For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN THE MATTER OF THE SUSPENSION OF:	)	**S. Ct. Civ. No. 2015-0019**
DESMOND L. MAYNARD, ESQUIRE	)	
AS A MEMBER OF THE VIRGIN ISLANDS BAR.	)	

On Petition for Disciplinary Action
Considered and Filed: June 8, 2018

BEFORE: **MARIA M. CABRET**, Associate Justice; **DOUGLAS A. BRADY**, Designated Justice; and **DARRYL DEAN DONOHUE, SR.**, Designated Justice.[1]

APPEARANCES:

Simone R.D. Francis, Esq.
Law Offices of Ogletree Deakins
St. Thomas, U.S.V.I.
Attorney for Petitioner V.I. Board of Professional Responsibility,

Shawn E. Maynard-Hahnfeld, Esq.
Law Offices of Desmond Maynard
St. Thomas, U.S.V.I.
Attorney for Respondent,

Tanisha M. Bailey-Roka, Esq.
Office of Disciplinary Counsel
St. Croix, U.S.V.I.
Disciplinary Counsel of the Supreme Court.

OPINION OF THE COURT

PER CURIAM.

[1] Chief Justice Rhys S. Hodge and Associate Justice Ive Arlington Swan are recused from this matter. The Honorable Douglas A. Brady, Judge of the Superior Court of the Virgin Islands, and the Honorable Darryl Dean Donohue, Sr., the former Presiding Judge of the Superior Court of the Virgin Islands, have been designated to sit in their places under 4 V.I.C. § 24(a).

This matter comes before the Court pursuant to a petition for disciplinary action filed by the Board on Professional Responsibility ("Board"),[2] which requests that this Court suspend Desmond L. Maynard, Esq., from the practice of law for 24 months and order Maynard to pay restitution in the amount of $41,844.50. For the reasons below, we grant the petition and impose the recommended sanction in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from grievances filed against Maynard for his handling of the probate proceedings for the Estate of Ruth Bender ("Bender"). Bender's husband, Edward P. Bender, died testate on July 11, 1985, leaving 100% of his assets to Bender. The wills of both Bender and her husband were probated sometime between 1987 and 1990. Thomas Sheridan and Monica Prince[3] were the beneficiaries and co-executors of the Bender estate. According to a final account filed with the Superior Court on or about December 3, 1992, Bender's estate held the following assets and liabilities (all currencies in U.S. dollars):

ASSETS	**VALUE**
Real Property	
14-17-1 and 18-1 Frenchman's Bay Frenchman's Bay Quarter Parcel Number: 1 07402 0243 00	225,000.00
Personal Property	
Securities	
11 securities held by Prudential Bache[4]	154,951.00
1 security held by Bank of New York	2,168.45
Life Insurance	

[2] Formerly the Ethics and Grievance Committee of the Virgin Islands Bar Association, now designated the Board on Professional Responsibility pursuant to S. Ct. Prom. No 2014-006.

[3] Prince also goes by the first name "Rosemary," which was the name under which she testified on December 2, 2014, the first day of Maynard's hearing.

[4] The record reveals that these securities were transferred from Prudential Bache and eventually ended up in the possession of Wells Fargo.

Lafayette Life Ins. Co. policy	2,500.00
Veteran's Administration policy	10,000.00
Savings Accounts	
Barclay's Bank Savings Acct. No. 77332448	19,700.48
Barclay's Bank Savings Acct. No. 77402071	24,884.49
Barclay's Bank Savings Acct. No. 7733241	16,596.61
Contents of One Safety Deposit Box One silver diamond ring One pocket watch One embroidered handkerchief Six photographs One brass, beaded necklace One silver necklace One pair of sapphire earrings One rings with green stone Two gold maple leaf broachers A pair of broaches (unknown material) One national honor society pin One sorority pin with pearls One gold earrings One pin One small gold ring One flat washer	5,000.00
Household Furnishings	10,000.00
Estimated Lawsuit Recovery	30,000.00
TOTAL ASSETS:	**500,080.03**
LIABILITIES	
Mortgage on real property	16,120.90
Cost and fees of final account	633.00
TOTAL LIABILITIES:	**16,753.90**

On January 14, 1993, the Superior Court held a hearing on the final account of the Bender estate.

The "lawsuit recovery" listed in the assets column of the final accounting referred to an insurance claim arising from damages to real property sustained as a result of Hurricane Hugo. On

January 26, 1993, Maynard settled the claim on behalf of the estate for the net sum of $55,809. By order dated February 12, 1993, the Superior Court directed that the $55,809 sum "shall be paid . . . to the personal representatives [of Bender's estate] upon receipt of general release from said personal representatives, thus closing the transaction."

On February 22, 1993, Maynard, through one of his associates, filed an amended final account with the Superior Court. On July 7, 1993, the Superior Court entered an order directing Maynard to correct certain deficiencies in a draft final adjudication of the Bender estate that Maynard had submitted. Maynard took no action with respect to the Superior Court's order, and in response to Maynard's inaction, the Superior Court entered an order dated December 6, 1996, directing Maynard to comply with its July 7, 1993 order. On December 13, 1996, Maynard requested an additional 30 days to comply with the Superior Court's December 6, 1996 order. The Superior Court granted Maynard's request by order entered December 20, 1996, and directed Maynard to file the amended final adjudication with the Superior Court no later than January 20, 1997. Maynard did not respond by that deadline.

No action took place with respect to Bender's estate until January 21, 2000, on which date Maynard, through an associate, filed an amended final adjudication for the estate with the Superior Court. The draft final adjudication filed with the Superior Court differs from the final account filed on or about December 3, 1992 in three ways: first, the three savings accounts identified in the draft final adjudication appear to have fluctuated in value;[5] second, the value of the household furnishings was decreased from $10,000 in the final account to $1,500 in the draft final adjudication; and third, the draft final adjudication listed the proceeds of the insurance settlement

[5] Account 77332448 appreciated to $20,028.65 from $19,700.48; account 77402071 appreciated to $25,299.01 from $24,884.49; and account 7733241 depreciated to $9,597.10 from $16,596.61.

pertaining to damage from Hurricane Hugo as $54,434, despite the fact that Maynard had settled the matter for a net of $55,809.

Despite the fact that Maynard filed this amended final adjudication in January of 2000, the matter moved no further until January 27, 2006, when the Superior Court entered a sua sponte final adjudication of the Bender estate. The adjudication signed by the court does not identify the household furnishings or proceeds from the insurance litigation as assets, but the values of the three savings accounts all match the values represented to the Superior Court in Maynard's January 21, 2000 filing.[6] The accompanying Notice of Entry of Adjudication indicates that the court directed the adjudication to Maynard, yet Maynard claims that he was not served with the court's adjudication. Consequently, Maynard admits that he "did not liquidate or distribute the assets of the Estate to the beneficiaries."

The matter remained dormant for another four years, from January of 2006 until April of 2010, when Karen Sheridan ("Sheridan"), daughter of Thomas Sheridan, reviewed the probate file and discovered the Superior Court's 2006 adjudication. Sheridan claims that she attempted to contact Maynard, but states that Maynard would not respond to her. Because Maynard failed to do so, Sheridan recorded the Superior Court's 2006 adjudication on her own, at her own expense, on April 23, 2010.

