THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

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

REPORT AND RECOMMENDATION OF
AD HOC HEARING COMMITTEE

Respondent, Dr. Kissinger Sibanda, is charged with violating Rules 1.6(a) (disclosing client confidences and secrets), 1.18(b) (disclosing information learned in consultation with prospective client), and 8.4(d) (serious interference with or conduct prejudicial to the administration of justice) of the District of Columbia and/or New York Rules of Professional Conduct (the "Rules"), arising from a dispute with a former prospective client, Karim Annabi, who had consulted with Respondent by Zoom video conference and email about filing a civil lawsuit against New York University ("NYU") in the New York federal courts. As a threshold issue, the Hearing Committee has determined that the New York Rules apply to this matter, but because the facts of this case are unusual, the Hearing Committee analyzes Respondent's conduct here under both the D.C. and New York Rules.

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

In its Post-Hearing Brief, Disciplinary Counsel asserts that Respondent violated New York Rules 1.6(a), 1.18(b), and 8.4(d), and should be suspended for 30 days with a requirement that he demonstrate fitness to practice as a condition of reinstatement. Respondent contends that all charges should be dismissed because he did not violate New York Rules 1.6(a) or 1.18(b) since he did not improperly reveal any confidential information he learned during his consultation with Mr. Annabi, or alternatively, if the information he disclosed was confidential, he was permitted to do so in order to prevent Mr. Annabi from committing a crime. Respondent also contends that he did not violate New York Rule 8.4(d) since his actions in the courts were protected by his right to free speech and his ability to engage in "motion practice."

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven that Respondent violated New York Rule 1.18(b) by clear and convincing evidence and recommends that Respondent be suspended for 30 days with a requirement that he prove fitness as a condition of reinstatement.

I. PROCEDURAL HISTORY

On May 9, 2023, Disciplinary Counsel filed a Specification of Charges ("Specification") in this matter. That same day, Respondent filed an Emergency Request to Stay Proceedings Until Pending Cases are Resolved,[1] in which he

[1] Respondent filed three addenda to his motion, dated May 11, May 12, and May 15, 2023, to which he attached additional exhibits, and, on May 16, 2023, he filed a reply to Disciplinary Counsel's opposition to his motion. On May 23, 2023, approximately one-and-one-half hours after the Hearing Committee issued a Report and

contended that two pending New York civil cases would resolve issues related to his defense to the charges. On May 23, 2023, the Hearing Committee Chair recommended that Respondent's motion be denied because it did not satisfy the requirements of Board Rule 4.2, and on June 2, 2023, the Board issued an order denying the motion, finding that Respondent did not show there was "a substantial likelihood that the resolution of the two civil matters pending in New York will help to resolve material issues involved in the [pending] disciplinary matter" and that Respondent did not articulate "a clear connection between his former prospective client's alleged actions and the narrow exceptions set forth in Rule 1.6." Board Order dated June 2, 2023, at 2. Respondent filed an Answer on May 26, 2023, followed by four addenda, dated June 6, June 8, June 17, and July 6, 2023.[2]

On July 26, 2023, Respondent filed a Request for Subpoenas and Assistance from Hearing Committee, seeking "assistance in obtaining . . . subpoenas" (Request at 3) for the property manager of a residential address in New York associated with Mr. Annabi, and a subpoena duces tecum to Mr. Annabi for his driver's license. Because the intended targets of the subpoenas were outside the subpoena range set

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Recommendation recommending that the Board deny Respondent's motion, he filed a "Response to Chair of Hearing Committee." On May 25, approximately one hour after Disciplinary Counsel filed a reply to his Response, Respondent filed another reply and, approximately three hours later, filed a separate pleading attaching an exhibit. In total, Respondent submitted eight filings and sixteen exhibits in support of his request to stay the proceedings.

[2] In total, Respondent attached eleven exhibits and four addenda to the Answer.

by Superior Court Civil Rule 45(b)(2)(B), and Respondent had not applied for a subpoena in New York, the Hearing Committee denied Respondent's motion without prejudice to his later request for a subpoena if one was required by New York. On September 6, 2023, Respondent filed a notice of subpoena addressed to Mr. Annabi that did not attach a New York subpoena. On September 7, 2023, Respondent filed another notice of subpoena that did not attach a New York subpoena, addressed to Ms. Mariana Avila Flyn[3], who, he alleged was the current resident of the residential address in New York associated with Mr. Annabi. On September 18, 2023, Respondent filed a copy of a New York subpoena for Ms. Flyn dated September 13, 2023.

The parties filed their respective exhibit lists and witness lists on September 1, 2023.[4] Respondent objected to his inclusion on Disciplinary Counsel's witness list, contending that he could not be compelled to testify in Disciplinary Counsel's case-in-chief. Disciplinary Counsel objected to Respondent's witness list, contending that the testimony of Ms. Flyn, would not be relevant. The Hearing Committee Chair denied both objections.

On September 20, 2023, Respondent filed a Request for Leave to File Motion to Dismiss, in which he sought both to file a comprehensive motion based on what

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[3] The court filing attached to Respondent's September 20, 2023, Request for Leave to File Motion to Dismiss refers to "Avila Flynn," but we defer to the spelling used consistently by both parties.

[4] Respondent's exhibit list was technically received shortly after midnight on September 2, 2023.

he asserted to be newly-discovered facts and to stay the proceedings until the motion was decided. On September 25, 2023, the Hearing Committee Chair denied the motion because, pursuant to Board Rule 7.16(a), Hearing Committees may not rule on motions to dismiss, but rather must include recommended dispositions in their reports and recommendations. Approximately one hour later, Respondent filed a similar motion with the Board, which was denied without prejudice to Respondent later making an argument in favor of dismissal to the Hearing Committee. Later that day, Respondent filed a motion to recuse the Chair of the Hearing Committee, which the Board denied the following day, on September 26, 2023.

On September 26, 2023, Respondent filed a motion requesting a two-week postponement of the hearing, scheduled to begin the following day, asserting that he had assumed that his motion to dismiss would be granted and that unforeseen – but unspecified – personal matters had arisen.[5] Respondent did not provide any argument as to why he assumed that his motion to dismiss would be granted, particularly since the Board Rules provide that a respondent's motion to dismiss can only be resolved by the Board after the hearing. The Hearing Committee Chair denied the motion based on Respondent's failure to show good cause for postponement.

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[5] The Motion was filed with the Board, but the Board Chair referred it to the Hearing Committee since, under Board Rule 7.10, all applications for hearing continuances must be presented to the Hearing Committee Chair.

A hearing was held on September 27 and 28, 2023. Respondent appeared *pro se*. At the hearing, Disciplinary Counsel called Mr. Annabi as its sole witness, and Respondent cross-examined him extensively. Tr. 54-357.[6] Respondent testified, by adopting his opening statement as part of his testimony (without objection from Disciplinary Counsel) and providing additional testimonial evidence. Tr. 27-53, 416-432. Disciplinary Counsel cross-examined Respondent after his direct testimony. Tr. 434-443.

The following exhibits were received in evidence: DCX[7] 1, 5-17, 21-38, and 40-47 and RX 1, 14, 23, 30, 34, 42, 44, 48, 334, 336, 339, 354, 356, 393, 396, 424, and 425.[8] Following the hearing, Respondent moved to admit RX 399 (Mr. Annabi's driver's licenses), which Respondent had "marked" but did not move to admit during the hearing (Tr. 344), as well as two new exhibits: RX 426 (a court order dismissing Mr. Annabi's case against NYU, issued on September 29, 2023) and RX 427 (a court

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[6] "Tr." refers to the transcript of the hearing held on September 27 and 28, 2023.

[7] "DCX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "FF" refers to the Findings of Fact made herein by the Hearing Committee.

[8] After the parties filed their exhibit lists and sets of admitted exhibits, Respondent disputed that DCX 7, 14, 17, and 30 were admitted, and Disciplinary Counsel disputed that RX 6, 40, and 399 were admitted. The Chair ordered the parties to file statements citing the pages of the transcript in which the disputed exhibits were admitted or, if applicable, to move for the admission of exhibits that were not admitted during the hearing. Disciplinary Counsel confirmed that the exhibits Respondent disputed were in fact admitted in evidence, citing Tr. 63 (DCX 7), 101 (DCX 14), 110 (DCX 17), and 165 (DCX 30). Respondent did not provide support for his contention that RX 6, 40, and 399 were admitted during the hearing, and we conclude that they were not.

order denying Mr. Annabi's motion for a sanctions conference in that case, dated October 5, 2023).[9] Disciplinary Counsel objected to the admission of all three exhibits on relevance grounds, but the Hearing Committee Chair issued an order admitting them and stating that they "will be given the weight the Hearing Committee deems appropriate." Hearing Committee Order dated October 20, 2023, at 1.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the ethical violations set forth in the Specification. Tr. 514; *see* Board Rule 11.11. In the sanctions phase of the hearing, Respondent made a statement concerning mitigating factors, but neither party submitted any other evidence.[10] Tr. 515-16.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC Post-Hearing Br.") on October

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[9] RX 426 and 427 were initially submitted by Respondent in a pleading entitled Update on Complainant's Federal Case, which he filed on October 10, 2023. Disciplinary Counsel filed a motion to strike the pleading, which the Hearing Committee Chair granted without prejudice to Respondent moving to supplement the record. Respondent did so on October 16, 2023, and this was granted by the Hearing Committee on October 20, 2023.

[10] In his Post-Hearing Brief, Respondent provided additional mitigation arguments. Specifically, he asserted that "[*a*]*ny* sanction would disproportionately punish" him because he represents clients in pending cases and because he is "scheduled to begin his career as a law professor in the foreseeable future." Respondent's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction at 59-60. He cited two cases in which he is counsel, but provided no details of any upcoming teaching position. *Id.*

27, 2023,[11] Respondent filed his Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("R. Post-Hearing Br.") on November 13, 2023, and Disciplinary Counsel filed its Reply ("ODC Reply Br.") on November 17, 2023. On November 20, 2023, Respondent filed a Sur Reply Brief ("R. Sur Reply Br."), including a request for leave to file it, which the Hearing Committee Chair granted.

II. FINDINGS OF FACT

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

1. Respondent is a member of the District of Columbia Bar, having been admitted on December 9, 2013, and subsequently assigned Bar number 1017426. DCX 1.

2. Respondent has a double Master's degree in Litigation and a Ph.D. in law (SJD) from the Suffolk University School of Law in Boston, Massachusetts. *See* Tr. 32-33 (Respondent); DCX 21 at 2; DCX 30 at 2; *see also* R. Post-Hearing Br. at 13.

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[11] Disciplinary Counsel's Post-Hearing Brief was originally due on October 23, 2023, but, because the transcript was issued four days later than anticipated, the Hearing Committee Chair granted four-day extensions of time for filing all three briefs, over Respondent's objection.

3. Respondent lives in and has a virtual office in New Jersey, but he is only licensed in the District of Columbia. He is admitted to practice in the U.S. Court of Appeals for the Second Circuit and the U.S. Supreme Court. Tr. 130 (Respondent); DCX 13 at 1; DCX 21 at 1-2. Respondent is not a member of the New York Bar, nor is he admitted in the U.S. District Court for the Southern District of New York. *See, e.g.*, DCX 13 at 1.

4. On April 16, 2022, Respondent responded to a Craigslist ad posted by Karim Annabi, who was seeking a litigation attorney to assist him with a federal case against New York University Stern School of Business. Answer at 2 ¶ 3; *see* DCX 6.

5. On April 16 and 17, 2022, Respondent and Mr. Annabi exchanged emails about the potential case and to set up a consultation call. DCX 7-9. Prior to the consultation call, Mr. Annabi asked Respondent if he was willing to accept the representation on a contingency basis. DCX 7. Respondent stated he would accept the case on a contingency basis, but only after evaluating the strength of the case. Respondent said, "if it's a good case, I [would] do it [on a] contingency." DCX 8. Mr. Annabi sent Respondent all the relevant records and information about his case so that Respondent could review them in preparation for the consultation. Answer at 2 ¶ 4; DCX 10; Tr. 59, 64 (Annabi).

6. Respondent initially told Mr. Annabi that the consultation fee was $200, but then reduced the fee to $125. DCX 6; DCX 8. Respondent testified:

> I was so happy that I met [Mr. Annabi]. I say, "You know, Nelson Mandela, when he started the whole revolution in South Africa, the first

> place he went to was Algeria," and we had a very nice conversation, and I was really happy that finally I could pay forward what I feel has been – should be paid for, because Algeria helped South Africa.
>
> So I said to Mr. Annabi, and the evidence will show this, I said, "You know what I'm going to do? I'm not going to do this for $200. I'm going to do this actually for $125."

Tr. 29. Nonetheless, Mr. Annabi eventually paid Respondent the full $200 via PayPal. Answer at 2 ¶ 4; DCX 21 at 2; Tr. 30 (Respondent).

