tr. 85 (Sullivan).

47. In February 2022, Ms. Parker sent Respondent another request for an itemized invoice and demanded she return Mr. Taylor's documents and refund the

fees paid. DCX 36 at 2. Respondent did not provide Ms. Parker with any accounting or refund. Tr. 74-75 (Parker).

48. Mr. Taylor had other counsel, obtained through the North Carolina Center on Actual Innocence. DCX 29 at 2-3; Tr. 73-74 (Parker). On June 13, 2022, an attorney with that organization filed a disciplinary complaint against Respondent with the North Carolina Bar. DCX 29 at 2-3; Tr. 82-83 (Sullivan). On July 11, 2022, the North Carolina Bar referred the complaint to ODC because Respondent was not licensed in North Carolina. DCX 29 at 1.

49. Ms. Parker filed a claim with her credit card company, which refunded the $4,800 amount. Tr. 77 (Parker); Tr. 85 (Sullivan).

50. Respondent did not produce any financial records relating to the Taylor representation during the ODC disciplinary investigation. In response to Disciplinary Counsel's inquiry, Respondent stated that financial records did not exist, falsely claiming that "it was not a legal representation situation." DCX 40 at 3.

III. CONCLUSIONS OF LAW

Introduction – Choice of Law

Respondent's misconduct involved five (5) different client matters, certain of which involved cases pending before tribunals in different jurisdictions.

D.C Rule 8.5(b) sets forth the applicable choice of law rules in such matters. It provides that:

> 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,[17] 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. . . .

Respondent's alleged misconduct in the Battle matter occurred in connection with a motion in the United States District Court for the Middle District of North Carolina. That court has adopted the Code of Professional Responsibility as adopted by the Supreme Court of North Carolina. *See* M.D.N.C. Civ. R., LR 83.10e. Thus, we have applied North Carolina's Rules in connection with the Battle matter.

Respondent's alleged misconduct in the Osorio and Baah immigration matters occurred in connection with the matters pending before USCIS, where attorneys are subject to oversight by the Executive Office for Immigration Review (EOIR). Administrative Appeals Office (AAO) Practice Manual, 2.10 n.43. The EOIR has its own Rules of Professional Conduct, *see* 8 C.F.R. § 1003.102 *et seq.*, governing attorney conduct before the Immigration Courts, and sanctions in such matters are issued by the Board of Immigration Appeals ("BIA"). Where applicable, we apply those rules. However, "the EOIR Rules are not a comprehensive substitute for state disciplinary rules," *In re Osemene*, Board Docket No. 18-BD-105, at 4 (BPR May

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[17] "'Tribunal' denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity." D.C. Rule 1.0(n).

31, 2022), *recommendation adopted*, 277 A.3d 1271, 1271-72 (D.C. 2022) (per curiam), and they do not address certain of the conduct at issue in these proceedings. In those instances, we apply D.C. Rules.[18]

With respect to the Alvarenga-Gomez matter, Respondent's conduct occurred in connection with a matter in the Maryland Circuit Court and we thus have applied the Maryland Attorneys' Rules of Professional Conduct.

Finally, because the Taylor matter did not involve a matter pending before a tribunal, we apply D.C. Rules to the conduct at issue there.

A. Respondent Violated D.C. Rules 1.15(a) and (b)

These charges relate to the Osorio and Taylor matters. We apply D.C. Rules 1.15(a) and (b) because the EOIR Rules (which apply to the Osorio matter) do not have similar Rules, and because the D.C. Rules apply to the Taylor matter.

1. Rule 1.15(a) (Failure to Keep Records)

D.C. Rule 1.15(a) requires lawyers to keep "[c]omplete records of . . . account funds and other property" and preserve them "for a period of five years after termination of the representation." *See In re Edwards*, 990 A.2d 501, 522 (D.C.

[18] According to the BIA, its rules are not intended to replace state disciplinary rules. In instances where EOIR Rules do not address conduct, the BIA intends that state disciplinary rules apply. Moreover, when an attorney is authorized to practice in immigration courts by virtue of her membership in a state bar, the intent of the BIA's rules is that "the disciplinary process of the relevant jurisdiction's bar" should apply to the alleged violations. *Matter of Rivera-Claros*, 21 I&N Dec. 599, 604 (BIA 1996); *see also Gadda v. Ashcroft*, 377 F.3d 934, 945 (9th Cir. 2004) (the federal immigration regulatory scheme did not preempt California's authority to regulate the conduct of immigration attorneys pursuant to California disciplinary rules).

2010) (appended Board Report) ("Financial records are complete only when an attorney's documents are 'sufficient to demonstrate [the attorney's] compliance with his ethical duties.'" (quoting *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003) (per curiam))). The purpose of the requirement of "complete records is so that 'the documentary record itself tells the full story of how the attorney handled client or third-party funds' and whether, for example, the attorney misappropriated or commingled a client's funds." *Id.* at 522; *see also In re Pels*, 653 A.2d 388, 396 (D.C. 1995) (finding Rule 1.15(a) violation when attorney showed a "pervasive failure" to maintain contemporaneous records accounting for the flow of client funds within various bank accounts). Thus, "[t]he records themselves should allow for a complete audit even if the attorney or client is not available." *Edwards*, 990 A.2d at 522.

Disciplinary Counsel originally charged that Respondent failed to maintain records in both the Osorio and Taylor matters. *See* Amended Specification of Charges (April 25, 2023) at ¶ 73(c); Specification of Charges (April 12, 2023) at ¶ 26(d). In the context of its argument that Respondent engaged in misappropriation that was at least reckless, Disciplinary Counsel broadly claims that Respondent "kept no records that would allow her to track how much she was required to hold for a client at any given time." ODC Br. at 42. However, its post-hearing brief cites to *no evidence* establishing that Respondent failed to maintain records in the Osorio matter, and we do not sustain that charge.

On the other hand, because Respondent conceded that financial records did not exist in the Taylor matter (FF 50), we find that she violated Rule 1.15(a) in that respect.

2. Rules 1.15(a) and (b) (Commingling and Failure to Keep Client Funds in A Trust Account)

Rule 1.15(a) requires a lawyer to hold property of clients separate from the lawyer's own property. The Rule also provides that client funds must be kept in a trust account.

