

Circuit Court for Prince George's County
Case No. CAE17-07944

Argued: October 4, 2018

IN THE COURT OF APPEALS

OF MARYLAND

Misc. Docket AG No. 58

September Term, 2016

ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND

v.

ANDREW NDUBISI UCHEOMUMU

Barbera, C.J.
Greene
*Adkins
McDonald
Watts
Hotten
Getty,

JJ.

Opinion by Watts, J.

Filed: November 16, 2018

*Adkins, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Md. Constitution, Article IV, Section 3A, she also participated in the decision and adoption of this opinion.

This attorney discipline proceeding involves a lawyer who, among other misconduct, caused an appeal in his client's case to be dismissed and lied to his client, Bar Counsel, and the Court of Special Appeals in an attempt to deflect the blame for the appeal's dismissal.

Shannan Martin retained Andrew Ndubisi Ucheomumu, Respondent, a member of the Bar of Maryland, to represent her in an appeal. For an appeal to proceed, transcripts of relevant proceedings in the trial court need to be ordered by a certain deadline. In this case, after the deadline passed, Ucheomumu requested from Martin money to cover the cost of obtaining transcripts, and she paid him \$3,000. Ucheomumu, however, never ordered the transcripts or advised Martin to do so. The Court of Special Appeals issued an order directing Martin to show cause why the appeal should not be dismissed for failure to file the transcripts. Ucheomumu filed a motion for extension of time to file the transcripts in which he falsely stated that one of the reasons why there had been a delay in filing the transcripts was that Martin's previous counsel had not provided him with them.

Martin terminated Ucheomumu's representation. Although Ucheomumu had not earned the total of \$6,200 that Martin had paid him, he did not refund the \$6,200. Additionally, after the Court of Special Appeals denied the motion for extension of time and dismissed the appeal, Ucheomumu falsely advised Martin that she was responsible for the appeal's dismissal. Martin filed a complaint against Ucheomumu with Bar Counsel. In his response to Martin's complaint, Ucheomumu falsely stated that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals had dismissed the appeal because Martin

had failed to order the transcripts.

On November 18, 2016, on behalf of the Attorney Grievance Commission, Petitioner, Bar Counsel filed in this Court a “Petition for Disciplinary or Remedial Action” against Ucheomumu, charging him with violating Maryland Lawyers’ Rules of Professional Conduct (“MLRPC”)¹ 1.1 (Competence), 1.2(a) (Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communication), 1.5(a) (Reasonable Fees), 1.5(b) (Communication of Fees), 1.8(a), 1.8(h) (Conflict of Interest; Current Clients; Specific Rules), 1.15(a), 1.15(b), 1.15(c) (Safekeeping Property), 1.16(d) (Terminating Representation), 3.3(a)(1) (Candor Toward the Tribunal), 8.1(a) (Disciplinary Matters), 8.4(c) (Dishonesty, Fraud, Deceit, or Misrepresentation), 8.4(d) (Conduct That Is Prejudicial to the Administration of Justice), and 8.4(a) (Violating or Attempting to Violate the MLRPC), and current Maryland Rule 19-408 (Commingling of Funds).²

On November 22, 2016, this Court designated the Honorable David A. Boynton of the Circuit Court for Montgomery County to hear this attorney discipline proceeding. On March 29, 2017, Ucheomumu filed in this Court a “Motion for Change of Venue and to Amend Order Designating Judg[e.]” On March 31, 2017, this Court issued an Order

¹Effective July 1, 2016, the MLRPC were renamed the Maryland Attorneys’ Rules of Professional Conduct, or MARPC, and renumbered. We will refer to the MLRPC because the misconduct at issue occurred before this change.

²On June 12, 2017, Bar Counsel filed in this Court an “Amended Petition for Disciplinary or Remedial Action,” charging Ucheomumu with violating former Maryland Rule 16-607 (Commingling of Funds), as opposed to current Maryland Rule 19-408. The charges in the two Petitions for Disciplinary or Remedial Action were otherwise identical. Before a hearing judge, Bar Counsel withdrew the charges that Ucheomumu had violated former Maryland Rule 16-607 and MLRPC 1.15(b).

granting the Motion for Change of Venue. On April 12, 2017, this Court designated the Honorable Tiffany H. Anderson (“the hearing judge”) of the Circuit Court for Prince George’s County to hear this attorney discipline proceeding.

On December 22, 2017, Ucheomumu filed in this Court a “Motion to Dismiss Improperly-Filed and Unauthorized Charges[,] and Request for Oral Argument[,]” a brief in support thereof, and a Motion to Seal as to one of the exhibits that he attached to the brief. On December 28, 2017, Ucheomumu filed in this Court an “Emergency Motion to Stay Trial Court Proceedings[,]” a “Motion for Issuance of Additional Briefing Schedule as to Questions of Law Capable of Repetition, but Consistently Evading Review, or in the Alternative, Motion for Appropriate Reli[e]f[,]” and a brief in support of the motions. On January 2, 2018, this Court issued an Order granting the Motion to Seal and denying the Motion to Dismiss and the Motion for Issuance.