7. On April 17, 2022, Respondent and Mr. Annabi met via Zoom for an initial consultation. During the meeting, they discussed the facts of the underlying case and the basis for Mr. Annabi's claim. Tr. 59, 64, 169-171 (Annabi); DCX 6; DCX 10. During this Zoom consultation, Respondent and Mr. Annabi shared some connection over their heritages (*i.e.*, that Mr. Annabi is Algerian and Respondent is from South Africa), and Mr. Annabi made statements that Respondent later referred to as the "as an African" speech. DCX 14; *see* Tr. 28-29 (Respondent).

8. After the consultation, Respondent sent Mr. Annabi a draft retainer agreement. In his email, Respondent reminded Mr. Annabi that their conversations and correspondence were "confidential and subject to attorney-client privilege." DCX 9. The draft agreement called for a hybrid fee arrangement, requiring Mr. Annabi to pay Respondent fees on a graduated schedule related to work that might need to be performed, as well as a contingency fee – which would be offset by fees previously paid – if the case was successful or settled. DCX 13.

9. Mr. Annabi accused Respondent of engaging in a "deceptive . . . bait and switch" by offering a contingency agreement but then presenting him with the

hybrid fee arrangement. DCX 14 at 1. A heated exchange of emails followed. DCX 14. Mr. Annabi asked Respondent to refund the consultation fee, but Respondent declined to do so, saying he had earned it. *Id.* at 2; *see* DCX 13. Mr. Annabi then threatened to seek a refund from PayPal or from the New York small claims court. DCX 14. Respondent suggested, "Let's resolve our dispute like two noble Africans who believe in Allah/Hashem. We don't need a Christian small claims court or PayPal for us to resolve this dispute between us." *Id.* at 7. Respondent offered Mr. Annabi different financial terms, but Mr. Annabi rejected these as well. *Id.*; Tr. 100-02 (Annabi).

10. Ultimately Respondent and Mr. Annabi could not agree on the terms of the representation, and Mr. Annabi never signed the agreement. *See* DCX 9; DCX 10; DCX 11; DCX 12; DCX 13; Tr. 67, 104-05 (Annabi); Tr. 435-36 (Respondent). This was in part due to Mr. Annabi's singular focus on whether Respondent had promised to undertake this engagement on a contingency basis, which Respondent refused to do, based on his assessment of the case after their Zoom call. *See, e.g.*, Tr. 59-76, 89-96 (Annabi); DCX 14.

11. Respondent has never represented Mr. Annabi, and Mr. Annabi has never utilized Respondent's legal services. Tr. 435-36 (Respondent).

12. On May 9, 2022, Mr. Annabi filed a *pro se* complaint in the U.S. District Court for the Southern District of New York against New York University Stern School of Business. The complaint alleged, *inter alia*, that the school

breached implied contracts and engaged in deceptive advertising practices. DCX 15; Tr. 104-05 (Annabi); Answer at 3 ¶ 6.

13. On June 23, 2022, Joseph DiPalma entered his appearance as counsel for NYU. DCX 15 at 3; Tr. 108 (Annabi).

14. On August 2, 2022, Mr. Annabi filed a separate action against Respondent in New York state civil court, alleging breach of contract and seeking $1,000 in damages. DCX 45. Mr. Annabi notified Respondent that evening that he had filed the complaint and would be using a process server to serve him, which would "add to the costs." DCX 17; Tr. 109 (Annabi). The complaint was not served on Respondent until November 25, 2022. DCX 46; Tr. 193-94 (Annabi).

15. Respondent was very upset that Mr. Annabi sought $1,000 from him in the civil case, even though Mr. Annabi had paid Respondent only $200, and did not allege that he suffered any additional economic harm. Tr. 422-23, 474-76 (Respondent). Respondent viewed this lawsuit as part of Mr. Annabi's continuing efforts to harass him. Tr. 475-76 (Respondent); *see* Tr. 46-47 (Respondent).

16. Approximately two hours after receiving Mr. Annabi's email notifying Respondent of the filed complaint, Respondent replied to Mr. Annabi. DCX 16 at 2. Mr. Annabi responded by email, referring to Respondent's "garbage legal opinion" and advising him to "[f]ocus on [his] own defense." *Id.* Respondent replied in an additional email, to which he added Mr. DiPalma – the attorney

representing NYU – on the cc line. *Id.* at 1-2. Respondent labelled this response as a "Rule 404(b) 2 Letter – Other Wrongs." *Id.* at 1.[12] In that email, Respondent criticized Mr. Annabi's lawsuit against NYU and described his own legal advice to Mr. Annabi. First, he stated: "Your lawsuit against NYU, referenced above, has fundamental flaws in law and fact – *and I brought that to your attention when I conferenced with you via zoom*." *Id.* (emphasis added). Respondent stated further: *"[A]s I stated during our consult*, your legal assertions are mostly frivolous and not based on any established or existing law." *Id.* at 2 (emphasis added). He also said: "There are many inconsistencies with your claim against NYU." *Id.* at 1. Respondent indicated that he would tell the court in the NYU case about his views of the case and the advice he had given Mr. Annabi, stating: "I will be forced to bring this issue to the federal judge handling this case as it speaks to your credibility in this lawsuit." *Id.*

17. Mr. Annabi did not authorize Respondent to make these disclosures. At the hearing, he described them as an attempt to sabotage his case. He also described Respondent's disclosures as a "complete 180" since, Mr. Annabi asserted, during the consultation Respondent had instead praised Mr. Annabi's case and told him it had merit. Tr. 112-14, 116 (Annabi).

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[12] Respondent references Fed. R. Evid. 404(b)(2), a rule governing character evidence that is primarily applicable in *criminal* cases. The Hearing Committee also notes that the Superior Court Rules govern this proceeding, not the Federal Rules.

18. On August 3, 2022, Respondent filed a request to be added as an "Interested Party" in the NYU case.[13] DCX 21. In his request, Respondent told the court that Mr. Annabi was "unsatisfied with [Respondent's] legal advise [sic] – that essentially his legal assertions of 'deceptive advertising etc' [sic] are unfounded in law and frivolous." *Id.* at 2. He claimed that the NYU lawsuit and his "dispute with Mr. Annabi, share the same nexus of facts and call to question the frivolous nature of Mr. Annabi's lawsuit and current legal assertions." *Id.* at 3 (emphasis in original). Respondent also endorsed NYU's motion to dismiss filed against Mr. Annabi, describing it as "well-written," and stating that it "echoes and sums up my concerns and the warnings I shared with Mr. Annabi during our consultation." *Id.* In the last two substantive paragraphs of this document, Respondent advised the court to question "Mr. Annabi's legal residency," noting that Mr. Annabi had "filed a lawsuit against me in Jamaica, Queens, New York and yet he is using a United Kingdom address in this aforementioned matter – as an assertion of diversity citizenship." *Id.* at 4. Respondent was neither a party nor a representative of a party in the case. Tr. 437 (Respondent); *see* DCX 21.

19. Mr. Annabi claimed that he felt betrayed by Respondent's motion and felt as though Respondent was trying to undermine his credibility before the District Court. Tr. 122-23 (Annabi).

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[13] Throughout these proceedings, Respondent referred to this motion as his request to be added as an "IP." *See, e.g.*, Tr. 38; R. Post-Hearing Br. at 9.

20. On August 3, 2022, citing Fed. R. Civ. P. 24, the court denied, without prejudice, Respondent's request to be added as an interested party because his filing did not "satisfy either the procedural or the substantive standards for intervention." DCX 23. The court also stated, "While Mr. Sibanda is free to follow the public proceeding in this case, he should not file papers on ECF as he is not a party or representative of a party in this action." *Id.* Despite the court's ruling, Respondent was still listed as an interested party on the electronic docket. DCX 15 at 1. Respondent nonetheless clearly understood the court's order that he was not to file any additional documents through ECF. Tr. 43, 428 (Respondent).

21. Mr. Annabi continued to correspond with Respondent by email in August 2022. DCX 24; DCX 25; DCX 26; DX 27; DCX 28. Respondent believed these emails to be "harassing." Tr. 46-47 (Respondent). Respondent responded by email to Mr. Annabi on a number of occasions, but he also initiated some emails with Mr. Annabi, despite having asked Mr. Annabi to cease email correspondence. DCX 29; DCX 30; *see, e.g.*, DCX 24 ("Please stop emailing me: this is my fifth request."). Whenever he sent an email to Mr. Annabi, Respondent included Mr. DiPalma on the "cc" line.[14] *E.g.*, DCX 24 at 1; DCX 30 at 1. Respondent said that he copied Mr. DiPalma so he would have a "witness to what [he] was experiencing and the way [he] was being treated." Tr. 437-39 (Respondent).

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[14] Mr. Annabi believes that Respondent copied Mr. DiPalma on seventeen emails, but not all of these were admitted, so the Hearing Committee cannot find that this number is correct. DCX 16; DCX 24; DCX 25; DCX 26; DCX 28; DCX 29; DCX 30; Tr. 188 (Annabi).

22. In these exchanges, on which he copied Mr. DiPalma, Respondent referred to Mr. Annabi as a racist and antisemite, accused Mr. Annabi of committing perjury, and threatened Mr. Annabi with "Rule 11" sanctions for his filings in the small claims action. DCX 24; DCX 25; DCX 26; DCX 27; DCX 28; DCX 29.

23. In an email Respondent sent to Mr. Annabi on August 4, 2022, on which he copied Mr. DiPalma, he explained his assertions that Mr. Annabi was a "racist and anti-semitic." DCX 24 at 1. He said: "This is the racism of North Africans where they think they can treat black Africans any sort of way. A case in point is that even though I told you I will not refund the $200 because I earned it you think I am not entitled to earn a living." *Id.*; RX 42.

24. Mr. Annabi replied to Respondent (removing Mr. DiPalma from the cc line):

> [Y]our beliefs that I'm racist against black Africans or Jews is comical and ignorant beyond belief. I even tried to hire you knowing you are a black Jew and it would have gone well if you hadn't agreed to full contingency upfront then sent me a retainer with fees like a fraudster. So my dislike of you [has] nothing to do with race only your dishonesty and now I also see your nastiness.

DCX 25 at 2.

25. In another email later that day (and cc'ing Mr. DiPalma again), Respondent again made clear that his opinion that Mr. Annabi was a "racist and antisemitic" was connected to Mr. Annabi's allegations that he had engaged in a "bait and switch" regarding the fees he would charge to represent Mr. Annabi in the case he wanted to file against NYU. DCX 25 at 1-2.

26. Respondent and Mr. Annabi's post-Zoom interactions were filled with increasingly heated insults that escalated to the point where Mr. Annabi filed a complaint against Respondent with PayPal, the small claims suit against Respondent in Queens County, and, at some time prior to August 18, 2022, a complaint with the Office of Disciplinary Counsel. Mr. Annabi informed Respondent about this latter action on August 18, 2022. *See* DCX 26 at 2; *see also* DCX 16.

27. In an email to Mr. Annabi later on August 18, 2022, Respondent again referred to Mr. Annabi as exhibiting "racist-antisemitism," citing Mr. Annabi's attempt to get "free legal services" from him. DCX 26 at 1. He also warned Mr. Annabi that "there are many exceptions to attorney-client privilege, including fraud and crime." *Id.* Finally, Respondent informed Mr. Annabi that he was preparing a second motion to Judge Liman, the judge presiding over Mr. Annabi's suit against NYU in the Southern District of New York. *Id.*; *see* DCX 15. After further exchanges that same day, Respondent again called Mr. Annabi a racist, an antisemite, and a liar and told him that when the judge received Respondent's second motion, "[T]hat will be the nail in your case!" DCX 27 at 1. Respondent sent copies of all of these emails to Mr. DiPalma. DCX 26; *see* DCX 28 (forwarding to Mr. DiPalma the chain of emails to contained in DCX 27).

28. On November 19, 2022, Respondent sent Mr. Annabi an email, copying Mr. DiPalma and the Office of Disciplinary Counsel, informing Mr. Annabi that because of Mr. Annabi's "threats and insults," he intended to file a

motion with Judge Liman "to defend [himself]" and was attaching a "Rule 11.c Notice" before doing so. DCX 29.

29. On November 21, 2022, Respondent sent another email to Mr. Annabi, arguing that he had "nothing to do with Queens, New York," so Mr. Annabi's suit against him in New York was "conclusive proof of bad faith." DCX 30 at 1. He again copied Mr. DiPalma and the Office of Disciplinary Counsel, and noted at the bottom of his email "CC: Judge Liman SDNY Exhibit 2." *Id.* at 1-2. It is not clear whether this email was in fact sent to Judge Liman.