Commingling occurs when an attorney fails to hold entrusted funds in an account separate from his or her own funds. *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997) (per curiam) (appended Board Report). Thus, commingling is established "when a client's money is intermingled with that of his attorney and its separate identity is lost so that it may be used for the attorney's personal expenses or subjected to the claims of its creditors." *In re Hessler*, 549 A.2d 700, 707 (D.C. 1988) (appended Board Report). To constitute commingling, the entrusted and non-entrusted funds must be in the same account at the same time. *See In re Doman*, No. 22-BG-0578, slip op. at 19-20 (D.C. May 16, 2024) (per curiam).

Rule 1.15(b) provides that "[a]ll trust funds shall be deposited with an 'approved depository' as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar."

In its brief, Disciplinary Counsel contends that, instead of depositing the money she received from Mr. Osorio and Ms. Parker in trust, Respondent deposited their funds into a mixed-use account which was not held at "an approved depository"

and which was not "in compliance with the District of Columbia's Interest on Lawyers' Trust Account (DC IOLTA) program" as required by Rule 1.15(b). ODC further argues that by depositing her clients' funds into an account that contained her own money, Respondent engaged in commingling in violation of Rule 1.15(a). *See* FF 22, 25, 42-44.

We agree that Disciplinary Counsel proved that Respondent violated Rules 1.15(a) and (b) in the Osorio matter. But, because the Specification of Charges does not charge Respondent with violations of either Rule in the Taylor matter – or even allege facts in support of the charges – we do not sustain these charges.[19]

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[19] Due process considerations require that a respondent receive adequate notice of the conduct in question and a fair opportunity to defend against it. *See In re Schwartz*, 221 A.3d 925, 930 (D.C. 2019) (per curiam); *In re Morten*, Board Docket No. 18-BD-027 (BPR May 7, 2021), appended Hearing Committee Report at 94-95. Even up to the point of the hearing, Disciplinary Counsel could have sought leave to amend the Specification of Charges to add these charges, after providing notice to Respondent. *See* Board Rule 7.21; *see also In re Smith*, 403 A.2d 296, 302 (D.C. 1979). But that is not what happened here. And it must be noted that, had the Hearing Committee relied upon ODC's brief without comparing it against the charging documents, we may not have identified this issue. It is incumbent upon ODC accurately to state the charges against a respondent in its brief, particularly in a matter where the respondent has not appeared.

B. **Disciplinary Counsel Failed to Prove that Respondent Misappropriated Client Funds in Violation of D.C. Rules 1.15(a) and (e)**

These charges relate to the Osorio and Taylor matters. We apply D.C. Rules 1.15(a) and (e) because the EOIR Rules (which apply to the Osorio matter) do not have similar Rules, and because the D.C. Rules apply to the Taylor matter.

Rule 1.15(e) provides that "[a]dvances of unearned fees and unincurred costs shall be treated as property of the client . . . until earned or incurred unless the client gives informed consent to a different arrangement." The Court has held that "when an attorney receives payment of a flat fee at the outset of a representation, the payment is an 'advance[ ] of unearned fees'" and must be held as property of the client pursuant to Rule 1.15(e) until the fees are earned. *In re Mance*, 980 A.2d 1196, 1202 (D.C. 2009).

Rule 1.15(a) prohibits misappropriation of entrusted funds. "Misappropriation is 'any unauthorized use of [a] client's funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom.'" *In re Nave*, 197 A.3d 511, 514 (D.C. 2018) (per curiam) (quoting *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) (alterations in original)).

The three elements of misappropriation are: (1) client funds were entrusted to the attorney; (2) the attorney used those funds for the attorney's own purposes; and (3) such use was unauthorized. *In re Harris-Lindsey*, 242 A.3d 613, 620 (D.C.

2020). Funds are "entrusted" when the lawyer is "imbued with authority to prevent their unauthorized use . . . ." *Id*. at 624.

Misappropriation is essentially a per se offense and does not require proof of improper intent. *See Anderson*, 778 A.2d at 335. Thus, an attorney commits "unauthorized use" when either "the client did not consent to the attorney's use of the funds" or "the funds or assets were accessed without required prior approval by a court." *Harris-Lindsey*, 242 A.3d at 624. When "the balance in [a respondent's] account falls below the amount due" to the respondent's client, misappropriation has occurred. *Pels*, 653 A.2d at 394.

Once it proves that a misappropriation occurred, ODC must establish whether the misappropriation was intentional, reckless or negligent. *See Anderson*, 778 A.2d at 336. Intentional misappropriation most obviously occurs where an attorney takes a client's funds for the attorney's personal use. *See id*. at 339. "Reckless misappropriation reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds, and its hallmarks include: the indiscriminate commingling of entrusted and personal funds; a complete failure to track settlement proceeds; the total disregard of the status of accounts into which entrusted funds were placed, resulting in a repeated overdraft condition; the indiscriminate movement of monies between accounts; and finally the disregard of inquiries concerning the status of funds." *In re Ahaghotu*, 75 A.3d 251, 256 (D.C. 2013) (internal quotation marks and citation omitted).

Disciplinary Counsel contends that in the Osorio and Taylor matters, Respondent misappropriated funds by spending advanced fees before she earned them and by spending advanced costs before they were incurred. It contends that, in the Osorio matter, Respondent deposited the full $2,070 she received from Mr. Osorio soon after she received it and spent nearly all of it within two months, leaving just $90 in her account. In its view, Respondent had not earned the advanced legal fees. As set forth above in the Findings of Fact, Disciplinary Counsel failed to present clear and convincing evidence in support of these claims. *See* FF 27-28, 30.

First, ODC failed to prove that Mr. Osorio's $1,070 payment, which initially constituted an advance payment for costs, was not converted on consent to an advance payment of legal fees. FF 28.[20] ODC also failed to prove that more than $1,500 of Mr. Osorio's $2,070 payment was deposited into Respondent's Wells Fargo account. FF 25, 27. Finally, ODC failed to prove that Respondent had not earned the $1,500 (or even $2,070) in advanced legal fees before the balance in the account dipped below that amount. FF 30. Therefore, there is no basis upon which we can find that Respondent misappropriated Mr. Osorio's funds.[21]

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[20] Our assessment of this issue is not at odds with *In re Szymkowicz*, 124 A.3d 1078, 1084 (D.C. 2015) (per curiam). Here, Respondent's account of the conversion of monies from advance costs to advance fees was explained to ODC in its investigation and supported by a third-party affidavit. FF 28; DCX 25 at 405-06. Under those circumstances, Respondent sustained her production burden of proof, and it is wholly appropriate to expect ODC to refute it with contrary evidence.