On January 10, 16, and 17, 2018, the hearing judge conducted a hearing.³ On April 25, 2018, the hearing judge filed in this Court an opinion including findings of fact and conclusions of law, concluding that Ucheomumu had violated MLRPC 1.1, 1.2(a), 1.3, 1.4, 1.5, 1.15(a), 1.15(c), 1.16, 3.3, 8.1, 8.4(c), 8.4(d), and 8.4(a), and had attempted to violate MLRPC 1.8(h)(1) and 1.8(h)(2) in violation of MLRPC 8.4(a).⁴

On July 16, 2018, Ucheomumu filed in this Court a “Motion to Compel Production

³The Petitions for Disciplinary or Remedial Action also charged Ucheomumu with violating various MLRPC involving another client in a separate matter. After the hearing, however, Bar Counsel withdrew the charges with respect to the allegations concerning Ucheomumu’s representation of the second client.

⁴The hearing judge did not address whether Ucheomumu violated, or attempted to violate, MLRPC 1.8(a). Accordingly, neither do we.

of Documents [Bar Counsel] Improperly []Withheld During the Trial Court Proceedings; and Exceptions to Trial Court Rulings Regarding Such Documents” and a “Motion to Unseal Records and Deposition and Vacate Non-Dissemination Order[.]” On August 23, 2018, this Court issued an Order denying the Motion to Compel and the Motion to Unseal. On September 7, 2018, Ucheomumu filed in this Court motions for reconsideration of this Court’s denial of the Motion to Compel and the Motion to Unseal. On the same date, this Court issued an Order denying the motions for reconsideration.

On October 4, 2018, we heard oral argument. For the below reasons, we disbar Ucheomumu.

BACKGROUND

The hearing judge found the following facts, which we summarize.

On June 16, 2009, this Court admitted Ucheomumu to the Bar of Maryland. At all relevant times, Ucheomumu was a solo practitioner with a virtual office in Montgomery County.

On July 31, 2014, in a child custody case, the Circuit Court for Prince George’s County issued an order that was unfavorable to Martin. On November 3, 2014, Ucheomumu and Martin signed an “Attorney Engagement Agreement,” which stated as follows. Martin had “filed a pro se appeal and need[ed] the legal services of [Ucheomumu’s firm] to handle the Appeal Brief and oral argument[.]” Martin would pay Ucheomumu a flat fee of \$10,500, and would also pay the filing fees and the cost of obtaining transcripts. Ucheomumu’s firm would “deposit any and all” payments “in [its] general operating account, and not in a trust account.” If, “[a]fter starting the work,”

Ucheomumu's firm withdrew from the representation "due to any conflict," Martin would receive a refund on a "pro[]rata basis[,] or" her payments would be applied to "outstanding legal bills." The Attorney Engagement Agreement did not specify an hourly rate, or explain how the amount of any "outstanding legal bills[,] or" the amount of any refund on "a pro[]rata basis[,] would be calculated. Ucheomumu did not advise Martin to seek independent counsel to review the Attorney Engagement Agreement's statement that he would not deposit unearned funds into an attorney trust account.

After Martin retained Ucheomumu to represent her in the appeal, she requested from him legal advice that pertained to the child custody case, but that was outside the scope of his representation of her in the appeal. Specifically, Martin requested from Ucheomumu legal advice regarding visitation with her children. Ucheomumu reviewed e-mails and other documents that pertained to the child custody case, and, on Martin's behalf, made phone calls and engaged in negotiation with opposing counsel regarding visitation with her children. The Attorney Engagement Agreement did not mention the costs of these legal services. There was no evidence that Ucheomumu and Martin entered into a separate or amended retainer agreement that addressed the costs of these legal services. Ucheomumu did not advise Martin that he applied at least some of her payments for the appeal toward the costs of these legal services.

On November 3, 2014, Martin paid Ucheomumu \$3,000, which he deposited into his attorney trust account; he drafted a Notice of Appeal and advised Martin to file it in the circuit court; and she did so. On November 4, 2014, Ucheomumu e-mailed Martin's previous counsel in an attempt to obtain her case file. Martin's previous counsel never

provided any documents to Ucheomumu. On November 7, 2014, Ucheomumu filed a Civil Appeal Information Report on Martin's behalf, and withdrew \$1,000 from his attorney trust account. On November 19, 2014, Martin paid Ucheomumu \$200, which he did not deposit into his attorney trust account.

On November 20, 2014, the Court of Special Appeals issued an order to proceed, stating that there would be no prehearing conference, and that the appeal would be governed by Maryland Rule 8-207(a), which provides for expedited appeals in child custody and visitation cases. See Md. R. 8-207(a)(1)(B). In November 2014, Maryland Rule 8-411(b)(1) stated that, generally, “[t]he appellant shall order the transcript within ten days . . . after [] the date of an order . . . that the appeal proceed without a prehearing conference, . . . unless a different time is fixed by that order[.]” (Paragraph break omitted). Here, ten days after the date of the order to proceed was November 30, 2014, which was a Sunday; thus, the transcripts of the relevant proceedings in the circuit court needed to be ordered by December 1, 2014, the next business day.⁵ See Md. R. 1-203(a)(1). Ucheomumu never ordered the transcripts, never advised Martin to do so, and never filed a timely motion for extension of time to file the transcripts.