30. In February 2023, Mr. Annabi prepared a motion seeking sanctions against Respondent for filing papers to harass him; for making frivolous accusations and defenses without evidentiary support; for perjury; and for engaging in fraud before the court, among other reasons. RX 356 (encompassing pages marked 356 to 392 (Tr. 304)). Mr. Annabi did not file the motion, but sent it to Respondent and Mr. DiPalma by email on February 4, 2023. DCX 33; Tr. 179-180 (Annabi). In his email, Mr. Annabi simply said, "Please see attached motion." DX 33. He did not say that he had filed it, the motion did not appear in the electronic case file, and Respondent was aware that it had *not* been filed. *See id.*; DCX 15 at 14; DCX 36; Tr. 172-74 (Annabi).

31. Two days later, on February 6, 2023, Respondent filed a letter with the district court (Judge Liman) via ECF, requesting the opportunity to respond to Mr. Annabi's motion for sanctions if Mr. Annabi filed it. DCX 34; DCX 36. In that letter, Respondent described Mr. Annabi's email as "threatening." DCX 36 at 1.

Respondent also described his views about Mr. Annabi's treatment of him and about Mr. Annabi's actions in the case before Judge Liman. *Id.* at 2. He emailed a copy of the motion to the judge's chambers, to be included as an exhibit to his letter. DCX 35; DCX 36; Tr. 178 (Annabi). Respondent did not explain why he needed to seek leave of court to respond to a motion that had not yet been filed and indeed might never be filed. *See* DCX 35; DCX 36.

32. In response, on February 7, 2023, apparently confused by Respondent's request to respond to the motion and his email to chambers, the court issued an order that mistakenly stated that Mr. Annabi had filed the sanctions motion. DCX 37. Thus, the court directed Mr. Annabi not to file a motion for sanctions without first requesting a pre-motion conference. The court also directed the clerk to strike Respondent's letter from the docket. DCX 15 at 14; DCX 37; Tr. 181 (Annabi).

33. Later that day, the court issued an additional order explaining that Mr. Annabi had called chambers and clarified that he did not file the motion for sanctions, nor did he authorize or request Respondent to do so.[15] DCX 41. The court also noted that Mr. Annabi stated that "he did not intend to file the motion for sanctions with the Court at that time." *Id.* Thus, the court had to amend the order it had previously entered. *Id.*; *see* DCX 15 at 14.

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[15] Respondent also sent an email to the court informing the court that he had been the one who sent the unfiled sanctions motion and that it was intended to be an attachment to his own filing. RX 396.

34. Soon after, the court issued an order reiterating that Respondent's request to be added as an "interested party" had been denied on August 3, 2022, and that Respondent should not be listed as an "interested party" on the docket. DCX 38; *see* DCX 15 at 4. The order stated further: "The Court also ordered Mr. Sibanda not to file papers on ECF in this action as he is not a party or a representative of a party in the case, an order that Mr. Sibanda has since violated." DCX 38; *see also* DCX 37. The court directed the Clerk to remove Respondent as an interested party on the docket. DCX 38.

35. After receiving the court orders, Respondent nonetheless sent an email to Judge Liman, copying Mr. DiPalma and Mr. Annabi, seeking to "clarify the reason for docketing the request to respond to Annabi's motion on ECF." DCX 40 at 1. He said that his filing was triggered by Mr. Annabi's "own purported sanction motion." *Id.* Respondent asserted that the court had "approved [him] following this matter,"[16] and he should not be blocked from "IP docketing privileges." *Id.* He further said that he was "listed as an IP for purposes of following the case. I have rights, in as much as Annabi has rights." *Id.*

36. After receiving Respondent's email, Mr. Annabi again attempted to serve the parties with his motion for sanctions via email. After receiving Mr. Annabi's email, Respondent forwarded it to Judge Liman's chambers. DCX 42.

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[16] In fact, in his Order, Judge Liman's statement referred only to the fact that Respondent, like any member of the public, was "free to follow the public proceeding[s]." DCX 23. Judge Liman did not "approve" of Respondent's actions.

37. On February 10, 2023, Mr. DiPalma sent a letter to Judge Liman addressing the motion for sanctions Mr. Annabi had sent to him – and which Respondent had provided to the court. RX 393 (encompassing pages marked 393 to 395 (Tr. 304-05)). In the section of that letter discussing NYU's argument that Mr. Annabi's lawsuit lacked subject matter jurisdiction, Mr. DiPalma said that they had not received any confidential information from Respondent relating to these allegations.[17] *Id.* at 394.

38. On February 15, 2023, Mr. DiPalma sent a letter to Respondent and Mr. Annabi requesting that they cease copying his firm and its attorneys and employees on communications between them. DCX 43. Respondent replied to Mr. DiPalma's letter, claiming that he had only copied Mr. DiPalma on the email about the renewed motion for sanctions and that any other time he had included Mr. DiPalma on email correspondence, he was required to do so, including "[t]o the degree that Annabi requested a reply I had to cc you." DCX 44. At the hearing,

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[17] Respondent points to Mr. DiPalma's assertion as proof that he never disclosed any confidential information from Mr. Annabi. RX 393 at 394. However, Mr. DiPalma's statement refers only to whether he received privileged or confidential information relating to NYU's defense about the lack of subject matter jurisdiction. Since this defense focuses on Mr. Annabi's domicile or residence, the information on which Mr. DiPalma focused related to Mr. Annabi's address, which was not confidential information, as explained in detail below. Mr. DiPalma also asserts that he obtained this information from publicly available sources, and as set forth below, the Hearing Committee has determined that this information was not privileged or confidential since Respondent learned it after the consultation period had ended. Mr. DiPalma's statements do not focus on any of the other information about Mr. Annabi that Respondent provided to him in emails.

however, Respondent did not assert that Mr. Annabi requested that he copy Mr. DiPalma. *See* Tr. 439 (Respondent explaining that he had copied Mr. DiPalma on emails for two reasons: so that Mr. DiPalma would be a witness to harassment by Mr. Annabi and because he would need to notify the parties when filing motions in his effort to become an interested party).

39. Respondent and Mr. Annabi continued to exchange emails about the New York civil case Mr. Annabi filed against Respondent. On June 4, 2023, Mr. Annabi sent an email to Respondent because Respondent had not appeared at a court proceeding in that case. After a series of emails between them, on June 5, 2023, Respondent told Mr. Annabi that he would file "criminal charges for harassment" if Mr. Annabi did not stop emailing him. RX 44 (encompassing pages marked 44-47 (Tr. 281-82)); *see also* RX 334.

40. Respondent asserts that he has never released any confidential information relating to Mr. Annabi. R. Post-Hearing Br. at 24; *see* Tr. 35-40 (Respondent); R. Post-Hearing Br. at 37. But he also asserts: "My defense is that, if there is a crime, I have attorney/client exception to the attorney/client privilege that I can bring that crime, and that's an exception." Tr. 247.

41. Respondent concedes that he violated Judge Liman's August 3, 2022, order that he not file any documents in the federal case. R. Post-Hearing Br. at 24; Tr. 428 (Respondent). He asserts that his filing was "triggered by" Mr. Annabi seeking to docket what he considered to be "a frivolous sanctions motion against him." R. Post-Hearing Br. at 24; *see* Tr. 44-45 (Respondent accusing Mr. Annabi of

a "very clever" attempt to "docket defamatory statements" against him via the sanctions motion).

42. Respondent has failed to follow applicable D.C. Superior Court Rules and Board Rules throughout this proceeding, including:

a. Seeking to send subpoenas beyond 25 miles from the District of Columbia, the limit set by D.C. Super. Ct. Civ. R. 45(b)(2)(B), without following the procedure set forth in D.C. Bar R. XI, § 18(f) (*see* Hearing Committee Order dated August 9, 2023).

b. Seeking dismissal of the proceedings before the hearing, contrary to Board Rule 7.16(a), and renewing his motion to the Board after the Hearing Committee alerted him to the Rule's requirement that the Hearing Committee "include a recommended disposition of the motion [to dismiss] in its report to the Board" (*see* Hearing Committee Order dated September 25, 2023; Board Order dated September 25, 2023 ("[T]here is no provision in the Board Rules for the Board to grant a pre-hearing motion to dismiss . . . .")).

c. Seeking a continuance of the hearing one day in advance, in a motion to the Board, contrary to Board Rule 7.10, which requires that applications for hearing continuances be filed with the Hearing Committee at least seven days before the hearing date, on the basis that he had "anticipat[ed] that [his] motion to dismiss," which he requested leave to file one day

earlier, would be granted (*see* Request for Two-Week Postponement, filed on September 26, 2023).

d. Failing to provide a complete list of exhibits he might seek to admit in evidence, and failing to supplement his exhibit list before the hearing, purportedly because he "needed time to prepare," which he claimed he did not have because his requests for continuances were denied (*see* Tr. 199-206).

e. Marking exhibits with Bates numbers rather than exhibit numbers, *see* Tr. 261-66; trying to admit incomplete documents, Tr. 281-82; and delaying proceedings while working through the final list and making redactions to certain exhibits with Disciplinary Counsel, Tr. 217-220.

f. Failing to keep track of which exhibits each party sought to move in evidence, whether there was an objection, and whether the Hearing Committee admitted each exhibit or excluded it (*see* Respondent's Request to Supplement Their Exhibit List Adding RX: 6 and 40, filed on October 31, 2023).

g. Failing to sign the list of exhibits, and instead seeking to preserve his right to contest the exhibits' admission after reviewing the transcript (*see* Respondent's Response to ODC Motion, filed on October 5, 2023).

h. Repeatedly failing to request the consent of the opposing party before filing procedural motions, as required by Board Rule 7.13 (*see, e.g.*, Respondent's Requests for Leave to File Motion to Dismiss, filed on

September 20, 2023 and September 25, 2023 ("Respondent anticipates that ODC Counsel, Mrs. Dru M. Foster, will oppose Respondent's motion to dismiss.")), even after the issue was called to his attention in a Hearing Committee Order dated September 25, 2023, and issued before he filed his Request to the Board later that day.

43. Respondent has asserted that he was respectful to everyone at the hearing. *See* R. Post-Hearing Br. at 36.

44. Throughout the hearing and after, Respondent asserted that Disciplinary Counsel and the Chair of the Hearing Committee were "rude" or unfair to him. *See, e.g.*, *id.* at 45 (Disciplinary Counsel "was rude towards Respondent despite touting herself as an ethics attorney; whose conduct is exemplary"); *id.* at 46-48; Tr. 143 (the Chair of the Hearing Committee "cannot testify and be a neutral judge"); Tr. 246-49 ("If you don't want me to have a strong defense because you already believe that I have done something wrong, then this [discussion of relevance] is not necessary, but you have to allow me to develop my case to the fullest and then reach a decision."); *see also* Tr. 283-84 (Respondent to Disciplinary Counsel: "Let me explain it, and then I'm going to give you time. I know you're going to say it's irrelevant, because you've been saying that from day one. But let me finish and give you a chance. That's how it works. Don't speak over me."); Tr. 289-292; Tr. 317-321 (Respondent to Chair: "Give me leeway. Stop being so critical of me.").

45. Throughout the hearing and after, Respondent asserted that Disciplinary Counsel, the Chair of the Hearing Committee, and the disciplinary system are racist. *See, e.g.*, R. Post-Hearing Br. at 45-47; Respondent's Response to ODC Motion, filed on October 5, 2023. His assertions against Disciplinary Counsel are based on her prosecution of Respondent, her objections to his motions, her objections to his presentation of evidence, and her request that a fitness requirement be imposed. *See* R. Post-Hearing Br. at 45-46, 54-55. His assertions against the Chair are based on the Chair's rulings against Respondent and his assertion that she had decided the case before hearing it. *See, e.g.*, Tr. 289-294. His assertions against the disciplinary system focus on his argument that the hearing committee hearing his case must have at least one black member and that the only similarity between his case and the respondent in *In re Paul* is the color of their skin.[18] *See* R. Post-Hearing Br. at 41-42, 46-47.

III. CONCLUSIONS OF LAW

A. Choice of Law

D.C. Rule 8.5(b) governs choice of law in the exercise of the Court's disciplinary authority and provides the set of rules that apply to particular conduct:

> (1) For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise, and

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[18] There is no evidence in the record as to Mr. Paul's ethnicity or race. Thus, the Hearing Committee finds that Respondent has failed to show a basis for this assertion.

(2) For any other conduct,

> (i) If the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and
>
> (ii) If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

The Specification states that the New York Rules should apply to "some" of Respondent's conduct, specifically any misconduct that was "in connection with a matter" pending before the U.S. District Court for the Southern District of New York. Specification at 6 n.1. In its Post-Hearing Brief, Disciplinary Counsel contends that all the misconduct took place in connection with a New York proceeding, and thus only the New York Rules should apply in this case. ODC Post-Hearing Br. at 8 n.2. Respondent does not contest Disciplinary Counsel's position.