[21] During closing argument, Disciplinary Counsel claimed that Respondent was not entitled to take *any* portion of the advance fees paid to her until all the contemplated work was completed:

The misappropriation claim in the Taylor matter fares no better. Disciplinary Counsel argues that Respondent misappropriated advanced fees she received from Ms. Parker because she accepted $500 from Ms. Parker to visit Mr. Taylor in prison and did not do so. It points to a decrease in the Wells Fargo bank account balance below $500, even though Respondent had not visited (and never did visit) Mr. Taylor in prison. Here, however, ODC did not clearly and convincingly prove that Ms. Parker's $500 fee payment was deposited into Respondent's operating account. FF 42. Without that predicate finding, we are unable to find that Respondent misappropriated those funds.[22] *See Nave,* 197 A.3d at 516 (misappropriation not proven where there was insufficient evidence as to the dates on which insurance checks were received and deposited).

> [Disciplinary Counsel]: Even if we were to argue that she did work as soon as she received the fees, this is a flat fee and it is not earned until the work is completed. And in this case, per her own notation in her receipts, they were fees to file certain petitions. They were not --
>
> CHAIRMAN BERNIUS: Excuse me. So that, if, if she takes a flat fee of $1,000, then she can't collect, she can't withdraw a penny of it until the whole matter is completed?
>
> [Disciplinary Counsel]: That's what a flat fee is.

Tr. 122. As the Chair indicated during the hearing, the Committee is unaware of any authority compelling such an aspirational reading of *In re Mance*. Tr. 130-32. *See also In re Alexei*, Board Docket No. 20-BD-018, at 15 (BPR June 30, 2023) (rejecting ODC's argument that Respondent was not permitted to withdraw any portion of the flat fee until the entire representation, or any identifiable task was complete), *pending review*, D.C. App. No. 23-BG-0591. Notwithstanding its argument during the hearing, ODC abandoned this argument in its post-hearing brief and we do not address it.

[22] Disciplinary Counsel does not claim that Respondent misappropriated the $4,800 Ms. Parker paid to her. ODC Br. at 26-27.

C. Disciplinary Counsel Failed to Prove that Respondent Violated D.C. Rule 1.15(d)

This charge relates to the Osorio matter. We apply D.C. Rules 1.15(d) because the EOIR Rules (which apply to the Osorio matter) do not have a similar Rule.

Rule 1.15(d) states:

> When in the course of a representation a lawyer is in possession of property in which interests are claimed by the lawyer and another person, or by two or more persons to each of whom the lawyer may have an obligation, the property shall be kept separate by the lawyer until there is an accounting and severance of interests in the property. If a dispute arises concerning the respective interests among persons claiming an interest in such property, the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. Any funds in dispute shall be deposited in a separate account meeting the requirements of Paragraph (a) and (b).

ODC alleged that Respondent violated this Rule in the Osorio matter, but its post-hearing brief presented neither facts nor argument in support of this charge. We decline therefore to speculate as to what the basis for this charge may have been and we do not find, by clear and convincing evidence, that Respondent violated this Rule.

D. Respondent Violated Rules 7.1(a) and 7.5(a) Because Her Letterhead was Misleading

Disciplinary Counsel charged that Respondent violated Rules 7.1(a) and 7.5(a) in the Battle and Taylor matters. North Carolina Rules apply in the Battle matter and D.C. Rules apply in the Taylor matter.

D.C. Rule 7.1(a) provides that

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:
>
> > (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; or (2) contains a statement about the lawyer or the lawyer's services that cannot be substantiated.

Material means "of such a nature that knowledge of the item would affect a person's decision-making. . . ." Material, Black's Law Dictionary (11th ed. 2019). Relatedly, Rule 7.5(a) provides: A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. The North Carolina Rules contain the same prohibitions.[23]

In *In re Winstead*, 69 A.3d 390, 399 (D.C. 2013), the Court determined that the respondent violated Rules 7.1(a) and 7.5(a) where, on numerous occasions, she had "used the letterhead and facsimile coversheets in a manner that misleadingly communicated that she was authorized to practice law in Maryland." *Winstead*, 69 A.3d at 398. Her assistant sent facsimile transmissions and other documents on her behalf which indicated that the respondent was an attorney and identified her office as being in Maryland. *Id*. The assistant did so without explaining that the respondent was not licensed to practice law in Maryland. *Id*.

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[23] North Carolina Rule 7.1 is similarly proscriptive: "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services." "[L]etterhead and professional designations are communications concerning a lawyer's services." *Id.*, cmt. [5].

Respondent violated D.C Rules 7.1(a) and 7.5(a) by using a similarly misleading letterhead when she communicated with Mr. Taylor. FF 41. Her letterhead listed a North Carolina address without disclosing that she was not licensed to practice law in North Carolina and thus falsely suggested the contrary. Respondent engaged in comparable misconduct in the Battle matter that violated North Carolina Rule 7.1. Like the letterhead used to communicate with Mr. Taylor, the signature block contained in Respondent's emails to Mr. Battle listed a North Carolina address without disclosing that she was not licensed to practice law in North Carolina. *See* FF 9.

E. <u>Respondent Violated D.C. Rule 1.5(b) by Failing to Provide her Clients with a Written Statement Setting Forth the Basis of her Fee and the Scope of her Representation in the Baah, Osorio and Taylor Matters</u>

We have determined that the D.C. Rules apply in the Baah, Osorio and Taylor matters as to this charge.[24] D.C. Rule 1.5(b) provides:

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

Comment [1] explains that "[i]n a new client-lawyer relationship . . . an understanding as to the fee should be promptly established, together with the scope

[24] The EOIR Rules do not appear to contain an analog to D.C. Rule 1.5(b).

of the lawyer's representation and the expenses for which the client will be responsible."

Respondent did not provide an engagement agreement or any other writing to any of the clients in these three matters. FF 16, 18, 43. She had never represented any of these clients in the past, and her failure to provide a written statement of the basis or rate of her fee and the scope of the representation violated D.C Rule 1.5(b). *In re Williams*, 693 A.2d 327, 327-28 (D.C. 1997).