On December 2, 2014, Ucheomumu withdrew \$2,000 from his attorney trust account. On December 8, 2014, a week after the date on which the transcripts were to be ordered, Ucheomumu sent a text message to Martin, requesting a payment for the purpose of “order[ing] the transcript[s] ASAP without any further delay.” This was the only

⁵The hearing judge inadvertently stated that the deadline was November 30, 2014.

occasion on which Ucheomumu requested a payment to cover the cost of obtaining transcripts. Ucheomumu did not inform Martin that he had missed the December 1, 2014 deadline for ordering the transcripts. On December 10, 2014, for the purpose of covering the cost of obtaining the transcripts, Martin paid Ucheomumu \$3,000, which he did not deposit into his attorney trust account. Ucheomumu never earned \$6,200 in attorney's fees that Martin had paid him, as he failed to take any action to advance the appeal, he never ordered the transcripts that were necessary to the appeal, and his legal services pertaining to visitation with Martin's children were not a significant undertaking. Additionally, Ucheomumu never drafted a brief on Martin's behalf.

At some point, Ucheomumu contacted a transcription company. On January 15, 2015, the transcription company responded to Ucheomumu, confirming the existence of transcripts of two days of a trial. The hearing judge did not find that Ucheomumu took any action in response.

On February 2, 2015, the Court of Special Appeals issued an order directing Martin to show cause why the appeal should not be dismissed for failure to file the transcripts. On February 24, 2015, Ucheomumu e-mailed Martin, stating that he lacked the transcripts. Ucheomumu did not inform Martin of the show cause order, or advise her that the Court of Special Appeals would dismiss the appeal for failure to file the transcripts.

On February 27, 2015, in the Court of Special Appeals, Ucheomumu filed an "Appellant[']s Motion for Extension of Time to Order Transcript[s] and File Appellant's Brief." In the Motion for Extension, Ucheomumu requested a two-month extension of the deadline for filing Martin's brief, and represented that there had been a delay in ordering

the transcripts because: (1) the circuit court had been closed for multiple days; (2) he was uncertain of how long the trial had been due to confusing information on the docket; and (3) he had not received Martin's case file from her previous counsel, who, he believed, had copies of the transcripts. Ucheomumu knowingly made a false statement by stating that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel. By requesting from Martin on December 8, 2014 a payment for the cost of obtaining transcripts, Ucheomumu indicated that, as of that date, he was no longer waiting for Martin's previous counsel to provide the transcripts, and instead planned to use a payment from Martin to order the transcripts himself. Ucheomumu "misled [] the Court of Special Appeals . . . in an attempt to explain his failure to order the transcripts."

On March 10, 2015, Martin requested a copy of the Motion for Extension, but she did not hear back from Ucheomumu. On March 11, 2015, Martin again requested a copy of the Motion for Extension, and again did not hear back from Ucheomumu. Subsequently, Martin requested that Ucheomumu provide copies of all of the documents that he had drafted on her behalf. Ucheomumu never did so.

On March 18, 2015, Martin terminated Ucheomumu's representation, sought a refund, and requested an accounting of all of the legal services that he had performed for her. At some point, Martin hired new counsel to represent her in the appeal. On March 20, 2015, Ucheomumu provided Martin with an invoice that indicated that she owed him \$10,944.50 based on an hourly rate of \$295. This was the first occasion on which Ucheomumu indicated that he would charge Martin an hourly rate. On the same date, Ucheomumu offered to refund Martin \$1,200, but did not explain how he calculated that

amount. Martin declined Ucheomumu's offer and requested that the two of them discuss the payments. Ucheomumu e-mailed Martin and her new counsel, again offering to refund Martin \$1,200—on the condition that she would sign a release that was attached to the e-mail, and that would preclude her from suing him. Ucheomumu did not advise Martin to seek independent counsel to review the release. Martin declined Ucheomumu's second offer.

On March 25, 2015, the Court of Special Appeals issued an order denying the Motion for Extension and dismissing the appeal. Ucheomumu's inaction caused the appeal's dismissal. On March 30, 2015, Ucheomumu e-mailed the order and the Attorney Engagement Agreement to Martin and stated:

Our agreement specifically specified that you are responsible for paying the transcripts; see attached. I told you many times to deposit the money for the transcript[s] and you told me that your grand[]father was going to loan you money, but that did not materialize. I specifically did not want to let the Court of Special Appeals know that you have not paid for the transcripts because it is my duty to protect you.

(Cleaned up).

On April 1, 2015, in the Court of Special Appeals, Martin's new counsel filed a Motion to Reinstate. On April 6, 2015, in the Court of Special Appeals, Martin's new counsel filed transcripts of certain circuit court proceedings. On April 14, 2015, the Court of Special Appeals denied the Motion to Reinstate. Martin's new counsel then filed in this Court a petition for a writ of *certiorari*, which this Court denied.

On April 13, 2015, Martin filed a complaint against Ucheomumu with Bar Counsel. On June 10, 2015, Ucheomumu provided to Bar Counsel a response to Martin's complaint

in which he falsely stated that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals had dismissed the appeal because Martin had failed to order the transcripts.