On May 24, 2010, Prince and Sheridan petitioned the Superior Court for a hearing, and the Superior Court directed Maynard to respond by July 30, 2010. Maynard claims that he did not receive the Superior Court's order, and that as a result, he failed to comply. The Superior Court then directed Maynard to appear and show cause on August 31, 2010. Maynard claims that he first

[6] *See* footnote 4, above.

learned of the Superior Court's 2006 adjudication at the August 31, 2010 show cause hearing. Maynard claims that he then began attempting to distribute the estate's assets to the beneficiaries.

Prince and Sheridan filed grievances against Maynard on November 9, 2011 and October 4, 2011, respectively.[7] Prince and Sheridan allege that Maynard did not advance the probate matter, repeatedly delayed the case, failed to provide information when requested by the Superior Court and by his clients, failed to safeguard the Bender estate's assets, and failed to distribute the Bender estate's assets following the Superior Court's 2006 final adjudication. The Board held an adjudicatory hearing on these allegations on December 2 and 11, 2014. The parties presented opening arguments, and were permitted to introduce exhibits and cross-examine witnesses. Prince, Maynard, and Sheridan testified. On December 22, 2014, the parties submitted their post-hearing briefs.

On February 20, 2015, the Board issued a memorandum of decision, in which it concluded that Maynard violated Supreme Court Rules 211.1.1, 211.1.3, 211.1.4, 211.1.5(b), 211.1.15, and 211.8.1, and recommended that Maynard be suspended from the practice of law for 24 months and ordered to pay $41,844.50.[8] On February 23, 2015, the Board filed the petition now before us.[9]

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[7] Sheridan's grievance was recorded as V.I. Bar Assn. Ethics & Grievance Comm. Case No. 20-2011 STT, and Prince's grievance was recorded as Case No. 26-2011 STT.

[8] Although the Board reviewed the grievances against Maynard under the ABA Model Rules of Professional Conduct, pursuant to S. Ct. Prom. No. 2013-001, the Virgin Islands Rules of Professional Conduct, codified in Supreme Court Rule 211, entered into effect February 1, 2014, replacing the formerly applicable ABA Model Rules. Because the Virgin Islands rules are substantively identical to the ABA rules, previous decisions interpreting and applying the ABA rules remain equally applicable in the interpretation and application of the Virgin Islands rules. Thus, for clarity and convenience, in this opinion we will refer to the currently applicable Virgin Islands Rules of Professional Conduct as embodied in Supreme Court Rule 211.

[9] Maynard and the Office of Disciplinary Counsel each filed an objection to the panel's memorandum on March 16, 2015.

II. JURISDICTION

This Court possess exclusive jurisdiction to discipline members of the Virgin Islands Bar. V.I. CODE ANN. tit. 4, § 32(e); *In re Maynard*, 60 V.I. 444, 448 (V.I. 2014) (citing *In Re Gonzalez*, 59 V.I. 862, 864 (V.I. 2013)). We therefore have jurisdiction to consider the Board's petition.

III. DISCUSSION

The Board concluded that Maynard violated Supreme Court Rules 211.1.1, 211.1.3, 211.1.4, 211.1.5(b), 211.1.15, and 211.8.1(b). We independently review the Board's factual findings and conclusions of law to determine whether there is clear and convincing evidence that the respondent committed ethical misconduct, and if so, whether to adopt the Board's recommended discipline or impose a different sanction. *In re Maynard*, 60 V.I. at 449 (citing *V.I. Bar v. Brusch*, 49 V.I. 409, 411–12 (V.I. 2008)).

Former Supreme Court Rule 207.1.11—the rule applicable at the time of the proceedings before the Board—provides that the "[f]ailure to timely answer the grievance shall be deemed an admission by the Respondent to all factual allegations contained in the grievance, and shall permit the grievance to proceed on a default basis." In its memorandum opinion dated February 20, 2015, the Board concluded that Maynard failed to answer the grievances against him despite specific requests from the Office of Disciplinary Counsel ("ODC") for written response by letters dated December 11, 2011 and January 9, 2012, Accordingly, we must, as a threshold matter, determine whether Maynard violated Rule 207.1.11 and, in turn, whether we should review this matter on a default basis deeming all factual allegations contained in the grievances true.

It is clear from the record before us that Maynard failed to *timely* file an answer to either of the grievances against him,[10] and consequently, that Maynard violated the plain text of Rule 207.1.11. However, the record also reveals that Maynard did eventually respond—albeit six months late—to ODC's requests by letter dated June 19, 2012, explaining that the requested records had been destroyed by Hurricane Marylin and indicating that Maynard would provide further information by way of his testimony at the hearing. Maynard not only appeared at both the initial hearing on June 25, 2012, and following remand from this Court, at the subsequent hearing conducted on December 2 and 11, 2014, but participated substantially in the proceedings by filing briefs and presenting extensive testimony and other evidence.

We have previously recognized that "a license to practice law 'has characteristics of property which should not be withdrawn by a governing authority save by proper application of traditional concepts of due process.'" *Maynard*, 60 V.I. at 449 (quoting *Florida Bar v. Fussell*, 179 So.2d 852, 854 (Fla. 1965)). As such, we "must ensure that attorneys subject to disciplinary action are afforded the full measure of procedural due process required under the constitution so that we do not unjustly deprive them of their reputation and livelihood." *Id.* (quoting *Statewide Grievance Comm. v. Botwick*, 627 A.2d 901, 906 (Conn. 1993)). Thus, in review of a disciplinary proceeding, reliance upon an attorney's default, whether before the Board or before this Court, is not undertaken lightly, and is most appropriately reserved for cases in which the respondent completely fails to answer and appear in his own defense. *See, e.g.*, *In re Joseph*, 56 V.I. 490, 499 (V.I. 2012) (affirming Board's decision to proceed on default basis where respondent "neither responded to the grievance nor appeared at the hearing" and in his filings with this Court "[did]

[10] Maynard's written response to grievance No. 20-2011 STT was due on November 4, 2011, and his written response to grievance No. 26-2011 STT was due on December 14, 2011.

not even address—let alone dispute—any of the panel's factual findings with respect to [his failure to answer or appear]"); *see also In re Parson*, 58 V.I. 208, 214 (V.I. 2013) (proceeding on default basis where respondent "was provided with multiple opportunities, spanning the course of several years, to respond to both the underlying grievance and the Committee's petition, yet failed to participate in any of the proceedings before the Committee or this Court").

Additionally, former Supreme Court Rule 207.1.11 is a procedural, claims-processing rule subject to relaxation under appropriate circumstances at the discretion of either the Board or this Court. *See Gov't of the V.I. v. Crooke*, 54 V.I. 237, 253–54 (V.I. 2010) ("It is well established that time limits set exclusively by court rules are mere claims-processing rules… a court possesses the discretion to relax time requirements mandated by a claims-processing rule."). Indeed, we have previously recognized that, despite the language of Rule 207.1.11 indicating that "[f]ailure to answer the grievance *shall* be deemed an admission…to all factual allegations contained in the grievance," the Board may nonetheless, in its discretion, permit a respondent to appear and elect to weigh the evidence presented "rather than merely accepting the truth of all of [the respondent's] allegations." *In re Joseph*, 60 V.I. 540, 564 (V.I. 2014) ("[The Board], by granting [the respondent's] motion [for hearing] and reversing its prior decision to proceed on a default basis, clearly found his cooperation sufficient to allow it to decide the matter on the merits.").