On the other hand, we have determined that the North Carolina Rules apply with respect to the Battle matter and that the Maryland Rules apply to the Alvarenga-Gomez matter. North Carolina Rule 1.5(b) provides that

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

Similarly, Maryland Rule 19-301.5(b) provides that

> [t]he scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the attorney will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

As to both of those matters, ODC asserts a Rule violation solely because Respondent "fail[ed] to provide a written statement of the basis or rate of her fee and the scope of the representation." ODC Br. at 29-30. ODC failed to prove that Respondent did not provide Mr. Alvarenga-Gomez with a written statement of the

basis or rate of her fee and the scope of the representation. Even if it had, neither the North Carolina Rules nor the Maryland Rules require such a written statement. We find that Disciplinary Counsel has not proved, by clear and convincing evidence, that Respondent violated the North Carolina Rule in the Battle matter or the Maryland Rule in the Alvarenga-Gomez matter.

F. Respondent Engaged in the Unauthorized Practice of Law in North Carolina and Maryland in Violation of D.C. Rule 5.5(a)

D.C. Rule 5.5(a) provides that a lawyer shall not "[p]ractice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." Thus, D.C. Rule 5.5(a) effectively incorporates the rules of the foreign jurisdiction (here, the Maryland and North Carolina disciplinary rules) regarding the unauthorized practice of law.[25] Respondent violated D.C. Rule 5.5(a) by engaging in unauthorized practice of law in the Battle, Alvarenga-Gomez and Taylor matters in violation of Maryland and North Carolina's rules.

Maryland prohibits the unauthorized practice of law by individuals who are not members of the Maryland Bar. Under Maryland Rule 19-305.5(b), an attorney who is not admitted to practice in Maryland may not "establish an office or other systematic and continuous presence in [Maryland] for the practice of law; or . . . hold out to the public or otherwise represent that the attorney is admitted to practice law in [Maryland]." Md. R. 19-305.5(b); *see Att'y Grievance Comm'n v. Thompson*,

[25] Because Rule 5.5(a) incorporates the applicable rules of the foreign jurisdictions, we understand Rule 8.5(b)(1) to be inapplicable to this charge.

198 A.3d 234, 244 (Md. 2018). North Carolina's Rules contain the same prohibitions as Maryland.[26]

Respondent is not and has never been licensed to practice law in Maryland, yet she filed the Petition for Writ of Actual Innocence in the Circuit Court for Montgomery County, Maryland, on behalf of Alvarenga-Gomez. FF 35, 37. She admitted this violation when she was reprimanded by Maryland authorities. FF 38.

Respondent has never been licensed to practice law in North Carolina. FF 2. In the Battle and Taylor matters, she held herself out as being authorized to practice law in North Carolina. She told the Battles that she could handle their son's criminal matter and represented him in connection with that case. FF 5. In her representation of Mr. Taylor, she told Ms. Parker that she could handle Mr. Taylor's criminal matter in North Carolina and undertook to do so. FF 40, 43. Respondent admitted to engaging in unauthorized practice, and the North Carolina Bar issued notices of Unauthorized Practice of Law against her. FF 15; DCX 19 at 2-3 (Nov. 4, 2014 letter from N.C. Bar); DCX 19 at 4-5 (Aug. 1, 2016 letter from N.C. Bar).

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[26] North Carolina Rule 5.5(b) provides that:

> A lawyer who is not admitted to practice in this jurisdiction shall not:
>
> (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
>
> (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

Clear and convincing record evidence thus demonstrates that Respondent violated D.C. Rule 5.5(a) by engaging in the unauthorized practice of law in North Carolina and in Maryland.

G. Respondent Violated D.C. Rule 1.16(d) by Failing to Promptly Refund the Fees Advanced by Ms. Parker, and by Failing to Return the Client File the Osorio Matter

We have determined that the D.C. Rules apply in the Osorio and Taylor matters as to this charge.[27] D.C. Rule 1.16(d) provides:

> In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred.

Furthermore, "'a client should not have to ask twice' for [her] file." *In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (per curiam) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986)). Comment [9] to Rule 1.16 further states that even if a lawyer has been unfairly discharged, "a lawyer must take all reasonable steps to mitigate the consequences to the client."

Failure to refund any unearned portion of a fee violates Rule 1.16(d). *See, e.g.*, *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation where the respondent claimed that he did some work on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee"); *In re Carter*, 11 A.3d 1219, 1222-23 (D.C. 2011) (per curiam) (finding a violation of Rule

[27] The EOIR Rules do not appear to contain an analog to D.C. Rule 1.16(d).

1.16(d) where the attorney failed to pay an ACAB award for unearned fees); *In re Kanu*, 5 A.3d 1, 5, 10 (D.C. 2010) (finding a violation of Rule 1.16(d) where the attorney failed to abide by a clause in her retainer agreement promising a refund if she failed to meet her clients' objectives).

Disciplinary Counsel argues that Respondent violated Rule 1.16(d) in both the Osorio and Taylor matters. It contends that she failed promptly to refund to Mr. Osorio the funds he advanced for expenses that were never incurred. ODC Br. at 30. As we discussed above, ODC did not disprove the conversion of Osorio advanced expenses to legal fees, and failed to disprove that Respondent earned those fees. FF 28, 30.

ODC also contends that Respondent delayed returning client files to Mr. Osorio for four months. PFF 51; ODC Br. at 30. As discussed above, we find that there was a seven-and-a-half-week delay in returning the files, during which Respondent continued actively to represent the minors in the case. FF 32 n.12. Nevertheless, the delay was significant enough to violate Rule 1.16(d). *See Thai*, 987 A.2d at 430-31. Thus, we find that ODC has established by clear and convincing evidence that Respondent violated Rule 1.16(d) with regard to the Osorio matter.

Respondent also failed to return unearned fees to Ms. Parker in the Taylor matter upon request. FF 46-47. Ms. Parker initially paid Respondent $500 to visit and consult with Taylor, but Respondent never did that. FF 40-41. Ms. Parker repeatedly asked for a refund of her fees and a detailed invoice from Respondent. Respondent never provided an accounting or paid any refund. FF 47; DCX 36 at 2-

3 (Ms. Parker's letters). Clear and convincing record evidence demonstrated that Respondent violated D.C. Rule 1.16(d) in the Taylor matter by failing to return unearned fees.