According to the hearing judge, Ucheomumu's misconduct was aggravated by prior attorney discipline, a dishonest or selfish motive, a pattern of misconduct, multiple violations of the MLRPC, and false statements during this attorney discipline proceeding. Ucheomumu's misconduct was mitigated by his "provision of some legal services [that were] related to" visitation with Martin's children.

STANDARD OF REVIEW

In an attorney discipline proceeding, this Court reviews for clear error a hearing judge's findings of fact, and reviews without deference a hearing judge's conclusions of law. See Md. R. 19-741(b)(2)(B) ("The Court [of Appeals] shall give due regard to the opportunity of the hearing judge to assess the credibility of witnesses."); Attorney Grievance Comm'n v. Slate, 457 Md. 610, 626, 180 A.3d 134, 144 (2018) ("This Court reviews for clear error a hearing judge's findings of fact." (Cleaned up)); Md. R. 19-741(b)(1) ("The Court of Appeals shall review de novo the [hearing] judge's conclusions of law."). This Court determines whether clear and convincing evidence establishes that a lawyer violated an MLRPC. See Md. R. 19-727(c) ("Bar Counsel has the burden of proving the averments of the [P]etition [for Disciplinary or Remedial Action] by clear and convincing evidence.").

In his Exceptions, Ucheomumu contends that the hearing judge erred in limiting his deposition of the Attorney Grievance Commission's Executive Secretary by denying him the opportunity to ask about "fundamental topics[,] such as the factual basis for its contentions in the Petition for Disciplinary or Remedial Action, . . . or [Bar Counsel's] compliance with its discovery obligations." Ucheomumu also argues that the hearing judge made several errors at the hearing, such as "[i]mproperly [h]urr[ying him] along[,] not taking judicial notice of certain documents, and denying him the "opportunity to introduce evidence inuring to unauthorized charges[.]" Ucheomumu seeks dismissal of this attorney discipline proceeding on these grounds. Upon a careful review of the record, we discern no procedural error or abuse of discretion on the hearing judge's part, and we decline to dismiss this attorney discipline proceeding.

In his Exceptions, Ucheomumu also requests that we remand this attorney discipline proceeding so that the hearing judge "can consider [] newly-discovered evidence"—namely, a purported November 3, 2014 e-mail in which Ucheomumu stated to Martin: "We need to . . . order the transcript[s] . . . as quickly as possible"; purported records of telephone calls and text messages between Ucheomumu and Martin from October 2014 to March 2015; and the testimony of "a witness who [allegedly] has knowledge of attempted settlement negotiations in the" child custody case. None of this proffered evidence causes us to conclude that the hearing judge's findings of fact are clearly erroneous. In the purported November 3, 2014 e-mail, Ucheomumu did not advise Martin to order the transcripts, nor did Ucheomumu indicate that Martin was responsible for ordering the transcripts; significantly, in a December 8, 2014 text message, he stated to Martin: "I need

to order the transcript[s] ASAP without any further delay.” Ucheomumu does not draw our attention to the content of any of the purported telephonic conversations and text messages, or proffer that any of them contradict the hearing judge’s findings that Ucheomumu failed to inform Martin of the December 1, 2014 deadline for ordering the transcripts, and failed to inform Martin that he had missed the deadline. Testimony regarding settlement negotiations in the child custody case would be of no consequence because Bar Counsel did not charge Ucheomumu with any misconduct that arose out of the alleged settlement negotiations. We decline Ucheomumu’s request to remand the attorney discipline proceeding.

(B) Findings of Fact

Bar Counsel does not except to any of the hearing judge’s findings of fact. Ucheomumu raises fifteen exceptions to the hearing judge’s findings of fact. We overrule all but one of the exceptions.

First, Ucheomumu excepts to the hearing judge’s finding that, on December 8, 2014, he requested from Martin money to cover the cost of obtaining transcripts. The hearing judge admitted into evidence a series of text messages between Ucheomumu and Martin, including a December 8, 2014 text message in which he stated: “Shannan, how is your funding coming? I need to order the transcript[s] ASAP without any further delay.” Ucheomumu contends that, in his text message, he did not expressly ask Martin for money. Ucheomumu’s contention is without merit. Given that Ucheomumu asked Martin how her “funding [was] coming[,]” and, in the next sentence, informed her that he “need[ed] to order the transcript[s],” the hearing judge did not clearly err in determining that the text

message was a request for money to cover the cost of obtaining transcripts.

Second, Ucheomumu excepts to the hearing judge's finding that the purpose of Martin's \$3,000 payment on December 10, 2014 was to cover the cost of obtaining the transcripts. Contrary to Ucheomumu's position, the evidence supports the hearing judge's finding. As mentioned previously, on December 8, 2014, Ucheomumu sent Martin a text message, requesting money to cover the cost of obtaining transcripts. On the same day, Martin replied, stating: "I was just informed that it should be wired to my account within 72 hours." On December 10, 2014, Martin paid Ucheomumu \$3,000. The timing of Martin's payment—just two days after the date on which Ucheomumu requested from her money to cover the cost of obtaining transcripts, and that Martin stated that she would receive money within 72 hours—supports the hearing judge's finding that the purpose of the payment was to cover the cost of obtaining the transcripts.