In this case, the Board, despite Maynard's failure to timely file an answer, exercised its discretion to conduct a hearing and consider the grievance on the merits rather than proceed on a default basis. Thus, for the reasons discussed above, and in keeping with our stated preference for resolving cases on the merits,[11] we find no reason to depart from the Board's decision in this regard

[11] *See, e.g., Virgin Islands Taxi Ass'n v. Virgin Islands Port Auth.*, 67 V.I. 643, 693 n.30 (V.I. 2017).

and will proceed to consider the Board's findings with respect to Maynard's substantive violations of the Virgin Islands Rules of Professional Responsibility.

A. Rule 211.8.1(b)

Rule 211.8.1(b) "prohibits a lawyer, in connection with a disciplinary matter, from knowingly failing to respond to a lawful demand for information from a disciplinary authority." *In re Welcome*, 58 V.I. 236, 246 (V.I. 2013) (quoting *Brusch*, 49 V.I. at 419)) (internal quotation marks omitted). We have previously emphasized "that our rules clearly contemplate that an attorney may violate [Supreme Court Rule 211.8.1(b)] by failing to timely file an answer, even if the attorney subsequently participates in the disciplinary proceedings." *In re Welcome*, 58 V.I. at 247. Additionally, Rule 211.8.1(b) requires "meaningful cooperation" from the respondent, and may still be violated "notwithstanding the filing of incomplete answers or requests for extensions of time, responses sent to other parties but not to the disciplinary Board itself, and appearances at some—but not all—of the scheduled hearings." *Id.* (collecting cases).

The panel concluded that Maynard violated Rule 211.8.1(b) because he "failed to submit a written response as requested by the Disciplinary Counsel" to requests for information sent on December 5, 2011 and January 9, 2012." As discussed above, Maynard did not completely fail to respond, eventually submitting a letter on June 19, 2012. In its memorandum opinion of November 12, 2012, the Board explained that following Maynard's failure to timely file an answer to grievance No. 20-2011 STT—due on November 4, 2011—ODC sent Maynard a hand-delivered follow-up letter instructing Maynard to file a written response to the grievance and identifying specific documents and information to be provided no later than December 12, 2011. Maynard does not deny that he received the letter, and offers no explanation for his failure to timely submit a response. Thus, despite Maynard's subsequent appearance and participation in the proceedings,

we affirm the Board's conclusion that Maynard violated Supreme Court Rule 211.8.1(b) by failing to timely respond to ODC's lawful request for information until six months after the deadline for filing such response had passed. *See In re Welcome*, 58 V.I. at 246 ("[A]n attorney may violate [Supreme Court Rule 211.8.1(b)] by failing to timely file an answer, even if the attorney subsequently participates in the disciplinary proceedings."); *accord Att'y Grievance Comm'n of Md. v. Butler*, 107 A.3d 1220, 1225 (Md. 2015) (finding violation of identical Rule 8.1(b) based upon failure to respond promptly to notices from disciplinary authority); *State ex rel. Okla. Bar Ass'n v. Braswell*, 975 P.2d 401, 430 (Okla. 1998) (finding respondent violated multiple rules, including identical rule 8.1(b), "both by his lack of a timely response to the … grievances and by his failure to provide a full and fair disclosure in his eventual responses").

In his objections to the Board's decision filed with this Court, Maynard does not, and indeed cannot, argue that his failure to timely respond to ODC's December 9, 2011 request for information does not violate the plain text of Rule 211.8.1(b). Instead, Maynard contends that any finding that he violated the rule is "clearly contrary to the decisions of this Court" in *In re Taylor*, 60 V.I. 356 (V.I. 2014) and *In re Joseph*, 60 V.I. 540 (V.I. 2014). We disagree.

In support of his argument, Maynard seizes upon a single sentence in *Taylor*—a complex case involving eleven separate grievances—in which we stated: "Although Taylor filed an untimely answer to the grievance, neither the case investigator, nor the [Board] acting *sua sponte*, moved to strike the answer from the record; thus, the untimely answer, without more, cannot sustain a violation of Model Rule 8.1(b)." However, as we ultimately decided to review *Taylor* on a default basis as a result of his failure to file an answer with this Court, the language cited by Maynard was not essential to our holding in *Taylor* and therefore constitutes *dicta*. And, in any event, Maynard misapprehends the meaning of that language.

In the relevant portion of the *Taylor* opinion, "we [began] our analysis by determining whether Taylor violated [Rule 211.8.1(b)]" by filing an untimely answer to the grievance against him, explaining that "the failure to timely answer a grievance shall be deemed an admission by the Respondent to all factual allegations contained in the grievance, and shall permit the grievance to proceed on a default basis." *Taylor*, 60 V.I. at 370. Critically, the quoted language is not that of Rule 211.8.1, but rather former Rule 207.1.11. Thus, on the facts presented in *Taylor*, our inquiry was directed not merely at whether the failure to timely answer the grievance constituted a violation of Rule 211.8.1, but was rather directed at whether the failure to timely answer constituted a joint violation of Rule 211.8.1 and Rule 207.1.11 such that the grievance should have been reviewed on a default basis.

And though it is true that a violation of procedural Rule 207.1.11 may also constitute a violation of the substantive Rule 211.8.1,[12] the converse is not true. Whereas the plain language of Rule 207.1.11 speaks only of the respondent's initial "failure to timely answer the grievance,"[13] a respondent may violate Rule 211.8.1 by knowingly failing to respond to any "lawful demand for information from a disciplinary authority" made at any point in the proceedings. Thus, the plain and unambiguous language of both rules makes clear that Rule 211.8.1—a substantive rule of professional responsibility—is more general and significantly broader in scope than the comparatively narrow, procedural Rule 207.1.11.

[12] *See, e.g.*, *In re Parson*, 58 V.I. 208, 214 (V.I. 2013) (reviewing petition on default basis where respondent jointly violated Rules 211.8.1 and 207.1.11 by completely failing to answer or participate in proceedings); *In re Joseph*, 56 V.I. 490, 498–99 (V.I. 2012) (considering joint violation of Rules 211.8.1 and 207.1.11 and concluding default review was appropriate where respondent completely failed to file answer or appear at hearing).

[13] The function of Rule 207.1.11 is analogous to the function of V.I. R. CIV. P. 55 in ordinary civil proceedings.

Viewed in this context, it is apparent that the language in *Taylor* cited by Maynard does not stand for the proposition that a respondent may never be found in violation of Rule 211.8.1 unless his answer to the grievance is stricken from the record. Indeed, an attorney's duties and obligations to the judiciary, to his clients, and to the public under the substantive rules of professional responsibility embodied in Supreme Court Rule 211 exist independently of, and are not conditioned upon, any subsequent action or inaction of disciplinary authorities. Rather, the relevant portion of the *Taylor* opinion stands for the more limited proposition that a respondent's failure to timely answer a grievance, standing alone, cannot sustain the type of joint violation of Rule 211.8.1 and Rule 207.1.11 necessary to permit review on a default basis unless that untimely answer is stricken from the record.[14]

Maynard's attempt to shield himself with language excerpted from *In re Joseph*, 60 V.I. 540, is similarly unavailing. In *Joseph*, we wrote:

> We agree with the [Board] that, standing alone, Joseph's failure to respond to the grievance violated [Supreme Court Rule 211.8.1] and permitted the [Board] to proceed on a default basis. However, we cannot ignore that the [Board], by granting Joseph's motion for a hearing, permitting Joseph to appear, and weighing the evidence rather than merely accepting the truth of all of Daniel's allegations, effectively relieved Joseph of his obligation to file a written answer. By virtue of his failure to file an answer, the [Board] was authorized to proceed on a default basis, and to strike Joseph's untimely request for a hearing from the record. *See In re Suspension of Welcome*, 58 V.I. 236, 247–48 (V.I. 2013). Although [Supreme Court Rule 211.8.1(b)] requires "*meaningful* cooperation," id. at 247 (emphasis in original), the [Board], by granting Joseph's motion and reversing its prior decision to proceed on a default basis, clearly found his cooperation sufficient to allow it to decide the matter on the merits.