Although Mr. Annabi originally sought to retain Respondent to file a civil suit for him in the U.S. District Court for the Southern District of New York, he ultimately did not retain Respondent. Instead, Mr. Annabi filed his case *pro se* in that court. The events underlying the alleged violations of Rule 8.4(d) clearly occurred "in connection with" that proceeding, and thus it is clear that New York Rules should apply to those allegations. *See* D.C. Rule 8.5(b)(1). The Hearing Committee finds it is less clear what Rules apply to the allegations about Respondent's breach of confidentiality of information learned from a prospective client before the filing of any litigation, but disclosed by Respondent subsequent to

the filing of that lawsuit, in alleged violation of Rules 1.6 and 1.18. However, looking to the Board's reasoning in *In re Ponds*, Board Docket No. 17-BD-015, at 36 (BPR June 24, 2019), *decided on other grounds without discussion*, 279 A.3d 357 (D.C. 2022) (per curiam), the Hearing Committee recognizes that "the language in Rule 8.5 is clear and broad." In *Ponds*, the Board found that because the handling of fees paid and received was "in connection with" a representation in Virginia, it applied the Virginia Rules to its consideration of whether those fees were handled appropriately, rather than looking at how the respondent handled fees generally (*i.e.,* as "other conduct" addressed by D.C. Rule 8.5(b)(2)(ii)). *Id.* at 36. Similarly, Respondent's disclosure of information learned during the consultation with Mr. Annabi was "in connection" with the proceeding ultimately filed in the New York federal courts. Further, the Hearing Committee notes that although Respondent's obligations to Mr. Annabi may have been set at the time of the consultation, his *violations* of these obligations are alleged to have occurred in connection with Mr. Annabi's federal case filed in New York. Thus, the Hearing Committee finds that Rule 8.5(b)(1) requires that New York Rules apply to its consideration of Respondent's disclosure of information.[19]

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[19] The Hearing Committee is not aware of any cases matching these facts, *i.e.,* where the conduct in question is in connection with a proceeding in which the respondent was not a party or counsel, and thus we believe that an argument could be made that the allegations about Respondent's disclosure are addressed by D.C. Rule 8.5(b)(2)(i) as "other conduct," since D.C. Rules applied during the consultation. In *Ponds*, the Board noted that although one of the respondent's client's cases was in the Virginia courts, because the D.C. lawyer handled fees and client property for

B. Summary

Disciplinary Counsel asserts that Respondent violated New York Rules 1.6 and 1.18 by disclosing Mr. Annabi's confidential information. Specifically, Disciplinary Counsel asserts that during his consultation with Mr. Annabi, Respondent provided legal advice about the strength of the case Mr. Annabi wanted to file against NYU in a New York federal court and then violated his obligations to Mr. Annabi by revealing this advice to Mr. Annabi's opposing counsel and to the judge in the case against NYU that Mr. Annabi ultimately filed *pro se*. Further, Disciplinary Counsel asserts that Respondent formed an unfavorable opinion of Mr. Annabi while he was a prospective client and that Respondent likewise disclosed these assessments, calling Mr. Annabi a racist and antisemite. Finally, Disciplinary Counsel asserts that Respondent violated New York Rule 8.4(d) by disrupting the federal court sitting in Mr. Annabi's case by filing requests and letters seeking to interject himself into that case and to provide information about Mr. Annabi to hurt his case.

Respondent asserts that he did not violate any Rules of Professional Conduct. First, he argues that everything he disclosed was information he learned after the "consultation," meaning none of it was confidential under Rules 1.6 and 1.18. He also asserts that New York Rule 1.6(b)(2) entitled him to disclose this information

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many clients, "it could make sense to require D.C. lawyers to comply with only D.C. rules about the safeguarding of client property and fee agreements." Board Docket No. 17-BD-015, at 36. But the Board found, "that simply is not what [D.C.] Rule 8.5 says." *Id.* We follow that finding here.

because he needed to prevent a crime or fraud relating to the addresses Mr. Annabi provided to the court. Finally, he asserts that his actions did not violate New York Rule 8.4(d) because he did not disrupt the federal court proceedings, nor were his actions prejudicial to the administration of justice, and because "motion practice" and the First Amendment allowed him to respond to Mr. Annabi's accusations against him. The Hearing Committee concludes by clear and convincing evidence that Respondent violated New York Rule 1.18, but we do not find by clear and convincing evidence that he violated New York Rule 1.6(a) or New York Rule 8.4(d).

C. Analysis

1. New York Rule 1.6(a) Does Not Apply

Disciplinary Counsel asserts that Respondent violated New York Rule 1.6(a). However, although New York Rule 1.6 is relevant insofar as it creates certain exceptions to the requirements of New York Rule 1.18(b), because Mr. Annabi was never a "client" (*see* FF 10-11; ODC Post-Hearing Br. at 13; R. Post-Hearing Br. at 60-61), it does not apply. *See* N.Y. Rule 1.6, cmt. [1] ("Other rules also deal with confidential information. See . . . Rule 1.18(b) for the lawyer's duties with respect to information provided to the lawyer by a prospective client."). In contrast, if D.C. Rules were to apply, Respondent's conduct would fall within the scope of both Rule 1.6(a) and Rule 1.18(b). Comment [9] to D.C. Rule 1.6 provides:

> Although most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so, the duty of confidentiality imposed by this rule attaches when the lawyer agrees to consider

> whether a client-lawyer relationship shall be established. *Other duties of a lawyer to a prospective client are set forth in Rule 1.18.*

(emphasis added); *see also* D.C. Bar Ethics Op. 374 (April 2018). The language of D.C. Rule 1.6, Comment [9] is subtly different from the corresponding Comment in the New York Rules, which, consistent with Comment [1] to New York Rule 1.6, *supra*, appears to impose the obligations of confidentiality in situations involving prospective clients via Rule 1.18:

> Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. *See Rule 1.18.*

N.Y. Rules, Scope, cmt. [9] (emphasis added).[20]

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[20] Disciplinary Counsel argues that the commentary to New York Rule 1.6 "makes clear that 'confidential information' includes 'information protected by Rule 1.18(b) with respect to prospective clients." ODC Post-Hearing Br. at 9 (quoting N.Y. Rule 1.6, cmt. [16]). However, the term "confidential information" is defined within New York Rule 1.6(a) itself:

> "Confidential information" consists of information *gained during or relating to the representation of a client*, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential.

(emphasis added). Furthermore, the comment relied upon by Disciplinary Counsel concerns Rule 1.6(c) that provides that "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, information protected by Rules 1.6, 1.9(c), or 1.18(b)." Thus, it does not stand for the proposition that Rule 1.6(a) applies to the confidential information of former or prospective clients; rather, it clarifies that, in addition to "information protected by Rule 1.6(a)," Rule 1.6(c) *also* requires protection of prospective and former client

Although in some cases, "confidential information" (as defined by Rule 1.6) might differ from information "learned . . . from a prospective client" (under Rule 1.18), here the difference is not significant. Thus, the presence or absence of a Rule 1.6(a) violation is a technical issue that does not affect the nature or seriousness of the misconduct and does not alter our recommendation as to sanction.

Because the Hearing Committee finds that Mr. Annabi was never Respondent's client, we find that Respondent did not violate New York Rule 1.6(a).[21]

2. Disciplinary Counsel Proved that Respondent Violated New York Rule 1.18(b) by Disclosing Information Learned from a Prospective Client.

Although Mr. Annabi did not ultimately retain Respondent – and thus was not Respondent's "client" – it is undisputed that he was a "prospective client." As New York Rule 1.18(a) provides, except for conditions that do not apply here, "a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client." Thus, as New York Rule 1.18(b) provides, "[e]ven when no client-lawyer relationship ensues, a lawyer who

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secrets – implying that those secrets are *not* already covered by Rule 1.6(a). N.Y. Rule 1.6, cmt [16]. Because Mr. Annabi was a "former prospective client" of Respondent (ODC Post-Hearing Br. at 8-9), the Hearing Committee finds that New York Rule 1.18(b) applies.

[21] As discussed below, because of the differences between the D.C. Rules and the New York Rules, if the D.C. Rules were found to apply, the Hearing Committee would find that Disciplinary Counsel had proved by clear and convincing evidence that Respondent violated D.C. Rule 1.6(b), as well as D.C. Rule 1.18(a).

has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client." New York Rule 1.9(c), in turn, prohibits disclosure of confidential information of former clients except as permitted by New York Rule 1.6, as well as "when the information has become generally known."[22]

Respondent focuses much of his argument on whether he shared what he termed to be "impressions" or "consult impressions." *See* R. Post-Hearing Br. at 8-12, 25-31, 37-38, 41, 44. This phrase is not found in the D.C. or New York Rules or the commentary to either. Respondent does not cite any authority as to the meaning of this concept or how this concept is relevant to the Rules or his conduct. However, from the Hearing Committee's review, it appears that in attempting to explain his beliefs about Mr. Annabi and his case, Respondent focuses on whether these arose *during* the Zoom call, when Respondent and Mr. Annabi discussed Mr. Annabi's

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[22] Disciplinary Counsel does not analyze New York Rule 1.18(b) separately from New York Rule 1.6(a). As previously explained, prospective client communications are covered under D.C. Rule 1.6(a), but not New York Rule 1.6(a). Thus, if the D.C. Rules were to apply to the analysis of Rules 1.6 and 1.18, the information that would be protected are "confidences," which encompass "information protected by the attorney-client privilege," and "secrets" that encompass "other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client." D.C. Rule 1.6(b). If D.C. Rule 1.6(a) were to apply, the Hearing Committee would find that the information Respondent revealed in violation of Rule 1.18(b) constituted confidences and secrets under D.C. Rule 1.6(b) and therefore that Disciplinary Counsel proved that Respondent violated D.C. Rule 1.6(a).

potential case, or – as Respondent terms it – the "consult." The Hearing Committee finds that this is too restrictive a reading of Rule 1.18.

As a threshold matter, the Hearing Committee finds that the relevant time period during which prospective clients can rely on a lawyer's obligation of confidentiality is the entire period during which the lawyer and the prospective client are discussing whether the client will engage the lawyer and the lawyer will accept the engagement – not simply the Zoom session. *See* N.Y. Rule 1.18, cmt. [3]. Indeed, Respondent informed Mr. Annabi *after* the Zoom call that their conversations were covered by the attorney-client privilege. FF 8. The Hearing Committee finds that until the parties determine that no attorney-client relationship will be formed, any information shared by the former prospective client or learned by the lawyer is subject to the confidentiality obligations imposed by New York Rule 1.18.

There are three categories of information that Respondent disclosed to third parties:

i. Statements about Respondent's communications with Mr. Annabi during the period of time in which they were discussing Mr. Annabi's possible retention of Respondent;

ii. Statements that Respondent made about Mr. Annabi's possible biases ("racist" and "antisemitic"); and

iii. Statements and evidence relating to Mr. Annabi's addresses.

The Hearing Committee notes that, in this case, the first two categories of information that Respondent disclosed are the *only* ones at issue relating to Rule 1.18. *See* ODC Post-Hearing Br. at 10-11. Although there may have been some ambiguity or uncertainty before the hearing about which of Respondent's disclosures

were at issue, Disciplinary Counsel made clear at the hearing that it is not asserting that statements or evidence relating to Mr. Annabi's address was confidential information shared during the consultation or that disclosing it was a violation of Rule 1.6 or Rule 1.18. Tr. 470-71. Disciplinary Counsel's Post-Hearing Briefs confirm that this is its position.

Thus, the Hearing Committee finds that statements made by Respondent and evidence proffered by him to third parties about Mr. Annabi's address was information that Respondent learned *after* Mr. Annabi and Respondent ended any discussion about establishing an attorney-client relationship. It is thus not relevant to the Hearing Committee's determination of whether Respondent violated Rules 1.6 or 1.18.[23] Rather, it is information that Respondent was free to divulge, so long

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[23] Respondent introduced a number of exhibits to demonstrate that Mr. Annabi used a variety of addresses in 2022 and 2023. See RX 1, RX 23, RX 336, RX 399, and RX 425. He also spent a substantial amount of time presenting testimony about this issue. *See* Tr. 39-41, 49-50, 199-204, 282-86, 321-25, 333-347. Disciplinary Counsel objected to a number of exhibits and testimony as irrelevant. *See id.* Respondent cites these objections as evidence that Disciplinary Counsel was unprofessional and racist. *See* R. Post-Hearing Br. at 45-46. However, since the Hearing Committee finds that it does not need to analyze Respondent's disclosure of Mr. Annabi's address, neither these exhibits, nor the testimony, is relevant to the Hearing Committee's determination of whether Respondent has violated New York Rules 1.6 or 1.18.