Third, Ucheomumu excepts to the hearing judge's finding that, after Martin terminated his representation, he billed her for legal services that were outside the scope of his representation of her in the appeal. Ucheomumu argues that the \$10,500 flat fee covered all of the legal services that he provided to Martin, including services related to visitation with her children; that he calculated the \$10,944.50 balance due in the invoice in response to her request for an accounting; and that he did not attempt to collect the balance due. Ucheomumu's logic is faulty. The Attorney Engagement Agreement stated that Ucheomumu would represent Martin in the appeal for a flat fee of \$10,500, and did not contemplate that he would provide any other legal services to her. Yet, after Martin terminated Ucheomumu's representation, he provided her with an invoice with a balance

due of \$10,944.50. Given that Ucheomumu could not have provided Martin with more than \$10,500's worth of legal services in the appeal, as he never ordered transcripts of the circuit court proceedings, filed briefs, or appeared at any oral argument, he necessarily billed her \$10,944.50 for legal services that were not related to his representation of her in the appeal, or services that he did not perform at all.

Fourth and fifth, Ucheomumu excepts to the hearing judge's findings that he never earned the \$6,200 that Martin had paid him, that he failed to deposit and maintain the funds in an attorney trust account until earned, and that he failed to take any action to advance the appeal. The evidence provides ample support for the hearing judge's findings. Martin retained Ucheomumu to represent her in the appeal, draft and file a brief on her behalf, and participate in oral argument. Ucheomumu never drafted a brief on Martin's behalf, and there was no oral argument because the Court of Special Appeals dismissed the appeal for failure to file the transcripts of proceedings in the circuit court. The transcripts were never filed because Ucheomumu never ordered them and never advised Martin to do so. Ucheomumu was responsible for the appeal's dismissal, and he did not earn \$6,200 for work that he failed to perform. Ucheomumu clearly did not earn the \$6,200 by performing such perfunctory tasks as e-mailing Martin's previous counsel, drafting a notice of appeal, filing a Civil Appeal Information Report, and filing an untimely Motion for Extension. Nor did Ucheomumu earn the \$6,200 by performing legal services that were related to visitation with Martin's children, as the hearing judge found, and this work was outside the scope of Ucheomumu's representation in the appeal. Specifically, Ucheomumu reviewed e-mails and other documents that pertained to the child custody case, and, on Martin's

behalf, made phone calls and engaged in negotiation regarding visitation with her children. The hearing judge found that Ucheomumu's legal services pertaining to visitation with Martin's children were not a significant undertaking. The hearing judge also found that, although Ucheomumu deposited into an attorney trust account the initial \$3,000 that Martin had paid him, he withdrew those funds from the attorney trust account, and he did not deposit into an attorney trust account the additional \$3,200 that Martin paid him. The hearing judge did not clearly err in finding that Ucheomumu never earned the \$6,200, and that he failed to deposit and maintain the funds in an attorney trust account until earned.

Sixth, Ucheomumu excepts to the hearing judge's finding that he did not advise Martin to seek independent counsel to review the Attorney Engagement Agreement's statement that he would not deposit unearned funds into an attorney trust account. Ucheomumu asserts that there is no evidence that he did not provide such advice. Ucheomumu's assertion is a red herring. MLRPC 1.15(c) required Ucheomumu to obtain Martin's "informed consent, confirmed in writing, to" his practice of not depositing unearned funds into an attorney trust account. Comment 6 to MLRPC 1.0 addresses informed consent, in pertinent part, as follows: "In some circumstances[,] it may be appropriate for a lawyer to advise a client . . . to seek the advice of another lawyer." Ucheomumu failed to put into writing advice of Martin's right to seek independent counsel, or a statement that he had orally provided such advice. And Ucheomumu simply makes a bald allegation that the hearing judge clearly erred with respect to the finding.

Seventh, although Ucheomumu does not challenge the hearing judge's finding that he never ordered the transcripts or advised Martin to do so, he contends that he promptly

for Extension. Martin's testimony, and the e-mails between Martin and Ucheomumu, demonstrate that the hearing judge did not clearly err in finding that he failed to provide her with a copy of the Motion for Extension.

Eleventh, Ucheomumu excepts to the hearing judge's finding that he made a false statement by representing in the Motion for Extension that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel. The hearing judge found that, in the Motion for Extension, Ucheomumu

stated that the delay in filing the transcripts . . . was due to: (1) the uncertainty concerning the length of the [] trial[,] and[,] specifically[,] whether the trial spanned two or three days; (2) [Ucheomumu]'s inability to obtain [] Martin's [case] file from her [previous counsel]; and (3) the [circuit court] experiencing several closures. Although[] the reasons for the delay [that were] proffered by [Ucheomumu] are not persuasive[—]and, in fact, did not convince the Court of Special Appeals to grant the [Motion for E]xtension— []there is not clear and convincing evidence that they are knowingly false statements. The evidence presented was not clear and convincing with regard to [Ucheomumu]'s proffer in the [M]otion [for Extension] that his uncertainty of the trial dates caused him to do further research on the issue, and him thereby violating [MLRPC 3.3]. Additionally, no such ruling was made by the Court of Special Appeals [i]n the denial of [the M]otion [for Extension].