60 V.I. at 564.

[14] This interpretation of the relevant language in *Taylor* is further indicated by the citation offered in support of that language, to our decision in *In re Welcome*, 58 V.I. at 247, "emphasiz[ing] that our rules clearly contemplate that an attorney may violate [Supreme Court Rule 211.8.1(b)] by failing to timely file an answer, even if the attorney subsequently participates in the disciplinary proceedings."

Thus, considered in the full context of our inquiry in *Joseph*—again framed explicitly in the language of Rule 207.1.11—it is clear that we were concerned not merely with whether the respondent's failure to answer the grievance constituted a violation of Rule 211.8.1, but with whether the failure to answer constituted a joint violation of Rules 211.8.1 and 207.1.11 such that the grievance should have been reviewed on a default basis. In this light, our statement that the Board's decision to permit Joseph to appear at the hearing and consider evidence "effectively relieved Joseph of his obligation to file a written answer" does not mean, as Maynard suggests, that a respondent may never be found in violation of Rule 211.8.1 if the Board, irrespective of any failure to respond to "lawful demand[s] for information from a disciplinary authority," elects to conduct a hearing and consider evidence. Rather, the relevant language in *Joseph* stands only for the proposition that the Board's decision to permit a respondent to appear and present evidence effectively relieves him of the obligation to file a written answer under Rule 207.1.11—the rule specifically addressed to the respondent's obligation to answer and the consequences for failing to do so. Therefore, on the facts presented in *Joseph*, we concluded that based upon the Board's decision to permit *Joseph* to appear and present evidence, we could not find that Joseph's failure to answer constituted the type of joint violation of Rule 211.8.1 and Rule 207.1.11 that would merit proceeding on a default basis.

Indeed, in our opinion in *Joseph*, we implicitly recognized the distinction between the specific type of joint violation of Rules 211.8.1 and 207.1.11—based upon the failure to file an initial answer to a grievance—discussed in the language quoted above, and other potential, independent violations of the broad directive of Rule 211.8.1(b). In the paragraph immediately following the quoted language, we considered whether the respondent's failure to provide the Board with certain requested documents prior to the hearing constituted an independent violation

of Rule 211.8.1(b) and ultimately concluded that Joseph could not be found in violation of Rule 211.8.1 on that basis given the Board's failure to dispute his claim that "he was not required to produce those documents because they were privileged." 60 V.I. at 564-65. But if, as Maynard argues, our statement that Joseph was "effectively relieved… of his obligation to file a written answer," meant that no respondent could be found in violation of Rule 211.8.1 where the Board elects to conduct a hearing, then there would have been no need for us to consider any further potential violations of the rule, and the subsequent discussion would be rendered meaningless. Thus, considering both the plain language of the rules and the operative context of the quoted language, we reject Maynard's overly broad interpretation of our statements in *Joseph*.

Accordingly, we reject Maynard's contention that any finding that he violated Rule 211.8.1 is foreclosed by our prior precedent, and, for the reasons discussed above, affirm the Board's conclusion that Maynard violated Supreme Court Rule 211.8.1(b) by failing to timely respond to ODC's lawful request for information.

B. Remaining Ethical violations

The panel concluded that Maynard violated Supreme Court Rules 211.1.1, 211.1.3, 211.1.4, 211.1.5, and 211.1.15, governing a lawyer's duty to his or her client. Sheridan testified that she was not Maynard's client. Consequently, we need only examine whether Maynard violated these rules with respect to his representation of his client, Prince. *See* MODEL R. PROF'L CONDUCT, Scope, ¶ 17 ("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."); [15]

[15] Although this Court has not expressly adopted either the statement of scope or the comments appended to the ABA Model Rules of Professional Conduct, they are nonetheless persuasive in our analysis of the Virgin Islands Rules of Professional Conduct as codified in Supreme Court Rule 211.

V.I. S. CT. R. 211.1.1 ("A lawyer shall provide competent representation to a client."); V.I. S. CT. R. 211.1.3 ("A lawyer shall act with reasonable diligence and promptness in representing a client."); V.I. S. CT. R. 211.1.4 ("A lawyer shall . . . inform the client . . . reasonably consult with the client . . . keep the client reasonably informed . . . consult with the client . . . [and] explain a matter to the extent reasonably necessary to permit the client to make informed decisions."). We address each alleged violation in turn.

1. Rule 211.1.1 Competence

"[Supreme Court Rule 211.1.1] provides that '[a] lawyer shall provide competent representation to a client,' with '[c]ompetent representation requir[ing] the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.'" *In re Taylor*, 60 V.I. 356, 373 (V.I. 2014) (citations omitted).

The panel identified numerous shortcomings in Maynard's representation. In concluding that he violated Rule 211.1.1, the panel observed that: there was no evidence that Maynard kept separate banking or escrow accounts for the Bender estate; no quarterly accounts were filed with the Superior Court on behalf of the estate; securities in the possession of Prudential Bache and the Bank of New York were never located, the contents of Bender's safety deposit box was never acquired or distributed; two savings accounts held by the Bender estate were considered abandoned property and transferred to the custody of the Office of the Lieutenant Governor; the whereabouts of a third savings account is unknown; a life insurance policy with the Veterans Administration has never been claimed; and the proceeds of another life insurance policy were never distributed to the Bender estate's beneficiaries, despite being sent to one of Maynard's associates. Maynard's only response to these findings is that his associates handled the Bender estate, and that he is not

responsible for the shortcomings of his associates because he was not aware of their conduct at a time when their conduct could have been mitigated.

A lawyer may violate his duty of competence in multiple ways. A failure to properly maintain a client's funds in an escrow account violates a lawyer's duty of competence, *Att'y Grievance Comm'n of Md. v. James*, 870 A.2d 229, 244 (Md. 2005), as does a failure to file accounts for a probated estate. *Att'y Grievance Comm'n of Md. v. Kendrick*, 943 A.2d 1173, 1179 (Md. 2008). A failure to distribute assets belonging to a client also constitutes a violation of a lawyer's duty to provide competent representation, *see, e.g.*, *In re Elgart*, 999 A.2d 853, 857 (Del. 2010) (attorney's failure to distribute insurance proceeds for approximately seven years violated the lawyer's duty to provide competent representation), as does extreme delay in administering an estate. *See, e.g., Att'y Grievance Comm'n of Md. v. Pawlak*, 969 A.2d 311, 316 (Md. 2009) (finding a violation of Model Rule 1.1 where an attorney delayed for over a decade in filing the papers necessary to administer an estate).