We note that on January 21, 2024, Respondent submitted Respondent's Update on Complainant's Continued Fraud: Federal Case, attaching a court filing that purported to show that Mr. Annabi continued to mislead the federal court as to his residency. Disciplinary Counsel moved to strike this filing on a number of grounds, including its lack of relevance. In response, Respondent asserted that Mr. Annabi's "actions, and continued filings are relevant in this matter because this matter was

as his efforts complied with his other obligations under the District of Columbia and New York Rules of Professional Conduct, rules of courts, and general civil and criminal law.[24]

Respondent focused his defense on his efforts/actions to inform the judge in the federal case Mr. Annabi had filed *pro se* that Mr. Annabi was using a false or fraudulent address in that case, because it affected the court's jurisdiction. He sought to obtain and introduce evidence about Mr. Annabi's use of several addresses. He asserted that, because these were "crimes" or "frauds," none of his disclosures violated New York Rules 1.6 or 1.18. Importantly, however, these are not the disclosures that Disciplinary Counsel asserts are violations of these Rules.

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started without the state and federal actions ending." Reply – Respondent's Update on Complainant's Continued Fraud: Federal Case, at 2, filed on January 23, 2024. The Hearing Committee finds that Mr. Annabi's filings in the federal court are not relevant to these proceedings, as explained in detail in this Report and Recommendation. Thus, on January 26, 2024, the Hearing Committee granted Disciplinary Counsel's motion on relevancy grounds. The Hearing Committee notes that Respondent's filing demonstrates his continued lack of recognition of the allegations against him.

[24] We note that, contrary to Respondent's argument, the plain language of D.C. Rule 3.3(a) does not obligate lawyers to "keep a watchful eye" on former prospective clients' filings and report their alleged misrepresentations to tribunals. *See* Reply – Respondent's Update on Complainant's Continued Fraud: Federal Case, at 3, filed on January 23, 2024. As discussed in Section IV.D.5, *infra*, Respondent's lack of understanding of the Rules is a factor in our recommendation that a fitness requirement be imposed.

Turning to the other two types of information, Disciplinary Counsel contends that, in at least three circumstances, Respondent disclosed information he learned from Mr. Annabi before they decided not to enter into an attorney-client relationship:

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

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

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

a. Respondent's Revelation of His Legal Advice and Assessment of Mr. Annabi's Case Violates New York Rule 1.18(b).

Respondent has asserted that he "never shared any consult impression." R. Post-Hearing Br. at 30 (emphasis in original). He also claims that his "impressions on [sic] Annabi's claims as discussed in the filings and emails were post-consultation." Resp. Br. at 34. But these statements are contradicted by Respondent's explicit statements memorialized in the exhibits admitted at the hearing.

Respondent concedes that he sent an email to Mr. Annabi, on which he copied Mr. DiPalma, that stated: "Your lawsuit against NYU . . . has fundamental flaws in law and fact – and *I brought this to your attention when I conferenced with you via zoom*." DCX 16 at 1 (emphasis added). And that he stated, "*[A]s I stated during our*

consult, your legal assertions are mostly frivolous and not based on any established or existing law." *Id.* (emphasis added). Further, in Respondent's request to join the federal court proceeding as an interested party, he wrote: "Soon after, Mr. Annabi was unsatisfied with my legal advi[c]e – that essentially his legal assertion of 'deceptive advertising etc' are unfounded in law and frivolous." DCX 21 at 2. He also wrote: "In addition, defendant's well-written 'motion to dismiss' echoes and sums up my concerns and the warnings *I shared with Mr. Annabi during our consultation* and is relevant to my own defense in Mr. Annabi's purported lawsuit against me." *Id.* at 3 (emphasis added).

On their face, these statements are direct references to Respondent's discussions with Mr. Annabi. They reveal that Mr. Annabi sought legal advice about his lawsuit against NYU and that Respondent gave him such advice. This is the heart of what is protected by the duty of confidentiality.[25] *See* N.Y. Rule 1.18, cmt. [3]. The Hearing Committee finds by clear and convincing evidence that Respondent's disclosure of these statements was the disclosure of information learned during the consultation period, in violation of New York Rule 1.18, unless there is an exception

[25] The Hearing Committee notes that even though New York Rule 1.18 covers a broader period of time than the actual "consult," we need not expand the period analyzed because Respondent is directly referencing his discussions with Mr. Annabi during the Zoom call, that is, during the "consult."

in the Rules that would allow the disclosure.[26] As discussed in Section III.C.2, *infra*, the Hearing Committee finds that no such an exception applies.

b. Respondent's Allegations that Mr. Annabi is Racist and Antisemitic Violate New York Rule 1.18(b).

The first instance in the record where Respondent accused Mr. Annabi of being a "racist" and "antisemite" is an August 4, 2022, email correspondence, on which Respondent copied Mr. DiPalma. FF 23. Respondent also repeated these charges several times in subsequent emails also copied to Mr. DiPalma. FF 22, 25, 27. Although Respondent's disclosures were made long after the period of time in which Mr. Annabi was a prospective client, Disciplinary Counsel asserts that these statements violated Rule 1.18(b) because Respondent's negative assessment was based on information Respondent learned during his interactions with Mr. Annabi during the time that Mr. Annabi was a prospective client. *See* ODC Post-Hearing Br. at 11. Specifically, Disciplinary Counsel asserts that Respondent's "negative opinions of Mr. Annabi came from their interactions during the same period, when Mr. Annabi disagreed with his legal advice and accused Respondent of engaging in bait and switch." *Id.* It also asserts that in Respondent's emails to Mr. Annabi, "it became clear that Respondent considered this to be both a racial and a religious issue. DCX 14." *Id.* Respondent testified that his impressions of Mr. Annabi were "not

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[26] If D.C. Rule 1.6 were found to apply, the Hearing Committee would find that the advice that Respondent said he gave to Mr. Annabi would be a client confidence, since it is the heart of what is covered by the attorney-client privilege. Thus, under D.C. Rules 1.6(a) and 1.18(b), Respondent would be prohibited from disclosing it to third parties, including the court and Mr. Annabi's opposing counsel.

based on the consultation that this is happening during the consultation. It's after the consultation." Tr. 37.

Respondent testified at the hearing that he offered a discount for the initial consultation because Mr. Annabi was Algerian. Tr. 29; FF 6. The Hearing Committee notes that in the email correspondence on April 17 and April 18, 2022, during the period that Mr. Annabi was still seeking to retain Respondent, Respondent also made statements that made clear he was considering issues of ethnicity in his interactions with Mr. Annabi. *See* FF 6, 7; *see also* DCX 12; DCX 14. This began when Mr. Annabi indicated that he considered Respondent's proposed engagement terms to have violated their pre-consultation agreement about whether Respondent would work on contingency if he agreed to take Mr. Annabi's case. Tr. 29; FF 9. Mr. Annabi accused Respondent of a "bait and switch" and requested that Respondent return the consulting fee. FF 9. Respondent took offense at Mr. Annabi's assertions and told him that he had earned the consulting fee. Mr. Annabi informed Respondent that he would seek a refund from PayPal, through which he had paid the consulting fee, or go to small claims court to recover his money. *Id.* In these messages, both Respondent and Mr. Annabi exchanged insults. Indeed, at one point, Respondent told Mr. Annabi: "You are very disrespectful and condescending! And very unlikeable. Good luck with your case, after all you are a very 'great business man.'" DCX 12 at 1. In one of his last emails during this exchange, Respondent denied that he had taken advantage of Mr. Annabi and indeed had "genuinely wanted to help [him] as an 'African brother.'" DCX 14 at 1. In his penultimate email, Respondent

wrote: "I believe in divine justice and you will be rewarded for what you put out there." *Id.* In his last email, Respondent focused on ethnicity and religion in trying to resolve his disagreement with Mr. Annabi: "Let's resolve our dispute like two noble Africans who believe in Allah/Hashem. We don't need a Christian small claims court or PayPal for us to resolve this dispute between us. Let's give each other the benefit of the doubt and start afresh." DCX 14 at 7.

After these emails, Respondent and Mr. Annabi did not have any contact until Mr. Annabi filed a civil suit against Respondent in New York state court. *See* FF 14. Immediately thereafter, Respondent filed his "Request for Addition as Interested Party on the Docket," and Mr. Annabi emailed Respondent expressing his concern about Respondent's public statements in this document and in other communications, calling Mr. Annabi a racist.[27] FF 18; *see* DCX 24 at 2. In his responsive email, copied to Mr. DiPalma, Respondent confirmed that he had called Mr. Annabi a racist and an antisemite. DCX 24 at 1. He explained: "This is the racism of North Africans where they think they can treat black Africans any sort of way. A case in point is that even though I told you I will not refund the $200 because I earned it you think I am not entitled to earn a living." *Id.*; RX 42; FF 23.

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[27] In an email from Mr. Annabi to Respondent on August 4, 2022, Mr. Annabi referred to statements Respondent made about him: "You make some additional damaging remarks to my character, such as being racist . . . ." DCX 24 at 2. Respondent's actual statement was not introduced at the hearing, but Respondent confirmed that he made such a statement in his email in response to Mr. Annabi's. *See id.* at 1 ("As for my statement that you are 'racist and anti-semitic,' I stand by it 100%.").

In his defense, Respondent testified that his statements about Mr. Annabi were based on what happened *after* the consultation. In support, he contends that his accusations of racism in several emails in August, 2022, were based on his view that:

> I felt that, because I'm a black person, because I'm an African Jew, because Annabi is a Muslim – and I'm not saying it's because he's a Muslim that he did that, but I am just giving you the differences of who we are – because I'm black and because I'm an African Jew, I'm being wrongly accused of bait and switch on something that is totally untrue.

Tr. 36 (Respondent). The Hearing Committee notes that "bait and switch" is the same phrase that was used in the parties' April discussions – not something Mr. Annabi used in connection with filing the lawsuit against Respondent. This supports Disciplinary Counsel's allegations that Respondent's negative view of Mr. Annabi arose during their April discussions. *See* FF 9. Thus, the Hearing Committee finds by clear and convincing evidence that Respondent's statements were formed during the time period in which he and Mr. Annabi were discussing whether they would form a client-attorney relationship.

We also find that Respondent both revealed the information and used it against Mr. Annabi. Indeed, Respondent made clear he intended these accusations to harm Mr. Annabi. In an email sent to Mr. Annabi on August 18, 2022, Respondent told him that he intended to go further and inform Judge Liman that Mr. Annabi was "a racist antisemite." DCX 27 at 1. Indeed, he noted that "when Judge Liman receives a second motion from me, that will be the nail in your case!" *Id.* Accordingly, those disclosures violated New York Rule 1.18(b), unless there is an exception in the Rules

that would allow the disclosure.[28] As discussed in the section below, the Hearing Committee finds that no such exception applies.

c. New York Rule 1.6(b) Does Not Provide Any Exceptions that Would Allow Respondent to Disclose Information He Learned from the Prospective Client.

The exceptions to the confidentiality requirement within New York Rule 1.6(b), which apply to New York Rule 1.18, include, in relevant part: "A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary . . . (2) to prevent the client from committing a crime; . . . [or] (5)(i) to defend the lawyer . . . against an accusation of wrongful conduct . . . ."

i. New York Rule 1.6(b)(2) (Crime/Fraud Exception)

Although Respondent asserts that he did not disclose any information "protected by attorney-client privilege," he argues in the alternative that any confidential information that was revealed as to prevent a crime or fraud, pursuant to New York Rule 1.6(b)(2). *See* R. Post-Hearing Br. at 12, 25-27. Respondent claims that this was his only purpose in revealing to the court and Mr. DiPalma

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[28] During the hearing, Disciplinary Counsel questioned Mr. Annabi to demonstrate that the information relating to whether he was a racist or antisemitic was embarrassing or detrimental to him. Tr. 168-170. The Hearing Committee finds that these judgmental statements would be generally embarrassing and detrimental to any former prospective client. Under D.C. Rule 1.6, the definition of a client "secret" includes information that would be embarrassing or likely detrimental to the client. Thus, if the D.C. Rules were to apply here, the Hearing Committee would find by clear and convincing evidence that these statements were client secrets that Respondent could not disclose.

information learned from Mr. Annabi, but the Hearing Committee finds by clear and convincing evidence that this argument fails.

Comment [6A] to New York Rule 1.6 requires the lawyer to consider a number of factors before relying on this exception, most of which Respondent appears not to have done. At its core, this Comment reiterates Rule 1.6(b)'s acknowledgement that this provision explicitly applies only to "to prevent the client from committing a crime." Thus, the lawyer should consider

> (i) the seriousness of the potential injury to others if the prospective harm or crime occurs, (ii) the likelihood that it will occur and its imminence; (iii) the apparent absence of any other feasible way to prevent the potential injury, (iv) the extent to which the client is using the lawyer's services in bringing about the harm or crime, (v) the circumstances under which the lawyer acquired the information of the client's intent or prospective course of action, and (vi) any other aggravating or extenuating circumstances.