With respect to Disciplinary Counsel's contention that Respondent failed to return the file in the Taylor matter, ODC's post-hearing brief presented no argument in support of this charge. *See* ODC Br. at 29-31. Once again, in light of ODC's indifference we decline to speculate as to what the basis for this charge may have been and do not find, by clear and convincing evidence, that Respondent violated the Rule in this regard.

H. Respondent Violated D.C. Rule 1.5(a) by Charging an Unreasonable Fee to Represent Mr. Taylor

D.C. Rule 1.5(a) provides "[a] lawyer's fee shall be reasonable." *See In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006). Respondent violated this Rule by charging a fee for services that she failed to provide.

"The prototypical circumstance of charging an unreasonable fee is undoubtedly one in which an attorney did the work that he or she claimed to have done, but charged the client too much for doing it." *Id.* However, "[i]t cannot be reasonable to demand payment for work that an attorney has not in fact done." *Id.* The Court has concluded that even negligent overbilling violates Rule 1.5(a). *See In re Bailey*, 283 A.3d 1199, 1208 (D.C. 2022).

Respondent accepted a $500 payment to visit and consult with Taylor but never did so, and that fee was consequently unreasonable.

She also received $4,800 to perform other legal services for him. FF 40-41. Because she was not licensed in North Carolina, Respondent was not entitled to accept any fee for providing legal services to Mr. Taylor. An attorney who is engaged in unauthorized practice has "no right to charge any fee." *In re Ray*, 675 A.2d 1381, 1389 (D.C. 1996).

Clear and convincing evidence shows that Respondent violated Rule 1.5(a).

I. Respondent Engaged in Dishonesty in Violation of D.C. Rule 8.4(c)

Disciplinary Counsel contends that Respondent engaged in dishonesty in the Battle, Osorio and Taylor matters. We have determined that the North Carolina Rules apply to the alleged misconduct in the Battle matter, the EOIR Rules apply in the Osorio matter with respect to Respondent's communications with Mr. Osorio, and the D.C. Rules apply to Respondent's communications with Disciplinary Counsel during its investigation of the Osorio matter, as well as to the Taylor matter. *See supra* pp. 20-22 (choice of law discussion). We discuss each matter in turn below.

The Battle Matter

North Carolina Rule 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation *that reflects adversely on the lawyer's fitness as a lawyer* (emphasis added). Thus, under North Carolina law, Disciplinary Counsel must not only prove that Respondent made a false statement, but also that the false statement reflected adversely on her fitness to practice law. *See N.C. State Bar v. DeMayo*, 898 S.E.2d 89, 93-94 (N.C. Ct. App. 2024) (reversing

finding that the respondent violated Rule 8.4(c) where there was insufficient evidence that the alleged false statements reflected on fitness as a lawyer).

In support of its contention that Respondent engaged in dishonesty in the Battle matter, Disciplinary Counsel argues that she was dishonest by (i) failing to visit Mr. Stewart, despite having promised to do so; (ii) advising the Battles that she was able to represent Stewart regarding his § 2255 motion when she was not admitted to practice in the district court; and, (iii) not telling the Battles that she would have Mr. Stewart file the motion as a *pro se* litigant, despite their contrary instructions. ODC. Br. at 34-35.

First, ODC has not proven that Respondent's representations that she would, in the future, visit Mr. Stewart and file a motion on his behalf were knowingly false when she made them. Absent that predicate showing, ODC did not prove the statements were dishonest. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003) ("[W]hen the act itself is not of a kind that is clearly wrongful, or not intentional, [Disciplinary] Counsel has the additional burden of showing the requisite dishonest intent.").[28]

Similarly, ODC did not prove by clear and convincing evidence that Respondent dishonestly advised the Battles that she could represent their son in Federal District Court. The evidence shows that she believed she could make a

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[28] Even if it proved that Respondent did not intend to visit Mr. Stewart when she made the statement, ODC has presented no argument as to how the false statement reflects adversely upon her fitness to practice law, as required by the North Carolina Rule 8.4(c).

special appearance in that court, *see* FF 9; ODC did not offer any evidence to show that she knew the prediction to be false when she made it.

Finally, we do not find that Respondent engaged in dishonesty by filing the motion *pro se* simply because the Battles had instructed her to the contrary. ODC has pointed to no evidence that Respondent agreed to comply with their instruction or otherwise led them to believe that she would abandon her plan to have their son file the motion *pro se*.

The Osorio Matter

Under the EOIR Rules, "[a] practitioner . . . shall be subject to disciplinary sanctions in the public interest if he or she . . . [k]nowingly or with reckless disregard makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence." 8 C.F.R. § 1003.102(c).

D.C. Rule 8.4(c) prohibits attorneys from engaging in conduct involving dishonesty. "Dishonesty" under Rule 8.4(c) includes not only fraud, deceit, and misrepresentation, but is a more general term that also encompasses "conduct evincing 'a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness.'" *In re Hager*, 812 A.2d 904, 916 (D.C. 2002) (alteration in original) (citations omitted) (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990)).

In *Shorter*, the Court noted that the terms fraud, deceit, and misrepresentation, have more specific meanings:

> Fraud is a generic term which embraces all the multifarious means . . . resorted to by one individual to gain an advantage over another by false suggestion or by suppression of the truth. . . . [Deceit is t]he suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact, . . . and is thus a subcategory of fraud. [Misrepresentation is] the statement made by a party that a thing is in fact a particular way, when it is not so; untrue representation; false or incorrect statements or account.

570 A.2d 767-68 n.12 (alteration in original) (internal quotations and citations omitted). The more general category of dishonesty does not depend on a finding that the attorney had an intent to defraud or deceive. *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

ODC argues that Respondent engaged in dishonesty because she (i) lied about the status of the returned filing fees and falsely told Mr. Osorio that USCIS did not return any fees when the petitions were rejected; and (ii) falsely told Disciplinary Counsel that Mr. Osorio's funds were not deposited into her account and that the funds ODC had identified belonged to a different client. ODC Br. at 35.