In this case, Maynard violated his duty of competence on each of these grounds. Maynard testified that he did not maintain a separate trust account for the Bender estate, failed to file quarterly accounts with the Superior Court on behalf of the Bender estate as required by the Virgin Islands Code, and failed to distribute the estate's assets to its beneficiaries. Moreover, the record reveals multiple lengthy delays, from 1996 to 2000, then from 2000 to 2006, and then again from 2006 until 2010, and Maynard testified that the estate still remains open. Maynard's defense that his associates handled the Bender estate is unavailing because Maynard possessed a duty to supervise those associates, and is therefore accountable for their shortcomings. *See* V.I. S. CT. R. 211.5.1. Accordingly, we agree with the panel's conclusion that clear and convincing evidence

demonstrates that Maynard violated Supreme Court Rule 211.1.1 in his handling of the Bender estate.

2. Rule 211.1.3 Diligence

Under Supreme Court Rule 211.1.3, "[a] lawyer shall act with reasonable diligence and promptness in representing a client." *In re Taylor*, 60 V.I. at 374. This requires a lawyer to "carry through to conclusion all matters undertaken for a client" unless the lawyer's services are terminated. MODEL RULES OF PROF'L CONDUCT 1.3 cmt. 4. The panel found that Maynard violated Rule 211.1.3 because the Bender matter has been pending for 27 years without being terminated, despite the fact that the Superior court entered a *sua sponte* final adjudication of the estate in 2006. Maynard argues that there is "no basis" for this conclusion because his associates worked on the file through 1996, because an associate filed an amended final adjudication with the court on January 21, 2000, and because he made diligent attempts to distribute the Bender estate's assets beginning in 2010.

Maynard's actions undermined Prince's confidence in the representation, as she testified that she "gave up" because she was "not getting anywhere" with Maynard. Even if we assume that Maynard acted diligently in all other regards, and if we find Maynard's testimony that he did not receive the final adjudication until 2010 to be credible, the Bender estate still sat unattended by Maynard or his associates for a period of four years—from 2006 to 2010. Maynard's delay in addressing the matter during this time—or even inquiring as to the status of the matter—is inexcusable. *See, e.g.*, *Att'y Grievance Comm'n of Md. v. Gray*, 72 A.3d 174, 180 (failure for four years to inform client that she was entitled to a share of proceeds of a sale violated lawyer's duty to act with diligence); *Att'y Grievance Comm'n of Md. v. Fezell*, 760 A.2d 1108, 1112 (Md. 2000)

(attorney's four-year delay in obtaining a divorce for his client violated the lawyer's duty of diligence).

But the assumption that Maynard acted with diligence in all other regards is not at all warranted. As discussed in the preceding section, the Bender matter lay dormant from 1996 to 2000, from 2000 to 2006, and then from 2006 to 2010. Maynard testified that nothing was filed with the Superior Court between 1997 to 2002, and that aside from requesting a continuance in 2002, he did not know whether anything was filed between 2002 and 2006 when the Superior Court entered its final adjudication. Moreover, Maynard testified that, as of December 2, 2014, the Bender estate was still open. Accordingly, clear and convincing evidence demonstrates that Maynard violated Rule 211.1.3 by failing to diligently probate the Bender estate.

3. Rule 211.1.4 Communication

Supreme Court Rule 211.1.4 requires that an attorney "keep the client reasonably informed about the status of the matter," and "promptly comply with reasonable requests for information" from a client. *In re Taylor*, 60 V.I. at 374. The panel concluded that Maynard's failure to advise Prince of Wells Fargo's request to speak with her personally, along with his failure to convene a teleconference to facilitate this request, supports a finding that Maynard violated Rule 211.1.4. Maynard claims that he did not violate Rule 211.1.4 because he communicated with Prince and Sheridan through his associates, and later directly once he learned about the final adjudication in 2010.

A failure to communicate with a client over a "period spanning several years" despite the client's request for information "constitutes the quintessential [Rule 211.1.4] violation." *In re Eichenauer-Schoenleben*, 59 V.I. 958, 969 (V.I. 2013); *accord In re Joseph*, 56 V.I. at 501 (finding a violation of Rule 211.1.4 where, among other things, the grievants were unable to speak with

their attorney "for several years" "despite numerous attempts" to communicate with him). Additionally, an attorney violates his duty to communicate with his client when he fails to disclose crucial information about the status of a case. *Att'y Grievance Comm'n of Md. v. Hamilton*, 118 A.3d 958, 970 (Md. 2015) (citing *Att'y Grievance Comm'n of Md. v. De La Paz*, 16 A.3d 181, 193 (Md. 2011)).

Here, Maynard testified that, despite Wells Fargo's request, he did not set up a teleconference between Prince and one of Wells Fargo's associates, or provide Wells Fargo with Prince's number so that it could contact her directly. During his testimony, Maynard was shown a series of emails from Wells Fargo requesting to speak to Prince and Sheridan. Maynard admitted that he did not provide these emails to Prince or Sheridan, or inform them of Wells Fargo's request to speak with them. Maynard defends this lack of communication only by asserting that he informed the Superior Court of the status of his efforts to liquidate the securities held by Wells Fargo, and that Prince was present at those hearings. But the lawyer's duty to communicate exists between himself and the client, and while an attorney also has a duty of candor toward the court, an attorney cannot discharge the former simply by observing the latter. *See generally* V.I. S. CT. R. 211.1.4 (requiring the lawyer to communicate with "the client"). Accordingly, we agree that Maynard failed to keep Prince reasonably informed about the status of his efforts to distribute the securities held by Wells Fargo and failed to explain his dealings with Wells Fargo to the extent reasonably necessary to permit Prince to make informed decisions with respect to the liquidation of the securities held by Wells Fargo, all in violation of Supreme Court Rule 211.1.4.

Prince's testimony also supports the conclusion that Maynard was generally less than diligent in communicating with Prince. Prince testified that no one from Maynard's office provided her with copies of documents filed with the court. Prince also testified that she was not aware of

the entry of a March 8, 1993 order entered by the Superior Court, directing the estate to submit a proposed adjudication, and that she did not receive a copy of that order. Similarly, Prince testified that she was not aware that, in 1996, the Superior Court entered an order requiring the estate to comply with a 1993 order to file a proposed adjudication or face dismissal, and that she did not receive a copy of that order. Further, Prince testified that she did not receive a copy of a January 20, 1997 order directing Maynard, yet again, to file a proposed final adjudication. Finally, Prince testified that she did not receive a copy of the final adjudication entered in 2006.

Prince's testimony also provides a basis for disregarding Maynard's self-serving assertion regarding the frequency with which Maynard communicated with her. Prince testified that Maynard would only call her back sometimes, but that, while she used to clean Maynard's office, she would occasionally speak to him about the estate. But Prince testified that Maynard did not inform her about the status of the insurance litigation at all. Specifically, she testified that she is not sure why Maynard had her sign the insurance litigation retainer, does not know if any monies were received from that litigation. Further, Prince indicated that she was not told why the values in the final account and the amended final adjudication differed, and that Maynard did not discuss the 2006 final adjudication with her.

Maynard's testimony generally contradicts Prince's assertions. Maynard testified that Prince would periodically discuss the status of the estate with him during the early years of the probate process. He testified that he informed Prince about the final adjudication once he learned of it. And he claims that he informed Prince about his efforts to liquidate some of the estate's securities, but admitted that he did not inform Prince that he was in contact with the senior counsel at Wells Fargo. With respect to the proceeds from the Hurricane Hugo litigation, Maynard testified that he verbally informed Prince that he held the proceeds from the hurricane litigation in trust for

the estate, and that he verbally informed Prince how the proceeds were distributed. Finally, Maynard testified that his office reasonably consulted with Prince, and that Prince, who performed janitorial work for Maynard, would speak with him casually about the status of the estate. He further testified that his office reasonably complied with requests for information from Prince.