There is no evidence that Respondent conducted any such analysis, other than to bring to Mr. Annabi's opposing counsel's and the court's attention that Mr. Annabi *had used* an invalid address in filing his complaint. As Respondent noted, NYU had competent counsel who had already raised these arguments. Further, Respondent's services were not used, which is usually a requirement when a lawyer asserts that disclosure is required by the crime-fraud exception. *See, e.g.*, D.C. Rule 1.6(d)(1); ABA Model Rule of Professional Conduct 1.6(b)(2).[29]

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[29] We note that Respondent's proposed engagement letter suggested that the representation would be governed by the ABA Model Rules ("Pursuant to Model Rule 1.5.b. Mr. Karim Annabi retains . . . ."). DCX 13. Although it does not mention ABA Model Rule 1.6 specifically, under that Rule, use of the lawyer's services in

Most notably, Comment [6A] makes clear that "[i]n any case, disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to prevent the threatened harm or crime." There is no evidence that Respondent ever considered this proscription or ever tried to limit his disclosures. The Hearing Committee finds that even if Respondent was able to disclose some information to prevent a crime or fraud related to Mr. Annabi's misuse of a residence or domicile address, the advice he gave Mr. Annabi about the strength or weaknesses of the case was not relevant to those efforts. Similarly, for Respondent to provide his assessment of Mr. Annabi's character did not serve to prevent any crime or fraud. These are both gratuitous statements that do not focus on the issue of Mr. Annabi's address; Respondent's disclosures to the court and Mr. DiPalma could serve no purpose other than to attempt to harm Mr. Annabi. Accordingly, Respondent was not authorized to make these disclosures under New York Rule 1.6(b)(2).[30]

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the commission of a crime or fraud is an essential element to the crime-fraud exception allowing for disclosure of confidential information.

[30] The Hearing Committee finds that the "crime-fraud exception" would be even more limited if D.C. Rule 1.6 were to apply. For D.C. Rule 1.6(d)(1) to justify the disclosure of a lawyer's former prospective client's confidential information, the lawyer's services must have been used to further the crime. Here, Respondent makes clear that his services were *not* used – and Disciplinary Counsel does not take a contrary position. Thus, this exception would not be available to justify Respondent's disclosure of Mr. Annabi's confidences and secrets.

ii. New York Rule 1.6(b)(5) (Disclosure to Defend Actions)

Disciplinary Counsel asserts that New York Rule 1.6(b)(5) does not allow Respondent to disclose the information he disclosed. *See* ODC Post-Hearing Br. at 14-15. It relies on an email from Respondent to Disciplinary Counsel (DCX 32) as the basis for its position that Respondent was raising this Rule as a defense. *Id.* Indeed, in his opening statement at the hearing, Respondent stated,

> I have rights, as well, even though I'm an attorney. I have rights as well to be able to file and practice motion practice. The only thing is that, if I am dealing with somebody who is a former client, I have to be cognizant of the confidences, so forth and so on.
>
> But my right as a person, under the Constitution to file motions and defend myself are still there.

Tr. 46 (Respondent). However, in his Post-Hearing Brief, Respondent states that he

> never claimed 'that he filed his IP request to be an interested party to defend himself against Mr. Annabi's New York civil court suit' (sic). This is a complete lie. As ODC counsel states in her brief. Respondent's reasons for the IP are to be found in the IP itself. And on its four corners. DCX. 21.

R. Post-Hearing Br. at 27-28. Thus, since Respondent is not asserting that New York Rule 1.6(b)(5) applies, it appears it is unnecessary for the Hearing Committee to make a finding whether this Rule would have allowed Respondent to disclose any information he learned in his consultation with Mr. Annabi.[31]

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[31] The Hearing Committee notes that, relating to disclosures that may be authorized by Rule 1.6(b)(5), Comment [14] to New York Rule 1.6 explains that if the accusation of wrongdoing is made "in connection with an adjudicative proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know the information, and appropriate

d. Respondent's Other Defenses Do Not Excuse His Conduct

Respondent asserts that he was entitled to take the actions he did because he is entitled to engage in "motion practice." In his Post-Hearing Brief (at 30), he asserted: "Respondent as a citizen, divorced from his profession engaged first and foremost in motion practice – this is a separate point from his employment as a lawyer and his obligations to a former client." In response to a question from the Chair of the Hearing Committee whether there were "any other exceptions to rule 1.6 or 1.18 that you believe apply to your disclosures," Respondent said,

> [M]y disclosures are protected by motions practice. You might not like the answer, but that's my answer.
>
> Motion – we can pick up all different motions people have filed and we can start nitpicking that this motion violates such and such a rule of ethics and what have you. We can do that. And we will fill this whole room with – with lawyers.
>
> But motion practice allows you to approach a judge and make sure that your rights are protected.

Tr. 442 (Respondent).

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protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable." If, as set forth in DCX 32, Respondent were asserting that he was defending himself in the federal case from accusations in the New York state case, he would need to contend with the Rule's requirements that such disclosure be extremely limited and that efforts be made to limit access to the information disclosed, including by seeking a protective order – which Respondent did not attempt to do. Since no accusation had yet been made against Respondent in the federal case, New York Rule 1.6(b)(5) would not permit a disclosure of protected information there.

As noted above, Respondent admitted that he had to be "cognizant of the confidences, so forth and so on. But my right as a person, under the Constitution to file motions and defend myself are still there." Tr. 46 (Respondent). There is simply no authority for Respondent's position that "motion practice" provides an exception to the requirements of Rule 1.18.

For the first time in his Post-Hearing Brief, Respondent also asserts that his disclosures were permitted because he has a First Amendment Right to petition the courts. R. Post-Hearing Br. at 30, 32, 38-41. The Hearing Committee recognizes that lawyers are entitled to First Amendment rights, but finds that such rights do not narrow Respondent's obligations to his clients or the administration of justice.

3. Disciplinary Counsel Did Not Prove that Respondent Violated New York Rule 8.4(d) by Engaging in Conduct Prejudicial to the Administration of Justice.

New York Rule 8.4(d) provides that a lawyer "shall not . . . engage in conduct that is prejudicial to the administration of justice." The Rule prohibits conduct that "results in substantial harm to the justice system comparable to those caused by obstruction of justice, such as advising a client to testify falsely, paying a witness to be unavailable, altering documents, repeatedly disrupting a proceeding, or failing to cooperate in an attorney disciplinary investigation or proceeding" and "must be seriously inconsistent with a lawyer's responsibility as an officer of the court." N.Y. Rule 8.4, cmt. [3]. Bad faith is not necessary to establish a violation, instead, the Rule applies where the conduct is "likely to cause substantial individual or systemic

harm to the administration of justice." N.Y. State Bar Ass'n Comm. on Pro. Ethics Op. 1098 (June 2016).

The Hearing Committee concludes that a fair reading of the Rule and this Comment is that this Rule is intended to address two types of harm: individual and systemic. Disciplinary Counsel contends that Respondent engaged in conduct prejudicial to the administration of justice when he repeatedly disrupted the federal court proceedings by emailing Mr. DiPalma and making several filings despite not being a party and having been ordered not to file anything via ECF. ODC Post-Hearing Br. at 15-16. Disciplinary Counsel asserts that those filings disclosed confidential information that "was likely to have caused substantial harm" to Mr. Annabi while there was a pending motion to dismiss, but provides no details. *Id.* Further, Disciplinary Counsel did not address whether there was harm to the administration of justice beyond the fact that court proceedings were disrupted. Disciplinary Counsel also did not provide any analysis as to whether Respondent's actions rose to the level of those discussed in Comment [3] to N.Y. Rule 8.4. There is little authority as to the reach of this Rule.

The Hearing Committee finds that Disciplinary Counsel failed to prove by clear and convincing evidence that Respondent violated the New York Rule, because the level of seriousness was not comparable to obstruction of justice and Respondent did not interfere with the court's ability to fairly decide Mr. Annabi's case. In fact, the court's Opinion and Order dismissing the case did not mention Respondent's

efforts to be added as an interested party or any information he revealed to the court.[32] *See* RX 426.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a 30-day suspension with a requirement to demonstrate fitness as a condition of reinstatement. Respondent has requested that the Hearing Committee recommend that the Board dismiss the charges. For the reasons described

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[32] We note that this Rule appears to differ from the D.C. Rule 8.4(d), which provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of D.C. Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) a respondent's conduct was improper, *i.e*., that the respondent either acted or failed to act when he should have; (ii) a respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) a respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). D.C. Rule 8.4(d) can be violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). We find that the unnecessary expenditure of time and resources was more than *de minimis,* in that it "potentially [had an] impact upon the process to a serious and adverse degree." *Hopkins*, 677 A.2d at 61. Respondent's filings were confusing to the court and required extra work for it, for Mr. Annabi, and for his opposing counsel. The court had already ordered Respondent not to file papers, so it assumed incorrectly that Mr. Annabi had done so. It took several calls and the court had to reissue an order. Further, it had to take additional steps to prevent Respondent from filing further, since its order to him had been violated. It required Mr. Annabi and Mr. Di Palma to expend additional efforts. Further, Respondent's actions had the potential to derail Mr. Annabi's case. *See* FF 30-35, 38. Thus, if the D.C. Rules were to apply, the Hearing Committee would find that Respondent's conduct violated D.C. Rule 8.4(d).

below, we recommend the sanction of a 30-day suspension with a fitness requirement.[33]

A. Standard of Review

Although the Hearing Committee found that New York law applies to determine the violation here, in deciding what sanction to apply to a District of Columbia lawyer, District of Columbia law applies. *See, e.g.*, D.C. Bar Rule XI, § 11(c)(4); *In re Zakroff*, 934 A.2d 409, 424 (D.C. 2007); *In re Ponds*, 888 A.2d 234, 235, 245-47 (D.C. 2005).

Under D.C. law, the sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In*

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[33] Respondent moved this Hearing Committee and the Board for permission to file a motion to dismiss the charges against him in advance of the hearing. *See* pages 4-5, *supra*; pages 64-65, *infra*. He was informed that such an action can only be taken by the Board, upon a recommendation by the Hearing Committee. Respondent has not filed a formal motion to dismiss, but argues in his Post-Hearing Brief that the charges should be dismissed on the basis that Disciplinary Counsel has not met its burden of proof. *See* R. Post-Hearing Br. at 1, 41, 61. As set forth in detail in this Report and Recommendation, the Hearing Committee does not recommend dismissal of the charges against Respondent.

re Reback, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

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

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent's misconduct was serious. The duty of confidentiality is one of the most fundamental responsibilities of any lawyer. As the Board has observed:

> Absent a strict duty of confidentiality, the role of an attorney could change from that of a client's representative and zealous advocate to "a combination of prosecutor, judge, and jury" who "gather[s] information about possible fraud, render[s] a decision, and then exact[s] a punishment – disclosure – as he [sees] fit in a context in which the client no longer has a legal representative or advocate."

In re Koeck, Board Docket No. 14-BD-061, at 2 (BPR Aug. 30, 2017), *recommendation adopted where no exceptions filed*, 178 A.3d 463 (D.C. 2018) (per curiam).

In fact, this duty is one of the only obligations that inures before the formation of an attorney-client relationship. Respondent has focused solely on whether he was justified in providing the court and Mr. Annabi's opposing counsel with information about Mr. Annabi's use of multiple addresses in his filings in court. As Disciplinary Counsel has made clear – and as the Hearing Committee finds – this focus is misplaced. This information is not at issue here since Respondent learned it after his relationship with Mr. Annabi ended.

However, it is undisputed – from Respondent's own words – that Respondent revealed information about the advice Mr. Annabi sought and about Respondent's advice to him. This is the heart of what is covered by the duty of confidentiality. Indeed, Respondent specifically informed Mr. Annabi that their conversations were covered by the attorney-client privilege. And then, without justification, Respondent

violated this privilege. The Hearing Committee finds that based on the disclosure of Respondent's advice alone, the suspension recommended here would be justified.

Moreover, in addition to this egregious breach of confidentiality, based on Respondent's dealings with Mr. Annabi during the period in which they were considering whether to form an attorney-client relationship, he formed a negative opinion of Mr. Annabi and then gratuitously spread his personal opinion and observations to others, with the foreseeable result that his words would harm Mr. Annabi. This use of confidential information in a retaliatory manner is an aggravating factor in our consideration of this case. *See In re Paul*, 292 A.3d 779, 788 (D.C. 2023) (finding that the "retaliatory nature" of the respondent's disclosure of client secrets in a disciplinary complaint against a former client was "particularly problematic and therefore warrant[ed] a suspension of some length").

Respondent's failure to recognize – both at the time of his disclosures and even now – what is confidential information, and what is not, emphasizes the seriousness of his misconduct.

2. Prejudice to the Client

Disciplinary Counsel does not cite to any specific harm to Mr. Annabi. It did assert that Respondent sought to negatively affect his case and that Mr. Annabi was embarrassed at being called a "racist" and "antisemitic." *See* ODC Post-Hearing Br. at 10-11. Mr. Annabi was particularly concerned about this since he thought that, because the judge in his case was Jewish, it increased the likelihood that Respondent's statements would be harmful to him. Tr. 142-45 (Annabi). Most

notably, Respondent threatened that his continued disclosures would put a nail in Mr. Annabi's case. DCX 27; FF 27. His intent to harm Mr. Annabi could not be more clear.