Disciplinary Counsel failed to meet its burden in proving that Respondent was dishonest in her communications with Mr. Osorio concerning the status of the returned filing fees. *See* 8 C.F.R. § 1003.102(c). First, ODC has cited to no evidence

that Respondent told Mr. Osorio that USCIS had not returned any filing fees.[29] Instead, the text exchange between Respondent and Mr. Osorio cited by ODC demonstrates that Mr. Osorio made a general request for his "documents" and "money." FF 32. In response, Respondent told him that she would send him a receipt for her services. *See* DCX 22.[30] Under the circumstances, we cannot find by clear and convincing evidence that this exchange exhibited dishonest conduct.

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[29] In support of this contention, ODC cited to "DCX 23 at 3-6" and "Tr. 54 (Osorio)." PFF 50. Neither provides support for this statement. DCX 23 is an exhibit containing only three (3) pages, the first and second page of which include Disciplinary Counsel's November 5, 2018 subpoena directing Respondent to produce the Osorio client file. The third page (DCX 23 at 3) is a copy of a U.S.P.S. certified receipt.

The cited testimony by Mr. Osorio is similarly deficient and contains the following testimony:

> Q: Mr. Osorio, when you received these rejection notices did Ms. Burke refund you the filing fees?
>
> A: No.
>
> Q: Did there come a time when you terminated her and asked for your, for the return of your fees?
>
> A: No, it wasn't like that. I went to her office and I asked her what was happening. And she said everything was good and that if I didn't like it, she could drop the case. To not bother her. That she was going to call the police on me because this was private property. I was with my daughter, K. And she said that if we didn't like it, she was even going to call immigration on it [sic].

[30] That response was consistent with her position that the $1,070 initially paid as advanced costs had been converted to advanced fees and that the returned filing fees that accompanied the rejected I-765 applications were advances from her personal funds. *See* FF 31 n.11.

We do, however, find that Respondent engaged in dishonesty when she falsely told Disciplinary Counsel that Mr. Osorio's funds were not deposited into her account and that the funds ODC had identified belonged to a different client. FF 23-25. Under D.C. law, reckless or intentional misrepresentations to Disciplinary Counsel made during an investigation constitute a violation of D.C. Rule 8.4(c). *See In re Boykins*, 999 A.2d 166, 172, 174, 176 (D.C. 2010); *see In re Chapman*, 962 A.2d 922, 925 (D.C. 2009) (per curiam). There is clear and convincing evidence to sustain this charge.[31]

The Taylor Matter

Here ODC argues that Respondent was dishonest by (i) accepting the $500 payment to visit Mr. Taylor and not doing so; (ii) telling Ms. Parker that there was a second attorney working on the case and that the fees paid were given to that attorney; (iii) accepting the $4,800 from Parker to work on Mr. Taylor's sentence reduction, and doing no substantive work in the matter while retaining the fees. ODC Br. at 35-36.

As in the Battle matter, we find that ODC has not proven that Respondent's representation that she would visit Mr. Taylor – at a future point in time – was dishonest when she made it. Similarly, ODC did not clearly and convincingly prove that the statements about a North Carolina attorney or the purpose of the $4,800 paid by Ms. Parker were dishonest. FF 43-45. As to ODC's final contention, ODC has

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[31] Although we found that Respondent made another misrepresentation to ODC (*see* FF 24), ODC does not assert it as a basis for a Rule violation. ODC Br. at 35.

not proven that Respondent accepted the fee with no intention of working on Mr. Taylor's case – or even that she failed to earn the fee. *See* FF 44.

We thus conclude that Respondent engaged in dishonesty, but only with respect to her interaction with ODC in its investigation.

J. Respondent Violated Maryland Rule 19-301.3(a) by Failing to Represent Alvarenga-Gomez with Diligence and Zeal

Maryland Attorneys' Rule 19-301.3 provides that "[a]n attorney shall act with reasonable diligence and promptness in representing a client."[32] Violations of Rule 1.3(a) have been found where attorneys have failed to take the actions on their clients' behalf required for the relief sought. *See Att'y Grievance Comm'n of Maryland v. Davenport*, 244 A.3d 1032, 1038 (Md. 2021) (Rule 1.3(a) violated where, among other things, the respondent "filed an untimely and legally insufficient counter-complaint that lacked [his client]'s signature under oath and neglected to file an amended counter-complaint to correct the deficiencies in the pleading"). Mr. Alvarenga-Gomez retained Respondent in his immigration case because he was in removal proceedings as a result of his criminal conviction. Respondent was retained to challenge the criminal conviction in order to enable him to remain in the United States. FF 34-35. Yet Respondent failed to take appropriate action to achieve that objective. She never forwarded the draft *pro hac vice* motion to the Maryland

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[32] Because the misconduct concerning the petition for innocence occurred in connection with a matter pending before a Maryland tribunal, we have applied the Maryland Attorneys' Rules of Professional Conduct to it. *See* D.C. Rule 8.5(b)(1). *See supra* pp. 24-26 (choice of law discussion).

attorney who had agreed to file it. FF 36. No Maryland attorney signed the motion. FF 36. Respondent ultimately filed pleadings with the Circuit Court of Montgomery County without being admitted there, and the court denied all relief she sought. FF 37. Respondent's conduct cannot be considered prompt, zealous or diligent, and she violated Maryland Rule 19-301.3.

K. Respondent Violated North Carolina Rules 1.4(a) and (b) by Failing to Communicate with the Battles or Their Imprisoned Son

North Carolina Rule 1.4(a) provides that

A lawyer shall:

> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;
>
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
>
> (3) keep the client reasonably informed about the status of the matter;
>
> (4) promptly comply with reasonable requests for information; and
>
> (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

North Carolina Rule 1.4(b) provides that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." As explained in Comment [4] to the Rule:

> When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client

> when a response may be expected. A lawyer should address with the client how the lawyer and the client will communicate, and should respond to or acknowledge client communications in a reasonable and timely manner.

Comment [5] to the rule explains that

> The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. . . . The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

In her representation of the Battles' son, Respondent utterly failed to keep either him or the Battles reasonably informed about the status of the representation or respond to their reasonable requests for information. When Respondent was retained by the Battles, she agreed to visit their son in prison as part of the representation, but she never did so. FF 7. Respondent spoke to the son just once, on the phone. PFF 17. She also failed to keep him reasonably informed about the representation by failing to discuss the motion in his case or her recommendation that he file the motion *pro se*. *See* FF 7, 10, 12-13. Providing the motion for his *pro se* signature, without concomitantly explaining it, denied him "sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued . . . ." N.C. Rule 1.4, cmt. [5]. She also failed to keep the Battles informed or respond to their reasonable inquiries about the motion and its filing. PFF 14-15, 18-24. Clear and convincing

record evidence demonstrates that Respondent violated North Carolina Rules 1.4(a) and (b) as charged.