Although this testimony casts doubt on the quality of Maynard's communication with Prince, Prince's testimony does not identify specific requests for information to which Maynard did not respond, or reveal that Maynard wholly failed to keep her apprised of the progress of probating the estate. And in light of Maynard's generally conflicting testimony, we cannot say that Prince's remaining testimony constitutes clear and convincing evidence that Maynard engaged in additional violations of Rule 211.1.4 beyond those specified above.

4. Rule 211.1.5(b) Fees

Under Supreme Court Rule 211.1.5(b), "[t]he scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing representation[.]" The panel concluded that Maynard violated Rule 211.1.5(b) for two reasons: because he failed to produce a retainer agreement for his probate of the Bender estate; and because the retainer agreement for handling the insurance claim for recovery of damage sustained by estate property due to Hurricane Hugo was never submitted to the probate court for approval, even though Maynard collected his one-third contingency fee for that case. Maynard claims that he did not violate Rule 211.1.5(b) because he was not paid any fees for the probate of the Estate and because he informed Prince and Sheridan "that the Court ultimately determines his fee at the conclusion of a probate matter." He further states that he provided the retainer agreement governing his representation of Sheridan in the insurance litigation, as well as in the probate case.

In reaching its conclusion, the panel misapprehends the scope of Rule 211.1.5(b). Although that rule expresses a preference that retainer agreements be in writing, no such requirement appears on the face of the rule. Consequently, Maynard's failure to produce a physical retainer agreement for his work with respect to the Bender estate—while certainly not evidence of best practices—does not violate the plain text of the rule. With respect to Maynard's work on the Bender estate, Prince testified that she never signed a written fee agreement, never agreed to an hourly rate, and never agreed how costs would be paid as they arose. However, Maynard testified that he explained to Prince at the outset of his work on the Bender matter how the case would be handled, and that the Superior Court would determine his fee upon the submission of an affidavit setting forth the number of hours worked, and at what hourly rate. Given the conflict between the testimony of Maynard and Prince, and in the absence of any documentation, we cannot say that the Board adduced clear and convincing evidence that Maynard violated Supreme Court Rule 211.1.5(b) with respect to his work on the Bender estate.

Nor can we reach such a conclusion with respect to Maynard's handling of the insurance litigation arising from damages to property owned by the Bender estate from Hurricane Hugo. During her cross examination, Prince was shown a copy of a retainer agreement outlining Maynard's responsibilities with respect to the insurance litigation. Prince testified that her signature appeared at the bottom of that document. Accordingly, the Board did not adduce clear and convincing evidence that Maynard violated Rule 211.1.5(b) with respect to his handling of the insurance litigation.

In reaching these conclusions, we are not persuaded by the Board's argument that Maynard never received approval from the probate court with respect to the insurance litigation retainer. No such requirement appears on the face of Rule 211.1.5(b). Whether Maynard failed to obtain

approval from the probate court may be relevant to whether Maynard discharged his duty under other rules—namely Rule 211.1.1, Competence—but it has no bearing on whether he explained the scope of the representation and the basis or rate of the fees and expenses for which Prince—on behalf of the Bender estate—would be responsible, before or within a reasonable time after commencing representation. Since the Board has not adduced clear and convincing evidence that Maynard failed to meet this standard, we cannot conclude that he violated Supreme Court Rule 211.1.5(b).

5. Rule 211.1.15 Safekeeping Property

Supreme Court Rule 211.1.15 obligates a lawyer to "hold property of clients or third persons . . . separate from the lawyer's own property. Funds shall be kept in a separate account ... Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five (5) years after termination of the representation." The Board concluded that Maynard violated Rule 211.1.15 because Bender's safety deposit box was never located and is presumed lost, because one of the three savings accounts is missing and the other two were never distributed to the estate's beneficiaries, because the life insurance policies were never distributed to the estate's beneficiaries, and because no records were kept with respect to disbursements of the proceeds from the Hurricane Hugo insurance litigation. Maynard claims he did not violate Rule 211.1.15 because he, "personally, has never received any assets belonging to the Estate that he did not promptly inform the probate court of or distribute to the clients." Maynard further argues that the original stock certificates used to prepare the final accounting were destroyed when the bottom floor of Maynard's office flooded.

Comment 1 to ABA Model Rule 1.15 states that "[s]ecurities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances." A lawyer's failure to distribute settlement proceeds to which a client is entitled constitutes a violation of Supreme Court Rule 211.1.15. *In re Brusch*, 49 V.I. 409, 418 (V.I. 2008). Likewise, a lawyer's failure "to maintain a distribution ledger or listing of inventory of assets" of an estate, coupled with a failure "to properly identify and safeguard the property" of that estate constitutes a violation of the lawyer's duty to safeguard client property. *In re McCann*, 894 A.2d 1087, 1102 (Del. 2005). Additionally, failure to locate estate property may also constitute a violation of a lawyer's duty to safeguard client property. *See, e.g., Att'y Grievance Comm'n of Md. v. Kendrick*, 943 A.2d 1173, 1180 (Md. 2008) (attorney's failure to locate a check belonging to the estate constituted a violation of the attorney's duty to safeguard client property).

Here, Maynard's behavior evidences repeated violations of his duty under Rule 211.1.15. Contrary to the guidelines provided by the Rules, Maynard testified that he kept original stock certificates belonging to the estate in the downstairs portion of his office, and that as a result, flooding from Hurricane Marilyn destroyed those certificates. Additionally, Maynard failed to account for, and ultimately, to distribute either the proceeds from the VA life insurance policy, or the contents of the safety deposit box. Further, Maynard testified that he incrementally distributed all of the proceeds from the Hurricane Hugo insurance litigation to Thomas Sheridan, thereby evidencing that Prince did not receive a single dollar of those settlement proceeds, despite the Superior Court's February 12, 1993 order that the precedes be distributed "to the personal representatives" of the Bender estate jointly. These shortcomings represent clear and convincing evidence that Maynard violated his duty under Supreme Court Rule 211.1.15.

C. Sanctions

Having found that Maynard violated Supreme Court Rules 211.8.1, 211.1.1, 211.1.3. 211.1.4, 211.1.15, and 211.8.1 we must now determine the appropriate sanction. The purpose of disciplinary sanctions is "to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their professional duties to clients, the public, the legal system, and the legal profession." *Brusch*, 49 V.I. at 419 (quoting ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS § III.A., Std. 1.1 (1985 as amended 1992)).[16]

We exercise independent judgment in determining the proper sanction, and in doing so, we consider four factors: (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating factors. *Id.* at 419–20 (citations and quotation marks omitted). We weigh the first three factors to determine the appropriate sanction, and then consider the presence of aggravating or mitigating factors to determine whether to depart from our initial determination. *Id.* (citation omitted).

1. The duty violated

"The most important ethical duties are those which a lawyer owes to clients." *In re Brusch*, 49 V.I. at 420 (citation omitted). "[T]he duties set forth in [Supreme Court Rules 211.1.1, 211.1.3, and 211.1.4] are among the most important ethical duties owed by a lawyer." *In re Joseph*, 56 V.I. at 505. Here, all of the duties violated by Maynard, with the exception of his duties under Rule 211.8.1, were duties owed to his client, Prince.