[Ucheomumu]'s inability to obtain [] Martin's [case] file from her [previous counsel] may or may not have delayed the filing because[,] as proffered in [the Motion for Extension, Ucheomumu] believed [that] Martin's previous [counsel] already had copies of the transcript[s]. However, this argument falls short because[,] in [Ucheomumu]'s December 08, 2014 [text message to] Martin[,] he specifically ask[ed] her for \$3,000.00 for the purpose of ordering the transcripts. Therefore, as of December 8, 2014[, Ucheomumu] was no longer waiting for [] Martin's [previous counsel] to provide the transcripts, as he indicated he would order them with [] Martin's \$3,000.00 payment. [] Martin made the payment as requested[] on December 10, 2014, yet the Motion for Extension [] was not filed until February 27, 2015, almost three months later. It is clear from [Ucheomumu]'s [text message] on December 08, 2014 that he was no longer waiting for copies of the transcripts from [] Martin's [previous counsel]. When [Ucheomumu] received the second \$3,000.00 payment for the purpose

of ordering the transcripts, there was no evidence of any impediment that would cause a delay in ordering them.

This representation made by [Ucheomumu] within [the M]otion [Extension] is a knowingly false statement of fact[.]

(Cleaned up).

Ucheomumu asserts that the hearing judge contradicted herself by finding both that “there [wa]s not clear and convincing evidence that [Ucheomumu’s statements we]re knowingly false[,]” and that Ucheomumu made “a knowingly false statement of fact[.]” In context, it is clear that, when the hearing judge found that “there [wa]s not clear and convincing evidence that [Ucheomumu’s statements we]re knowingly false[,]” she was referring to Ucheomumu’s statements that he was uncertain of how long the trial had been, and that the circuit court had been closed for multiple days. Indeed, immediately after making this finding, the hearing judge stated that there was not “clear and convincing” evidence that Ucheomumu’s statement in the Motion for Extension about “his uncertainty of the trial dates” was a violation of MLRPC 3.3—*i.e.*, a false statement. And, elsewhere in the opinion, the hearing judge observed that the circuit court was closed every day between February 19, 2015 and March 8, 2015. A fair reading of the hearing judge’s remarks leads to the conclusion that the hearing judge’s finding of dishonesty pertained to Ucheomumu’s statement that there had been a delay in ordering the transcripts because he had not received Martin’s case file from her previous counsel.

Alternatively, Ucheomumu maintains that the hearing judge’s finding that he made a false statement in the Motion for Extension was clearly erroneous because the hearing judge clearly erred in finding that he requested from Martin money to cover the cost of

obtaining transcripts on December 8, 2014, and that the purpose of Martin's \$3,000 payment on December 10, 2014 was to cover the cost of obtaining the transcripts. In his twelfth exception, Ucheomumu makes the same argument in challenging the hearing judge's finding that he made a false statement to Bar Counsel when he represented that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals dismissed the appeal because Martin had failed to order the transcripts. As explained above, the hearing judge did not clearly err in making the findings of fact to which Ucheomumu excepts.

Thirteenth, Ucheomumu excepts to the hearing judge's finding that he made misrepresentations to Martin. The hearing judge found that Ucheomumu

misled . . . Martin in an attempt to explain his failure to order the transcripts. Ultimately, [the] appeal was dismissed because [Ucheomumu] did not order the transcripts. . . . [Ucheomumu] tried to disclaim his responsibility for the dismissal of the appeal by placing blame on [] Martin for the delay in the order, via an e[-]mail. This Court finds [that Ucheomumu] made several knowing and intentional misrepresentations and omissions . . . to [] Martin[.]

Ucheomumu contends that the hearing judge's opinion leaves unclear the misrepresentations that he made to Martin. We disagree. The hearing judge found that Ucheomumu "misled . . . Martin in an attempt to explain his failure to order the transcripts." The hearing judge explained that Ucheomumu was responsible for the appeal's dismissal, yet he blamed Martin for it in an e-mail. The hearing judge found that, on March 30, 2015, Ucheomumu e-mailed to Martin the order in which the Court of Special Appeals dismissed the appeal, and he stated to her: "[Y]ou have not paid for the transcripts[.]" Ucheomumu's statement was false, as the purpose of Martin's \$3,000 payment on December 10, 2014 was

to cover the cost of obtaining the transcripts. By e-mailing the order to Martin and stating that she had not paid for the transcripts, Ucheomumu not only lied about her alleged failure to pay for the transcripts, but also falsely implied that she was responsible for the appeal's dismissal.

Fourteenth, Ucheomumu excepts to the hearing judge's finding that he "did not instruct [] Martin to order the transcripts by the [December 1], 2014 deadline." Ucheomumu argues that, in the Amended Petition for Disciplinary or Remedial Action, Bar Counsel did not allege that he failed to advise Martin to order the transcripts by a certain date, and instead simply alleged that he never advised Martin to order the transcripts. Ucheomumu's claim of lack of notice is without merit. In the Amended Petition for Disciplinary or Remedial Action, Bar Counsel alleged: "On November 20, 2014, the Court of Special Appeals ordered [] Martin's appeal to proceed without a pre-hearing conference. Maryland Rule 8-411(b) requires that an appellant order the transcripts of the underlying proceedings **within ten [] days from the date of that Order.**" (Emphasis added). The Amended Petition for Disciplinary or Remedial Action indicated that Ucheomumu allegedly failed to meet the deadline of December 1, 2014—the day after November 30, 2014, which was a Sunday that was ten days after November 20, 2014, when the Court of Special Appeals issued the order to proceed.