Further, even though the Hearing Committee did not find that Disciplinary Counsel had proved a violation of New York Rule 8.4(d) by clear and convincing evidence, we note that Respondent violated a court order when he filed a letter in the court after Judge Liman had specifically instructed him not to file anything. FF 31, 34. And this caused sufficient confusion that Respondent then contacted the Court further, FF 35, Mr. Annabi had to contact the court and the Court had to file additional orders. FF 32-34. Even Respondent did not cite any reason for his actions other than motion practice, his Constitutional rights, and his right to defend himself against future allegations. *See* Tr. 41-46 (Respondent).

3. Dishonesty

The Hearing Committee does not find that Respondent intentionally lied about his conduct or the facts in this case. However, the Hearing Committee observed that, in a number of instances, Respondent made statements that were then contradicted by, or were inconsistent with, other statements he made. *Compare, e.g.*, R. Post-Hearing Br. at 24 ("Respondent's insertion into the Annabi federal case was triggered by the harassing sanctions motion from Complainant . . . ."), *with* DCX 21 (seeking to be added as an interested party in the NYU case because Mr. Annabi had filed suit against him and their dispute "share[d] the same nexus of facts" with that case (emphasis in original)). He also made statements that had no basis in fact. *See,*

e.g., R. Post-Hearing Br. at 24 (claiming that Mr. Annabi waived his attorney-client privilege through his public filings and that the information he disclosed was in the public domain, although Mr. Annabi did not discuss his conversations with Respondent or admit that he was a racist or antisemite); *id.* at 40 (claiming that Disciplinary Counsel called him "inherently revengeful," although there is no evidence of this statement in the record). The Hearing Committee found that Respondent did not appear to appreciate the necessity of carefully choosing his words and ensuring that his statements were true and accurate. Rather, it appeared that Respondent often made statements that seemed to suit the moment, rather than being based on actual facts. Thus, the Hearing Committee found that it could not rely on Respondent's statements on critical points.

4. Violations of Other Disciplinary Rules

The Hearing Committee has found that Respondent violated one Rule of Professional Conduct: New York Rule 1.18(b).[34]

5. Previous Disciplinary History

Respondent does not have any disciplinary history.

6. Acknowledgement of Wrongful Conduct

Respondent does not acknowledge any wrongful conduct. He asserts that his failure to acknowledge wrongdoing cannot be held against him without violating his

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[34] As discussed above, because of the differences between the D.C. Rules and he New York Rules, if the D.C. Rules were found to apply, the Hearing Committee would find that Disciplinary Counsel had proved by clear and convincing evidence that Respondent violated D.C. Rules 1.6(a), 1.18(b), and 8.4(d).

right to defend himself. R. Post-Hearing Br. at 39-40, 44. Although this may be persuasive in other circumstances, it is not so here.

First, the Hearing Committee finds that one cause of Respondent's failure to acknowledge wrongdoing is his failure to recognize what the Rules require, even after this matter has gone through a hearing and post-hearing briefing. Further, the Hearing Committee finds that Respondent's failure to acknowledge the wrongfulness of his conduct is also based on his belief that because he is a lawyer or because he has advanced legal degrees, he has a right to be treated with absolute respect by and deference from anyone else with whom he comes in contact. *See, e.g.*, R. Post-Hearing Br. at 11-12, 40. To the extent he believes he might have taken other action, he shifts the blame and focus to Mr. Annabi. Tr. 27-28 ("I think that the behavior of the complainant . . . towards the respondent needs to be taken into context and understood."); Tr. 422 ("[W]hen you say somebody is not doing business the right way[, t]hat's a form of slander, and that's actionable, because it damages the business reputation."); Tr. 427 ("So in my closing testimony I would just like to say that, the motive behind all this has been nothing but to harass – harass me, and to get me to a point where I am not in a position to defend myself, or I feel like I have no right to defend myself."); Tr. 488-89 ("It is such a mischaracterization when you consider the totality of the facts and the behavior of the complainant towards respondent.").[35]

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[35] The Hearing Committee found that Mr. Annabi sought to present himself as having been totally reasonable and faultless throughout his interactions with

The Hearing Committee also notes that Respondent's attitude toward the court's order that he not file through ECF is of concern. In his opening statement, Respondent noted, "[W]e are all lawyers, and we all file motions. If . . . some of the motions get granted; some of the motions get dismissed. There are orders that judges put in there, and those judges might not necessarily be followed to the T." Tr. 50. This cavalier attitude is indicative of Respondent's lack of understanding of his obligations. Respondent also attempted to defend his disclosure of information he learned from Mr. Annabi by asserting that "judges and lawyers routinely lecture on cases they have been involved in," without citing any authority for this position. *See* R. Post-Hearing Br. at 24.

Respondent's blatant failure to recognize the seriousness of his misconduct is a significant aggravating factor. *See In re Yelverton*, 105 A.3d 413, 430 (D.C. 2014).

Respondent. The Hearing Committee does not find that all of Mr. Annabi's statements were credible or that his behavior – including bringing a civil suit for $1,000 against Respondent over a dispute about a $200 fee – was reasonable. Respondent asserts that his conduct should be assessed in the context of Mr. Annabi's behavior. *See* Tr. 27-28. However, the Hearing Committee found that the significant issues of disagreement between Mr. Annabi's testimony and Respondent's were not relevant to the findings required of the Hearing Committee. For example, what was said about Respondent's willingness to undertake Mr. Annabi's case on a contingency basis clearly led to the bad blood between them, but it is not important to the misconduct involved in the Rule violations alleged or to our findings here. *See* FF 9-10, 24-25. And Mr. Annabi's behavior does not provide an excuse for Respondent's actions.

7. Other Circumstances in Aggravation and Mitigation

Disciplinary Counsel did not offer other circumstances in aggravation, and Respondent did not offer other circumstances in mitigation, other than his brief statement, in the hearing. Tr. 515-16. In his Post-Hearing Brief, Respondent argues that the Hearing Committee should take into account several mitigating factors:

1) his cooperation with Disciplinary Counsel during its investigation;

2) the fact that he was not charged with dishonesty or "obstruction of justice";

3) the fact that "he has shown remarkable restraint given Annabi's harassment of him, the false charges in Annabi's lawsuit, and has conducted himself accordingly in an adversarial setting";

4) the fact that any suspension would cause him to neglect cases he has pending in federal courts, in violation of Rule 1.3(a), and would unfairly harm his clients;

5) the fact that any sanction would interfere with his efforts to become a law professor;

6) the absence of any disciplinary history; and

7) his commitment to legal education.

R. Post-Hearing Br. at 58-60.

The Hearing Committee acknowledges and has considered the fact that Respondent has cooperated with Disciplinary Counsel during the investigation, which is a requirement of all lawyers. We have also favorably considered that he does not have a disciplinary history, since this is one of the factors in our determination of the appropriate sanction. The Hearing Committee recognizes that Respondent is not charged with dishonesty or obstruction of justice, but finds this of

minor significance. Respondent has asserted that he demonstrated "remarkable restraint" in dealing with Mr. Annabi, but the Hearing Committee does not find that this is an accurate statement; Respondent's actions violated his obligations to Mr. Annabi. To take additional actions against Mr. Annabi would have been an aggravating factor, so the absence of additional actions by Respondent is not a mitigating factor. The Hearing Committee does not find that it should consider the effect of discipline on Respondent's clients, since clients are often affected if a lawyer is suspended. Finally, the Hearing Committee does not find it to be mitigating factors that action here may have an effect on Respondent's ability to become a law professor or that he is committed to legal education. Indeed, a true commitment to understanding the law should have prevented Respondent from violating the Rules.

Respondent has also implied that because Judge Liman did not recommend discipline for him in connection with his filing related to Mr. Annabi's potential sanction motion, he should not be facing disciplinary charges. R. Post-Hearing Br. at 23, 33. The Hearing Committee notes that judicial referrals are not necessary to the imposition of charges, and there are many reasons that courts would not make referrals.

On October 10, 2023, Respondent submitted copies of the order issued by the Southern District of New York, dismissing Mr. Annabi's case. *See* RX 427. It appears that Respondent considers this decision to be essential to our consideration of the charges against him here. We do not. The fact that the court there found that

there was not a basis for Mr. Annabi's case to proceed in the court does not justify any of Respondent's disclosures.

C. Sanctions Imposed for Comparable Misconduct

In the past, the Court has imposed sanctions for a single violation of Rule 1.6 that included informal admonitions and public censure. *See, e.g.*, *In re Ponds*, 876 A.2d 636, 636-37 (D.C. 2005) (per curiam) (public censure for disclosure of confidential information in motion to withdraw); *In re Gonzalez*, 773 A.2d 1026, 1030-32 (D.C. 2001) (informal admonition for disclosure of client secrets in motion to withdraw). However, as noted above, the respondent in *In re Paul*, was suspended for 30 days due to the retaliatory nature of his disclosure of client secrets in a complaint to Disciplinary Counsel, even though the Board and the Court found that the disclosures did not seriously interfere with the administration of justice. 292 A.3d at 782-83, 788.

Considering the factors set forth above, particularly Respondent's efforts to harm Mr. Annabi by making disclosures in violation of Rule 1.18 and continuing to blame him for the misconduct, the Hearing Committee finds that a 30-day suspension is appropriate in this case.

D. Fitness

A fitness showing is a substantial undertaking. *In re Cater*, 887 A.2d 1, 20 (D.C. 2005). In *Cater*, the Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt

upon the attorney's continuing fitness to practice law." *Id*. at 6. Proof of a "serious doubt" involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

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

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

Cater, 887 A.2d at 22.

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

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

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

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

For the reasons set forth below, each of those factors weighs in favor of a fitness requirement.

1. Nature and Circumstances of the Misconduct

As explained in Section IV.B.1, *supra*, even though Respondent only violated one Rule of Professional Conduct, his misconduct was serious. Respondent revealed information he learned from a former prospective client in an intentional effort to harm that person – an egregious breach of "core professional concerns." *See Koeck*, Board Docket No. 14-BD-061, at 2.

2. Recognition of the Seriousness of the Misconduct

Though he admits that he violated a court order and that his actions were "not [his] stellar work," Tr. 428-29, Respondent has otherwise failed to recognize that he has done anything wrong. *See* R. Post-Hearing Br. at 44 ("[T]he punishment of any accused for failure to 'acknowledge wrong' is an impermissible conduct by any prosecutor and ODC should be admonished for suggesting that a vigorous defense to one's action is synonymous with failure, as a human being, to regret a regrettable interaction.").

Rather, he sees himself as the victim of harassment by Mr. Annabi and discrimination and unfair treatment by Disciplinary Counsel. *See* Tr. 427 ("So in my closing testimony I would just like to say that, the motive behind all this has been nothing but to harass – harass me, and to get me to a point where I am not in a

position to defend myself, or I feel like I have no right to defend myself."); R. Post-Hearing Br. at 40 (accusing Disciplinary Counsel of "racism of the lowest form, unacceptable in our legal profession" based on its purported effort "to paint Respondent as deserving of punishment because he is 'inherently revengeful'"). Instead of defending against the relatively narrow charges in this case, Respondent focused much of his defense on proving wrongdoing by Mr. Annabi. *See* Tr. 48 ("My defense will show that the complainant is engaged in fraud."); Tr. 284-295, 316-349; R. Post-Hearing Br. at 4-8, 25-26, 29-30, 33-34, 37-38, 40-44, 51, 56-57. For example, he filed a motion seeking leave to file a more expansive motion to dismiss all charges in the case on the basis that he had uncovered evidence from Ms. Flyn that Mr. Annabi did not live at the address in New York – an issue Disciplinary Counsel previously argued was irrelevant to the charges against him. *See* Respondent's Request for Leave to File Motion to Dismiss, filed on September 20, 2023; Disciplinary Counsel's Objection to Respondent's Witness List, filed on September 8, 2023. The Hearing Committee denied Disciplinary Counsel's objection to Respondent calling Ms. Flyn as a witness not because the testimony would be relevant to the charges, but because the relevance objection was premature. *See* Hearing Committee Order dated September 11, 2023. For Respondent to then, based on information from a "possible relevant witness" suggesting that Mr. Annabi did not live at a certain address, argue that *all* of "these bar charges are *de minis* [sic] *non curat lex* and should be dismissed," shows that he did not appreciate the nature

of the charges against him. *See* Respondent's Request for Leave to File Motion to Dismiss, at 2, filed on September 20, 2023.

Respondent also asserts that the entire disciplinary system is racist. *See* FF 45; R. Post-Hearing Br. at 43, 45-47. This attitude is of concern to the Hearing Committee because it appears that Respondent does not respect the parties in the disciplinary proceeding, and thus will not respect the sanction imposed – or learn from it – if he is allowed to return to practice after a brief suspension.