2. The lawyer's mental state

> In violating a duty, a lawyer may act intentionally, knowingly, or negligently. . . . Conduct is intentional when the lawyer acts with the conscious objective or purpose

[16] Although we have not formally adopted the ABA Standards for Imposing Lawyer Sanctions, we consider them as persuasive authority, providing a clear set of guidelines in our determination of the appropriate sanctions.

> to accomplish a particular result. . . . When the lawyer acts with conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result, the conduct is done knowingly. The least culpable mental state is negligence. A lawyer acts negligently when the lawyer fails to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

In re Brusch, 49 V.I. at 421 (citations and internal quotation marks omitted). Here, the panel found that Maynard was negligent in the handling of the Bender estate. We agree. In this case, Maynard's attribution of the significant delays that plagued the probate of the Bender estate to the work of his associates illustrates that he was negligent, as his failure to supervise his associates, and his resulting failure to keep himself apprised of the status of the Bender estate, represents a deviation from the standard of care that a reasonable lawyer is expected to exercise. *See* V.I. S. CT. R. 211.5.1. Maynard's failure to take action in this matter for years at a time evidences a disregard for the substantial risk that estate property would be lost or otherwise placed beyond the beneficiaries' reach. Indeed, the contents of the safety deposit box belonging to the estate has been deemed lost. Further, Maynard's inaction also evidences a disregard for the risk that the Superior Court would take action that might adversely impact his client's interests. Maynard's failure to keep himself informed of the status of the Bender probate matter resulted in a delay of approximately four years between the entry of the Superior Court's final adjudication and the distribution of the remaining assets to the beneficiaries.

But the fact that Maynard took action to secure what funds he could from Wells Fargo and the Office of the Lieutenant Governor illustrates neither an awareness of, nor desire to bring about the diminution of estate property that ultimately befell certain assets of the estate. So, while we conclude that Maynard's actions were negligent, we cannot conclude that they were either knowing or intentional.

3. Injury

As a result of Maynard's violation of Supreme Court Rules 211.1.1, 211.1.3. 211.1.4, and 211.1.15, Prince suffered actual injury due to the loss of estate property. The Board presented an itemized list of damages allegedly suffered as a result of Maynard's conduct, which included the following:

1. Loss of the safety deposit box and its contents valued in the initial inventory at $5,000.00.
2. Loss of one savings account, the value of which was last reported at $19,000.00
3. The loss of the Veterans Life Insurance policy valued at $10,000.00
4. The loss of the Lafayette Insurance policy proceeds in the sum of $3,601.85
5. The necessity to retain outside counsel to sell the real estate asset of the Estate and to pay that attorney a fee of $8,500.00
6. The loss of securities described as 5 Corp. Income Trust, managed by the Bank of New York, with an initial value for inventory purposes of $2,168.00
7. The one third contingent legal fee paid by [Maynard] to himself from the proceeds recovered from [the Hurricane Hugo insurance litigation proceeds] without Court approval.

The record only substantiates some of these findings, however. It is clear that items 1, 3, 4,[17] 5, and 6 listed above are accurate. But documents submitted by Maynard illustrate that all three of the savings accounts were recovered from the Office of the Lieutenant Governor ("OLG") on or about January 12, 2011,[18] and Maynard's entitlement to his 1/3 contingent fee for the work performed in connection with the Hurricane Hugo insurance litigation matter has never been disputed by his clients. Based on the record, Maynard's violation of the Rules of Professional

[17] The record reveals that the proceeds from the Lafayette insurance policy were distributed to Maynard's office, but the record contains no evidence that those funds were ever distributed to the estate's beneficiaries.

[18] According to documents from the OLG's office, account 77332448 was recovered from the OLG on 1/12/11, with a balance of 32,651.76, which was up from the $20,028.65 balance listed in the final adjudication, which was up from the $19,700.48 balance listed in the final account; account 77402071 was recovered from the OLG on 1/12/11, with balance of 8,480.20, which was down from the balance of 25,299.01 as listed in the final adjudication, which was up from the $24,884.49 balance listed in the final account; and account 7733421 was recovered from the OLG on 1/12/11, with balance of $2,016.88 down from $9,597.10 as listed in the final adjudication, which was down from the balance of $16,596.61 as listed in the final account.

Responsibility has deprived his clients of $20,769.85, and caused his clients to expend an additional $8,500.00, for a total of $29,269.85 in damages.

4. The appropriate sanction

The panel recommends that Maynard be suspended from the practice of law for twenty-four months—applying a baseline sanction of twelve months suspension with a twelve-month upward adjustment in light of aggravating factors—and that he be ordered to pay restitution to Prince and Sheridan in the amount of $41,844.50. Maynard contends that suspension is inappropriate here because the estate remains open and Maynard has not been discharged from serving as counsel for the estate. Maynard contends restitution is inappropriate because our case law purportedly holds that restitution is only permissible when an attorney has actually taken money from a client, "such as the attorney's compensation for the matter in which the ethical breach occurred." Once again, Maynard construes language excerpted from our previous cases far too broadly,[19] and we are not persuaded by his objections.

Considering the important nature of the duties violated, Maynard's clear negligence in discharging those duties, and the substantial financial injuries suffered by the beneficiaries as a result of those violations, we agree with the Board that suspension represents the appropriate sanction in this case, rather than reprimand as Maynard contends. However, in light of our existing precedent, we conclude that suspension for a period of six, as opposed to twelve months is the appropriate baseline sanction. The Board compared this case to our previous decisions in *In re*

[19] In support of his argument, Maynard cites *Taylor*, for the proposition that "restitution is limited solely to monies that the attorney has actually taken from the client." 60 V.I. at 371. However, in *Taylor* we made this statement in the context of noting that the Board erred in ordering the respondent to "file a Motion to Reopen the divorce case so that the deed could be issued," and "take immediate steps to remedy the deed issue within ten days," as a form of restitution. *Id.* Nothing in *Taylor* suggests, as Maynard appears to argue, that restitution must be limited to cash monies physically taken from a client, and cannot include monies wrongfully withheld from clients, or the value of property lost or destroyed as a direct result of the respondent's negligence.

Parsons, 58 V.I. 208 (2013) (imposing twelve-month suspension where client did not receive $2,500 settlement proceeds) and *In re McLaughlin*, 60 V.I. 228 (2013) (imposing twelve-month suspension for failure to return unearned $3,000 retainer). But, in both of those cases we applied a baseline sanction of six-months suspension, even though the respondent was found to have committed knowing and intentional, rather than negligent, violations of the Rules of Professional Responsibility. Indeed, "when considering similar circumstances—an intentional violation of an important duty resulting in an actual or potential injury to a client—this Court has repeatedly identified a six-month suspension from the practice of law as the appropriate baseline sanction." *McLaughlin*, 60 V.I. at 239 (citing *Welcome*, 58 V.I. at 611–13 (collecting cases)).