Fifteenth, Ucheomumu excepts to the hearing judge's failure to find that he communicated with Martin on multiple occasions from October 2014 to March 2015. Ucheomumu does not proffer that any of his communications contradict the hearing judge's findings that Ucheomumu failed to inform Martin of the December 1, 2014

deadline for ordering the transcripts, and failed to inform Martin that he had missed the December 1, 2014 deadline. And, at various points within the opinion, the hearing judge discussed communications between Ucheomumu and Martin that occurred between October 2014 and March 2015—namely, Ucheomumu’s December 8, 2014 text message to Martin, her November 3, 2014, November 19, 2014, and December 10, 2014 payments to him, and his February 24, 2015 e-mail to her. We decline to find that the hearing judge clearly erred in failing to determine that Ucheomumu communicated with Martin numerous times between October 2014 and March 2015.

(C) Conclusions of Law

Bar Counsel does not except to any of the hearing judge’s conclusions of law. Ucheomumu excepts to all of the hearing judge’s conclusions of law. We reverse the hearing judge’s conclusions that Ucheomumu attempted to violate MLRPC 1.8(h)(1) and 1.8(h)(2), thereby violating MLRPC 8.4(a), and uphold the rest the hearing judge’s conclusions of law.

MLRPC 1.1 (Competence), 1.2(a) (Allocation of Authority Between Client and Lawyer), and 1.3 (Diligence)

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” MLRPC 1.1. “A lawyer shall act with reasonable diligence and promptness in representing a client.” MLRPC 1.3. MLRPC 1.2(a) states in pertinent part:

[A] lawyer shall abide by a client’s decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to

the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.1, 1.2(a), and 1.3. The Attorney Engagement Agreement set forth the objectives of Ucheomumu's representation of Martin in the appeal—namely, that he would draft a brief and participate in oral argument on her behalf. On November 20, 2014, the Court of Special Appeals issued an order to proceed, meaning that the transcripts of the relevant proceedings in the circuit court needed to be ordered by December 1, 2014. Ucheomumu never ordered the transcripts, never advised Martin to do so, and never filed a timely motion for extension of time to file the transcripts. As a result, the Court of Special Appeals dismissed the appeal, and there was no oral argument. Ucheomumu never drafted a brief on Martin's behalf. Ucheomumu's inaction constituted a failure of competence and diligence, as well as a failure to accomplish the objectives of his representation of Martin.

MLRPC 1.4 (Communication)

MLRPC 1.4 states:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in [MLRPC] 1.0(f), is required by [the MLRPC];

(2) keep the client reasonably informed about the status of the matter;

(3) promptly comply with reasonable requests for information; and

(4) consult with the client about any relevant limitation on the

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.4(a)(3). On two occasions, Martin requested a copy of the Motion for Extension, but she did not hear back from Ucheomumu. Subsequently, Martin requested that Ucheomumu provide copies of all of the documents that he had drafted on her behalf. Ucheomumu never did so.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.4(b). The Attorney Engagement Agreement stated that Ucheomumu would represent Martin in the appeal for a flat fee of \$10,500, and that, if, "[a]fter starting the work," Ucheomumu's firm withdrew from the representation "due to any conflict," Martin would receive a refund on a "pro[]rata basis[,] or" her payments would be applied to "outstanding legal bills." The Attorney Engagement Agreement did not specify an hourly rate or explain how the amount of any "outstanding legal bills[,] or" the amount of any refund on "a pro[]rata basis[,] would be calculated. After Martin terminated Ucheomumu's representation, sought a refund, and requested an accounting of all of the legal services that he had performed for her, he provided her with an invoice that indicated that she owed him \$10,944.50 based on an hourly rate of \$295. This was the first occasion on which Ucheomumu indicated that he would charge Martin an hourly rate. By failing to explain to Martin before the representation began that he would charge an hourly rate, and that he would charge more than the \$10,500 flat fee, Ucheomumu failed to explain his manner of billing to the extent reasonably necessary to permit Martin to make an informed decision regarding whether to retain him.

not draft a brief on Martin's behalf or appear at oral argument. Although Ucheomumu provided legal services pertaining to visitation with Martin's children, those were not a significant undertaking on his part. The \$6,200 that Ucheomumu collected constituted an unreasonable fee.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.5(b). The conduct that constitutes a violation of MLRPC 1.4(b), which is discussed above, also constitutes a violation of MLRPC 1.5(b).

MLRPC 1.15(a) and 1.15(c) (Safekeeping Property)

MLRPC 1.15 states in pertinent part:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained pursuant to Title 16, Chapter 600 of the Maryland Rules[.]

* * *

(c) Unless the client gives informed consent, confirmed in writing, to a different arrangement, a lawyer shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the lawyer's own benefit only as fees are earned or expenses incurred.