IV. RECOMMENDED SANCTION

A. Standard of Review

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 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); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24.

In determining the appropriate sanction, the Court considers numerous factors, including: (1) the nature and seriousness of the misconduct; (2) the moral fitness of the attorney, including the presence of any misrepresentation or dishonesty; (3) the attorney's attitude toward the underlying misconduct; (4) prior disciplinary violations; (5) mitigating circumstances; (6) whether counterpart provisions of the Rules of Professional Conduct were violated; and (7) any prejudice to the client. *See In re Cleaver-Bascombe*, 986 A.2d 1191, 1195 (D.C. 2010); *see In*

re Omwenga, 49 A.3d 1235, 1238-39 (D.C. 2012) (per curiam) (appended Board Report).

B. Application of Sanction Factors

Respondent's aggregate misconduct was quite serious. Over a span of eight (8) years, Respondent systematically engaged in the unauthorized practice of law, despite repeatedly being warned against doing so by North Carolina and Maryland disciplinary authorities. She masked her lack of authority to practice in those jurisdictions by using misleading letterhead, despite being warned about the impropriety of its use. Although we have not concluded that she misappropriated client funds, she was cavalier in her handling of them and commingled them with her own; when challenged, rather than acknowledging her misconduct she lied about it to ODC. She failed to maintain adequate financial or other records. She disdained participation in the disciplinary process, and failed to respond to charges against her or to appear at her disciplinary hearing despite being given every reasonable opportunity to do so. Disciplinary Counsel does not contend that any of Respondent's clients suffered prejudice (Tr. 136) although she neglected – or even defied – their interests. FF 10-13, 21, 36-37, 45-46.

Disciplinary Counsel argues that Respondent should be disbarred, but its recommendation was based on its assertion that Respondent engaged in two instances of misappropriation that were at least reckless. Though we have concluded that Disciplinary Counsel failed to meet its burden in proving those charges, as

discussed above (*see supra* Section III, Part B), we have found that Respondent engaged in serious persistent misconduct worthy of a significant sanction.

C. **Comparable Cases**

This case involves dishonesty, and in such matters, the Court has imposed a wide range of sanctions, depending on severity of the attendant circumstances. *See In re Edwards*, 278 A.3d 1171, 1172-74 (D.C. 2022) (per curiam) (two-year suspension with fitness where respondent made a reckless false statement on her *pro hac vice* application form, displayed a pervasive lack of record keeping, and had prior discipline for strikingly similar misconduct); *In re Marks*, 252 A.3d 887, 888-89 (D.C. 2021) (per curiam) (suspending respondent for one year without fitness requirement, where respondent commingled and negligently misappropriated client funds and made two intentionally dishonest statements); *In re Ekekwe-Kauffman*, 210 A.3d 775, 781-82, 786-89, 793-97, 800 (D.C. 2019) (per curiam) (suspending respondent for three years with fitness requirement, where respondent commingled client funds over course of several years; failed to provide competent, zealous representation; failed to keep her client informed about course of her case; charged unreasonable fee; refused to return unearned fee; and intentionally submitted falsified document to court); *In re Speights*, 189 A.3d 205, 207, 212 (D.C. 2018) (per curiam) (two-year suspension with fitness where respondent had an extended failure to serve his clients with the requisite competence, skill and care, diligence and zeal and promptness, engaged in a serious interference with the administration of justice and gave intentionally false testimony); *In re Johnson*, 158 A.3d 913, 915-

16, 919-20 (D.C. 2017) (suspending respondent for ninety days, with sixty days suspended in favor of one year of probation with conditions, where respondent commingled funds, failed to act competently and diligently, and engaged in dishonest conduct); *In re Rodriguez-Quesada*, 122 A.3d 913, 918-19, 921-23 (D.C. 2015) (per curiam) (two-year suspension with fitness where respondent made a false statement to a judge, gave false testimony to the Hearing Committee, injured his "vulnerable" clients, and engaged in conduct reflecting a pattern of lack of competence, lack of diligence, neglect of his clients' cases, failure to communicate with his clients, and refusal to return case files and unearned payments); *In re Bradley*, 70 A.3d 1189, 1195-96 (D.C. 2013) (per curiam) (two-year suspension with fitness where respondent engaged in multiple years of intentional client neglect, gave intentionally false testimony to the hearing committee and had three prior informal admonitions, two of which were for similar misconduct); *In re Boykins*, 999 A.2d 166, 171-72, 177-78 (D.C. 2010) (two-year suspension with fitness where respondent engaged in negligent misappropriation, record keeping violations, and made recklessly false statements to Disciplinary Counsel); *In re Ukwu*, 926 A.2d 1106, 1115, 1118-1120 (D.C. 2007) (appended Board Report) (two-year suspension with fitness where respondent engaged in dishonesty, intentionally neglected clients, and failed to communicate and act with reasonable promptness).

Sanctions for failure to return unearned fees and client files range from public censures to moderate periods of suspension, depending on the aggravating or mitigating circumstances. *See In re Kaufman*, 14 A.3d 1136 (D.C. 2011) (per

curiam) (public censure); *In re Mance*, 980 A.2d 1196, 1208-09 (D.C. 2009) (public censure); *Carter*, 11 A.3d at 1223-24 (eighteen-month suspension); *Thai*, 987 A.2d at 429-31 (sixty-day suspension with thirty days stayed).

Violations of the unauthorized practice rule, standing alone, normally justify at most the sanction of a Board reprimand or public censure. *See In re Zentz*, 891 A.2d 277, 278 (D.C. 2006) (per curiam). The Court has issued suspensory sanctions in matters involving aggravating factors. *In re Lea*, 13 A.3d 770, 771-72 (D.C. 2011) (per curiam) (180-day suspension where attorney engaged in unauthorized practice of law; made false or misleading communications about the lawyer's services; failed to respond to Disciplinary Counsel; engaged in dishonesty; and engaged in serious interference with administration of justice); *In re Gonzalez-Perez*, 917 A.2d 689, 690-91 (D.C. 2007) (per curiam) (ninety-day suspension for making false statement to a tribunal; unauthorized practice of law; dishonesty; and serious interference with the administration of justice); *In re Schoeneman*, 891 A.2d 279, 280 (D.C. 2006) (per curiam) (appended Board Report) (four-month suspension for neglecting clients; dishonesty; unauthorized practice of law; and serious interference with the administration of justice).