The ABA Standards for Imposing Lawyer Sanctions generally counsel that reprimand, rather than suspension is the appropriate sanction when a lawyer negligently, as opposed to knowingly or intentionally, violates the rules. However, where the lawyer is found to have violated the rules based not upon a single, discrete negligent act or omission, but rather upon a "pattern of neglect caus[ing] injury or potential injury to a client, "suspension is generally appropriate."[20] Thus, because the record demonstrates that Maynard engaged in pattern of negligent conduct over the course of many years and because the resulting economic injury suffered by the beneficiaries in this case is more substantial than the injuries suffered by the clients in either *Parson* or *McLaughlin*, we do not hesitate to conclude that suspension, rather than reprimand, is appropriate. However, because the Standards for Imposing Lawyer Sanctions generally reserve suspension for knowing or intentional, rather than negligent conduct, and because our previous cases counsel that suspension for a period of six months constitutes the appropriate baseline sanction even in cases

[20] *See* STD'S FOR IMPOSING LAWYER SANCTIONS § III.B., Std. 4.42(b)

concerning knowing and intentional violations of the rules, we conclude that suspension for a period of six months represents the appropriate baseline sanction in this matter.

And, we must now also consider whether aggravating or mitigating factors justify a departure from this initial determination. *In re Brusch*, 49 V.I. at 419. "An aggravating circumstance is one that may justify a more severe sanction, while a mitigating circumstance is one that may justify a more lenient sanction." *Id.* at 422. The Board identified the following aggravating factors: (1) Maynard expressed no remorse for the egregious delay attendant to his handling of the Bender estate, and instead attempted to shift the blame on to various associates who worked alongside him at various times;[21] (2) Maynard has not offered to make restitution to Prince—or to Thomas Sheridan, for that matter—for the $3,601.85 payment made by the Lafayette Life Insurance Company which was sent to his law office, but never distributed to the estate's beneficiaries;[22] (3) Maynard committed multiple violations of the Rules of Professional Conduct;[23] (4) Maynard intentionally failed to comply with the requests of disciplinary counsel to provide a written response to the grievance and to explain where the assets of the Bender estate were located; and (5) Maynard's client was vulnerable inasmuch as she was neither sophisticated nor knowledgeable in the law, working as a janitor in Maynard's office and relying "totally on the respondent to handle all aspects of the [e]state proceeding and [placing] her trust and confidence in him to do so to the point of signing any document which he presented to her for execution."[24] With respect to mitigating factors, the Board found that: 1) Maynard had substantial experience in the practice of law, having been admitted to practice law in the Virgin Islands for more than forty

[21] *See* STD'S FOR IMPOSING LAWYER SANCTIONS § III.B., Std. 9.22(g).
[22] *See* STD'S FOR IMPOSING LAWYER SANCTIONS § III.B., Std. 9.22(j).
[23] *See* STD'S FOR IMPOSING LAWYER SANCTIONS § III.B., Std. 9.22(d).
[24] *See* STD'S FOR IMPOSING LAWYER SANCTIONS § III.B., Std. 9.22(h).

years; and 2) Maynard has been "a person of good character and reputation, having served the community on various public service committees."[25] On balance, the Board determined that the aggravating factors outweighed the mitigating factors present in this case and concluded that a twelve-month upward adjustment in the period of suspension was appropriate.

We agree that the record in this case supports the Board's findings with respect to each of the five aggravating factor's identified above. However, because the record also demonstrates that Maynard was continuously and repeatedly negligent in his handling of the probate matter over the course of many years we further identify Maynard's pattern of misconduct as an aggravating factor.[26] Additionally, although the Board mistakenly identified Maynard's substantial experience in the practice of law as a mitigating factor, such experience is properly considered an aggravating, rather than a mitigating, factor. *See* STD'S FOR IMPOSING LAWYER SANCTIONS § III.B., Std. 9.22(i). Lastly, given our conclusion that Maynard negligently, rather than knowingly or intentionally, violated the relevant rules, we further find Maynard's absence of dishonest or selfish motive to be mitigating factor in this case.[27]

On balance, we agree with the Board's determination that the numerous aggravating factors presented in this case significantly outweigh the mitigating influence of Maynard's good character and reputation in the community and the absence of a dishonest or selfish motive. Nonetheless, considering the totality of the circumstances, we find that, even in the presence of the two additional aggravating factors not identified by the Board, a twelve-month upward adjustment in the period of suspension is appropriate in this case. Thus, considering the factors outlined in

[25] *See* STD'S FOR IMPOSING LAWYER SANCTIONS § III.B., Std. 9.22(d).
[26] *See* STD'S FOR IMPOSING LAWYER SANCTIONS § III.B., Std. 9.32(g).
[27] *See* STD'S FOR IMPOSING LAWYER SANCTIONS § III.B., Std. 9.32(b).

Brusch, we conclude that Maynard should be suspended from the practice of law for a total period of eighteen months. Indeed, this case presents a picture of a highly experienced, reputable attorney who nevertheless engaged in a pattern of egregious neglect that ultimately resulted in losses to his client—not just of cash, but of personal property that should have passed from Bender to the beneficiaries of her estate.

We note that Maynard's egregious violation of Supreme Court Rule 211.1.1 alone is sufficient to merit his suspension from the practice of law for the eighteen-month period. *See Ky. Bar Ass'n v. Hatcher*, 965 S.W.2d 166, 166–67 (Ky. 1998) (suspending an attorney from the practice of law for two years due to "aggravated neglect" of an estate for over four years); *In re Caliendo*, 290 N.Y.S.2d 952, 953 (N.Y. App. Div. 1968) (suspending an attorney from the practice of law for two years where the attorney failed to obtain letters testamentary for almost seven years after being retained, and where the attorney failed to distribute $1,400 worth of bonds held in a safety deposit box); *cf. In re Brault*, 471 N.E.2d 1124, 1125 (Ind. 1984) (attorney's failure to close an estate for more than five years after a distribution of assets had been ordered was one factor that justified disbarring the attorney). Put simply, no excuse can justify allowing a probate matter to languish for over a decade without resolving it.[28] And since Maynard's failure to distribute the estate's assets resulted in direct injury to the beneficiaries of the estate, restitution to the beneficiaries in the amount of $29,269.85, representing the total amount of losses sustained by the

[28] The probate matter in question was pending for over 27 years. At least eleven years of the delay in the resolution of the matter are directly attributable to Maynard's neglect: first, the six and one-half years between the entry of the Superior Court's July 7, 1993 order directing Maynard to correct deficiencies in a draft final adjudication of the estate and Maynard's January 21, 2000 filing of an amended final adjudication; and second, the four and one-half years between the entry of the final adjudication of the estate on January 27, 2006 and Maynard's appearance at the August 31, 2010 show cause hearing. *See supra*, Section I. Factual and Procedural Background, pp. 4-5.

estate due to Maynard's violation of the Rules of Professional Conduct, constitutes adequate restitution.

IV. CONCLUSION

Maynard violated his duties under Supreme Court Rules 211.1.1, 211.1.3, 211.1.4, 211.1.15, and 211.8.1 by, among other things, permitting the probate of an estate to languish for over a decade, failing to communicate with Prince with respect to the liquidation of certain securities, and by failing to keep safe certain property of that estate. Maynard's lethargic attitude toward the administration of the Bender estate not only significantly delayed the beneficiaries' receipt of certain assets, it wholly precluded them from receiving other assets, which were lost due to the passage of time and Maynard's generally negligent handling of the Bender estate. Accordingly, we order Maynard to pay restitution to the beneficiaries of the Bender estate in the amount of $29,269.85, representing the value of the assets lost due to his negligence, and we suspend Maynard from the practice of law in this jurisdiction for a period of eighteen months.

Dated this 8th day of June, 2018.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court