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

Respondent asserts that, as a result of these proceedings, he has "gone back and looked at the rules and paid more close attention to them" and that "difficult clients will happen." Tr. 429. His two solutions for handling similar situations differently in the future are "avoidance of such a difficult and shady client, in the future, as Annabi" and "better articulation of wording in Respondent's motions." *See* R. Post-Hearing Br. at 39. These statements show that Respondent has failed to appreciate how his conduct violated Rules and that he continues to blame Mr. Annabi for his actions,[36] while accusing him of criminal conduct. *See, e.g.*, Tr. 434-35 (alleging false pretenses and extortion); R. Post-Hearing Br. at 40 ("While Annabi

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[36] Respondent unconvincingly denies that he is blaming Mr. Annabi for his conduct: "While Respondent does not blame Annabi, he does not condone his dishonest and uncivil conduct." R. Post-Hearing Br. at 44. He uses similar reasoning to explain why he devoted a substantial portion of his brief to criticizing Disciplinary Counsel: "While ODC counsel is not on trial here, her conduct is relevant because it compares apples-to-apples, behavior in the same proceeding. Furthermore, ODC counsel has made Respondent's behavior in these proceedings an ethical concern." *Id.* at 56 n.16.

is not on trial here, his conduct towards Respondent was unacceptable falls [sic] far short of civil conduct expected of any person who received legal services from a DC lawyer.").

4. Present Character

As evidenced by his continued efforts to be added as an interested party in the underlying case, Respondent has demonstrated a willingness to disregard relevant rules of procedure and ethics in his efforts to defend his reputation and pride. *See* Tr. 44 ("I have a right to defend my rights, and if you don't feel I should be a part of your case, don't invite me or attack me unnecessarily."); Tr. 421-22 ("I am telling the court what is my background, for the court to understand why the accusation that was made against me, even legally, is a form of slander, business slander when you say somebody is not doing business the right way. That's a form of slander, and that's actionable, because it damages the business reputation."); R. Post-Hearing Br. at 31 ("That sanctions motion had many falsehoods which Respondent has a right to rebut in open court."). During these proceedings he has often acted impulsively – filing informal, confusing pleadings within hours of a pleading filed by Disciplinary Counsel or of a Hearing Committee Order, interrupting testimony without raising an objection, and arguing with Disciplinary Counsel and Mr. Annabi during his testimony. *See, e.g.*, Tr. 151-52 (arguing with Mr. Annabi during Disciplinary Counsel's presentation); Tr. 283-84 (arguing with Disciplinary Counsel); Tr. 324 (arguing with Mr. Annabi on cross-examination). More concerning is his tendency to call into question the motives of opposing counsel or the Hearing Committee. *See,*

e.g., Tr. 249 ("Your Honor, to be honest – to be honest with you, I have some problem with this hearing. Are you testifying on the behalf of ODC, or you are neutral?"); R. Post-Hearing Br. at 2-5 ("By way of introduction into their brief, Respondent is unimpressed by the way ODC Counsel Dru Foster has behaved throughout these proceedings towards Respondent."); R. Post-Hearing Br. at 45-59 (accusing Disciplinary Counsel of showing "a remarkable amount of obfuscation," rudeness, "difficulty understanding simple courtesy and civility," "unfitness for her current position as an impartial ODC prosecutor," a "condescending tone," anger, racism, personal animus, and unethical behavior); Respondent's Notification of ODC Counsel's (Dru M. Foster) Inappropriate Email and Tactics, at 3, filed on September 18, 2023 ("Please . . . remind Dru M. Foster of her obligation to threat [sic] opposing counsel with fairness in these proceedings."). That character trait creates an ongoing risk that Respondent would be willing to turn against a client or disrupt future proceedings if he feels insulted or wronged. *See* R. Post-Hearing Br. at 58 ("Respondent should not undergo any fitness to practice law because he has shown remarkable restraint given Annabi's harassment of him, the false charges in Annabi's lawsuit . . . .").

5. Present Qualifications and Competence to Practice Law

Throughout these proceedings, Respondent has shown a lack of understanding of the charges against him and the procedural rules that apply to disciplinary proceedings in the District of Columbia. He frequently avoided addressing the standards set forth in the Rules he was charged with violating, instead broadly

relying on the concepts of "crime/fraud," "motion practice," and the First Amendment as defenses to all charges. *See, e.g.*, Tr. 441-42 ("[T]he court allows motions . . . as long as there's a reasonable protection of attorney/client, what have you. That's one of the biggest rules I rely on. . . . [M]y disclosures are protected by motion practice."); Tr. 476 ("The filings are protected under the fraud exception for the simple reason that . . . it is a crime to have false pretenses."); Respondent's Omnibus Reply, at 6, filed on September 8, 2023 ("For ODC to find that using a false address to conduct official business by complainant Annabi is irrelevant is a remarkable statement. . . . It does not matter that a person has violated a law, all that matters are ethical charges against the good Samaritan lawyer?"); Respondent's Post-Hearing Br. at 41 ("Respondent has not only acted with restraint towards the harassment of Annabi but was acting within his reasonable legal rights under the first Amendment to petition the courts and as an officer of the court, when he discussed the impressions of the publicly filed Queens lawsuit."). Even after Disciplinary Counsel – in its opening statement – clarified that Respondent's accusation of fraud by Mr. Annabi was not a basis for the charges of Rules 1.6 and 1.18 violations, and that the substance of Respondent's disclosures to the court about Mr. Annabi's address were not at issue, Respondent, in his defense, proceeded to present evidence intending to show that his accusations of fraud and false pretenses against Mr. Annabi were true. *See* Tr. 12-26 (Disciplinary Counsel outlining the bases for the charges); Tr. 284-95, 316-349 (Respondent seeking to elicit testimony from Mr. Annabi related to his accusations of fraud and false pretenses). *Compare*

ODC Post-Hearing Br. at 10-12 (alleging that Respondent's disclosure of information learned "during the consultation call" violated Rules 1.6 and 1.18), *with* R. Post-Hearing Br. at 6-8 ("In her brief [Disciplinary Counsel] does not even refute that Annabi is engaged in fraud but instead choses [sic] to ignore it; this is the white elephant in the room: that someone breaking the law, now demands the law's full assistance to punish others."), *and* Respondent's Update on Complainant's Continued Fraud: Federal Case, filed on January 21, 2024 (seeking to inform the hearing committee that Mr. Annabi had submitted a new court filing that purportedly misrepresented his physical residency).

It is also troubling that he believed, or at least led Mr. Annabi to believe, that his conduct was governed by the (non-binding) ABA Model Rules of Professional Conduct, rather than the rules of the jurisdiction in which he is licensed to practice, the D.C. Rules of Professional Conduct. *See* DCX 13 at 1. There is no indication that he informed his prospective clients that he was licensed only in the District of Columbia. Furthermore, despite being a solo practitioner working from a virtual office, he referred to himself in a court filing as "head of litigation with the Law Offices of Kissinger N. Sibanda." *See* DCX 21 at 5; Tr. 130 ("The law offices exist because I have an office. I do immigration work here in New Jersey. I have a virtual office, so forth and so on."); FF 3. Thus, Respondent's assertion that "because of his education he paid close attention to rules of litigation," *see* R. Sur Reply Br. at 7, is undermined by the record in this case.

Finally, as detailed in Finding of Fact 42, *supra*, Respondent failed to follow basic procedural rules by (a) seeking subpoenas beyond the range permitted by Superior Court Rules; (b) seeking to dismiss the proceedings prior to the hearing after being informed that the Board Rules do not permit it; (c) seeking a continuance of the hearing one day in advance without good cause, (d) submitting a disorganized, incomplete exhibit list including by failing to submit a supplemental exhibit list in a timely fashion, improperly marking them by Bates numbers rather than exhibit numbers, trying to admit incomplete documents, and holding up proceedings while working through the final list with Disciplinary Counsel, (e) failing to track admitted exhibits, (f) refusing to sign a final list of admitted exhibits, and (g) failing to seek the consent of the opposing party before filing procedural motions. Instead of adhering to the Board Rules, Respondent frequently referred to inapplicable rules and concepts, insisting at the hearing that federal rules of evidence are applicable because "we are all lawyers, we practice under that federal rule." *See* Tr. 249. When the Chair inquired into his reliance on the standard for relevance under the federal rules, Respondent effectively argued that it was inappropriate for the Chair to consider excluding irrelevant evidence. *See id.* ("I am saying that it is relevant to my defense of the fraud. You might not agree with me, but that's not your place to say, 'I don't agree with it, I don't want it.'"); Tr. 320-21 ("Give me leeway. Stop being so critical of me. Give me some leeway to – to develop my case. . . . It's like you want me to just say 'You are wrong,' and I give up and you don't want me to show evidence. . . . Okay, let me give – give you my evidence, then, and then you can do

whatever you want to do, if you feel I'm – I'm not a good person, what have you."); *see also* R. Post-Hearing Br. at 45-46 (criticizing Disciplinary Counsel for "s[eeking] to act outside of our acceptable *federal* rules of evidence and procedure because it was a disciplinary hearing" (first emphasis added)).

Indeed, although Respondent claimed in the hearing that he has now gone back and looked at the Rules again, in the post-hearing designation of exhibits, Respondent again failed to comply with Board Rule 7.17, establishing how exhibits are to be finalized. Although it is clear that the list of exhibits in evidence is to be finalized immediately after the hearing, Respondent refused to follow the Board Rules and requested that he be allowed to address this issue in the post-hearing briefing. *See* Respondent's Response to ODC Motion, filed on October 5, 2023. This does not square with Respondent's statement that he is now familiar with the Rules. Finally, Respondent's Post-Hearing Brief refers to facts outside the record. *See, e.g.*, R. Post-Hearing Br. at 6-7 (accusing Mr. Annabi of filing "numerous lawsuits in the New York state courthouses" and "official paperwork claiming to be an attorney to register his nonfunctional company Activate," citing to RX 23, an exhibit that was marked "Not Moved" on Respondent's post-hearing exhibit list); *id.* at 26 (asserting, without citation, that "NYU has awarded [Mr. Annabi's] family no less than five college degrees and conducted themselves with no hint of prejudice towards him").

The Hearing Committee recognizes that recommending a fitness requirement for a single Rule violation is unusual. However, the Rule violation – the disclosure of client information – is one of the most fundamental duties required of attorneys.

In addition, despite Respondent's assertion that his academic credentials make him an expert in litigation, his lack of awareness of rules of evidence and rules of procedure – as well as the Rules of Professional Conduct – are of particular concern for his consultation with prospective clients and his representation of any of his clients. At the time of his disclosures – and throughout this proceeding – Respondent has focused on what he characterizes as a "Good Samaritan" role to bring his former prospective client's "fraud" to the court's attention. *See* Respondent's Omnibus Reply, at 5-6, filed on September 8, 2023. Respondent has failed to recognize that the addresses on which he says the fraud is based – and on which he has focused his defense – are *not* at issue in this case. He has failed to recognize that it was the advice he said he gave to Mr. Annabi that is the core protected information at issue here. He has also failed to recognize that his characterizations of Mr. Annabi as a racist and antisemite were not permitted because they stemmed from his consultations with a prospective client – and were not necessary to any disclosures he might make about Mr. Annabi's use of multiple addresses. Respondent has attempted to justify his actions as allowed by "motion practice," rules, the First Amendment, and his right to defend his reputation; this evidences Respondent's lack of awareness of what the rules require.

The Hearing Committee finds by clear and convincing evidence that Respondent's actions were taken with the intent to harm Mr. Annabi, his former prospective client, because Mr. Annabi had questioned his advice, harassed him, and impugned his reputation by filing a civil suit against him. Even though Respondent

knew that it would violate the New York court order if he were to file papers there, he did so anyway because he took offense at Mr. Annabi's statements about him and his conduct and wanted to defend himself from possible future allegations. Respondent similarly took offense at Disciplinary Counsel's objections and arguments and to having to address charges in the disciplinary process. He took offense at the Hearing Committee's rulings that interfered with his concept of what rules apply and how the proceedings are run.

Respondent's ultimate position is that he did nothing wrong and that any flaw in his conduct should be excused because of Mr. Annabi's conduct. The Hearing Committee finds that Respondent's lack of understanding of his obligations as a lawyer, his quickness to take offense when challenged, and his mistaken beliefs about his abilities are likely to lead Respondent to engage in similar misconduct in the future, with the strong potential to harm clients. Taken together, these considerations establish by clear and convincing evidence a serious doubt about Respondent's continuing ability to practice law in compliance with the Rules of Professional Conduct.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated New York Rule 1.18(b) and should receive a 30-day suspension with a requirement that Respondent demonstrate fitness to practice as a condition of reinstatement. The Committee further recommends that Respondent's attention be directed to the

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

AD HOC HEARING COMMITTEE

Mary Lou Soller, Chair

Lisa Harger, Public Member

Paul Smolinsky, Attorney Member