Informal admonitions are frequently issued for the failure to provide written engagement agreements setting forth the relevant fee information. *See In re Szymkowicz*, 124 A.3d at 1088 ; *Williams*, 693 A.2d 32 at 327-28; *In re Confidential (J.E.S.)*, 670 A.2d 1343, 1345-46 (D.C. 1996).

The range of sanctions for prosecutions involving commingling and a failure to maintain complete financial records of entrusted funds in violation of Rule 1.15(a) spans from Board reprimand to a short period of suspension. *See, e.g.*, *In re Mott*, 886 A.2d 535 (D.C. 2005) (per curiam) (public censure); *In re Graham*, 795 A.2d 51 (D.C. 2002) (per curiam) (public censure); *In re Ukwu*, 712 A.2d 502 (D.C. 1998) (per curiam) (thirty-day stayed suspension); *In re Klass*, Board Docket No. 13-BD-041, at 4-5 (BPR Dec. 22, 2014) (Board reprimand).

Violations of Rules 7.1(a) and 7.5(a) usually result in a sanction of informal admonition. *See In re Winstead*, 69 A.3d 390, 399 (D.C. 2013); *In re McRae,* Bar Docket No. 2006-D323 (Letter of Informal Admonition Jan. 2, 2008).

Finally, sanctions in matters involving failure to represent clients zealously and diligently, along with a failure to explain the matter to a client range from informal admonitions to brief periods of suspension, again depending on the accompanying circumstances. *See, e.g.*, Order, *In re Fay*, Board Docket No. 10-BD-022, at 1-2 (BPR Nov. 27, 2013) (informal admonition), *adopted*, 111 A.3d 1025, 1031-32 (D.C. 2015); *In re Fox,* 35 A.3d 441 (D.C. 2012) (per curiam) (forty-five-day suspension); *In re Bah*, 999 A.2d 21 (D.C. 2010) (per curiam) (thirty-day suspension).

D. <u>Sanction Recommendation</u>

The imposition of a sanction is not "an exact science," *In re Thyden*, 877 A.2d 129, 144 (D.C. 2005), and that it is impossible to "match" all factors in different disciplinary cases. *In re Yelverton*, 105 A.3d 413, 429 (D.C. 2014). Because of the

scope and duration of Respondent's misconduct, its aggregate severity, and its persistence despite repeated admonitions from disciplinary authorities, we find that Respondent's misconduct is most similar to that at issue in cases such as *Edwards*, *Boykins* and *Ukwu*.

We also view, as particularly aggravating, the fact that Respondent lied to Disciplinary Counsel about her misconduct during its investigation. "The Bar is indeed a noble calling; and an attorney deliberately attempting to cover up misconduct is absolutely intolerable, regardless of whether it is under oath or during an investigation." *In re Chapman*, 962 A.2d 922, 925 (D.C. 2009) (per curiam), *as amended* (Feb. 5, 2009); *see also In re Corizzi,* 803 A.2d 438, 440-43 (D.C. 2002) (dishonest conduct including false statements made to Bar Counsel during investigation was aggravating factor, concluding that lying to Disciplinary Counsel about his misconduct, displayed "a continuing and pervasive indifference to the obligations of honesty in the judicial system"); *Chapman*, 962 A.2d at 925 ("[The C]ourt has consistently highlighted the importance of a respondent's veracity during [Disciplinary Counsel]'s investigation and commended those who have cooperated with candor."); *In re Sheehy,* 454 A.2d 1360, 1361-62, 1365 (D.C. 1983) (appended Board Report) (respondent's misrepresentations to Bar Counsel was a factor relevant in determining appropriate suspension of two years).

For the foregoing reasons, we conclude that Respondent should be suspended from the practice of law for two years.

E. <u>Fitness</u>

A fitness requirement is a substantial matter. *Cater*, 887 A.2d at 20. 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 [r]espondent 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:

> 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.

As discussed above, the persistent and intransigent nature of Respondent's past misconduct strongly suggests that she will continue to engage in it. Admonished repeatedly by disciplinary authorities, she persisted in her misbehavior over the course of almost a decade. She continued to represent unsophisticated clients in North Carolina and Maryland despite knowing that she had no right to do so. She coupled that disdain with a deliberate indifference to the disciplinary process, in which she refused to participate despite the convenience of a Zoom hearing. She quite simply did not treat these proceedings seriously. Further, Respondent lives and works in North Carolina, and it seems clear that her conduct during suspension will be more difficult for disciplinary authorities in the District of Columbia to monitor. Finally, although we did not find that her conduct harmed Mr. Taylor, it was evident from evidence offered by the attorney from the North Carolina Innocence Project that Respondent was not competent to represent his interests.

Accordingly, we recommend that Respondent be sanctioned with a two-year suspension and that, before being permitted to resume the practice of law, she be required to demonstrate fitness to do so pursuant to D.C. Bar Rule XI, § 3(a)(2).

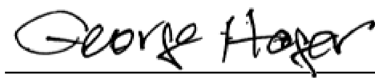
V. **CONCLUSION**

For the foregoing reasons, the Hearing Committee finds that Respondent violated D.C. Rules 1.5(a), 1.5(b), 1.15(a), 1.15(b), 1.16(d), 5.5(a), 7.1(a), 7.5(a) and 8.4(c), as well as Md. Rule 19.301.3(a) and N.C. Rules 1.4(a) and 1.4(b), and should receive the sanction of a two-year suspension with a requirement that she prove her fitness to practice law prior to 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). Further,

the Hearing Committee recommends that Respondent be ordered to pay restitution, with interest, to Betty Parker.[33] *See* Rule XI, § 3(b); *In re Edwards*, 990 A.2d at 508.

AD HOC HEARING COMMITTEE

Robert C. Bernius, Esq., Chair



George Hager, Public Member

Thomas Urban, Esq., Attorney Member

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[33] As noted herein, Ms. Taylor's credit card company refunded the $4,800 that she paid Respondent.