Clear and convincing evidence supports the hearing judge's conclusions that Ucheomumu violated MLRPC 1.15(a) and 1.15(c). The Attorney Engagement Agreement stated that Ucheomumu's firm would "deposit any and all" payments "in [its] general operating account, and not in a trust account." Ucheomumu did not advise Martin to seek independent counsel to review the Attorney Engagement Agreement's statement that he would not deposit unearned funds into an attorney trust account. Ucheomumu failed to

by falsely representing to Martin that she was responsible for the appeal's dismissal. The hearing judge concluded that Ucheomumu violated MLRPC 8.4(d) through his "conduct toward" Martin, Bar Counsel, and the Court of Special Appeals. We uphold all of these conclusions.

Clear and convincing evidence supports the hearing judge's conclusions that Ucheomumu violated MLRPC 3.3(a)(1) and 8.4(c) by falsely representing to the Court of Special Appeals that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel. On November 4, 2014, Ucheomumu e-mailed Martin's previous counsel in an attempt to obtain her case file. Ucheomumu believed that Martin's previous counsel had copies of the transcripts. Martin's previous counsel, however, never provided any documents to Ucheomumu. Ucheomumu never ordered the transcripts, never advised Martin to do so, and never filed a timely motion for extension of time to file the transcripts. As a result of Ucheomumu's inaction, the transcripts were not ordered by the December 1, 2014 deadline. On December 8, 2014, Ucheomumu sent Martin a text message, stating: "Shannan, how is your funding coming? **I need to order the transcript[s]** ASAP without any further delay." (Emphasis added). As the hearing judge explained, by stating that he "need[ed] to order the transcript[s]" himself, Ucheomumu indicated that, as of that date, he was no longer waiting for Martin's previous counsel to provide the transcripts. Almost two months later, on February 2, 2015, the Court of Special Appeals issued an order directing Martin to show cause why the appeal should not be dismissed for failure to file the transcripts. On February 27, 2015, Ucheomumu filed the Motion for Extension, in which, instead of acknowledging that he

was at fault for the failure to order the transcripts, he falsely represented that one of the reasons for the delay in ordering the transcripts was that Martin’s previous counsel had not provided her case file. Whereas the truth was that Ucheomumu was responsible for ordering the transcripts—a fact that he had expressly acknowledged almost two months earlier—he instead blamed Martin’s previous counsel for the failure to order the transcripts. As the hearing judge found, Ucheomumu “misled . . . the Court of Special Appeals . . . in an attempt to explain his failure to order the transcripts.”

Clear and convincing evidence supports the hearing judge’s conclusions that Ucheomumu violated MLRPC 8.1(a) and 8.4(c) by falsely representing to Bar Counsel that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals had dismissed the appeal because she had failed to order the transcripts. Ucheomumu’s first statement was false because he never advised Martin to order the transcripts. Ucheomumu’s second statement was false because, on December 10, 2014, Martin paid him \$3,000 for the purpose of covering the cost of obtaining the transcripts. Ucheomumu’s third statement was false because he, not Martin, was responsible for both the failure to order the transcripts and the appeal’s dismissal.

Clear and convincing evidence supports the hearing judge’s conclusion that Ucheomumu violated MLRPC 8.4(c) by falsely representing to Martin that she was responsible for the appeal’s dismissal. On March 30, 2015, Ucheomumu e-mailed to Martin the order in which the Court of Special Appeals dismissed the appeal, and he falsely stated: “[Y]ou have not paid for the transcripts[.]”

failing to comply with Martin's requests for copies of certain documents. Ucheomumu violated MLRPC 1.4(b) and 1.5(b) by failing to communicate that he would charge an hourly rate. Ucheomumu violated MLRPC 1.5(a) by collecting, and failing to earn, the \$6,200 that Martin paid him. Ucheomumu violated MLRPC 1.15(a) and 1.15(c) by failing to deposit unearned funds into, and withdrawing unearned funds from, his attorney trust account. Ucheomumu violated MLRPC 1.16(d) by failing to refund unearned funds and attempting to get Martin to sign the release that would preclude her from suing him. Ucheomumu violated MLRPC 3.3(a)(1), 8.4(c), and 8.4(d) by falsely representing to the Court of Special Appeals that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel. Ucheomumu violated MLRPC 8.1(a), 8.4(c), and 8.4(d) by falsely representing to Bar Counsel that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals had dismissed the appeal because Martin had failed to order the transcripts. Ucheomumu violated MLRPC 8.4(c) and 8.4(d) by falsely representing to Martin that she was responsible for the appeal's dismissal.

The hearing judge found that Ucheomumu's misrepresentations to Martin and Bar Counsel were "knowing and intentional[,]" and that he made "a knowingly false statement of fact" to the Court of Special Appeals. Ucheomumu's misconduct injured Martin, in that he caused the appeal's dismissal. Notably, Martin's new counsel's attempts to salvage the appeal were unsuccessful; Martin's new counsel filed a Motion to Reinstate, which the Court of Special Appeals denied, and then filed a petition for a writ of *certiorari*, which this Court denied. Thus, because of Ucheomumu, Martin lost the opportunity to challenge

