

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*



**Issued
March 24, 2023**

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of: :
: :
CHRISTOPHER D. LIBERTELLI :
: :
Respondent. : Board Docket No. 20-BD-050
: Disc. Docket No. 2019-D072
A Member of the Bar of the :
District of Columbia Court of Appeals :
(Bar Registration No. 451341) :

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

This matter arises from Respondent’s conduct in divorce and custody proceedings in Maryland, both as a party and *pro se* litigant, between December 2015 and March 2019. Hearing Committee Number Twelve found that Respondent made false statements and altered drug test results and other documents throughout those proceedings to conceal his ongoing abuse of prescription drugs and use of cocaine and marijuana, in violation of Maryland Rules 19-303.3(a)(1) (knowingly making false statement to tribunal), 19-303.3(a)(4) (knowingly offering false evidence), 19-303.4(a) (unlawfully altering evidence), 19-303.4(b) (falsifying evidence), 19-308.4(b) (perjury), 19-308.4(c) (dishonesty), and 19-308.4(d) (conduct prejudicial to the administration of justice), and recommended his disbarment for flagrant dishonesty.

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

Respondent filed an exception to the Hearing Committee Report, conceding the Hearing Committee's findings of fact and conclusions of law, but arguing that, pursuant to *In re Kersey*, 520 A.2d 321 (D.C. 1987), he should not be disbarred because the misconduct was substantially caused by his addiction to opioids (Opioid Use Disorder), from which he is substantially rehabilitated. Disciplinary Counsel did not file an exception to the Report and supports its recommendation of disbarment but disagrees with the Hearing Committee's conclusion that Respondent's Opioid Use Disorder qualified as a disability under *Kersey*.

The Board concludes that the Hearing Committee's findings of fact are supported by substantial evidence in the record and that there is clear and convincing evidence that Respondent's conduct violated Maryland Rules 19-303.3(a)(1), 19-303.3(a)(4), 19-303.4(a), 19-303.4(b), 19-308.4(b), 19-308.4(c), and 19-308.4(d). We therefore adopt and incorporate Sections III and IV of the Hearing Committee Report, which is appended hereto. We also agree with the Hearing Committee's conclusion that Respondent failed to meet his burden for mitigation of sanction under *Kersey* and therefore recommend that he be disbarred. *See* Parts III & IV, *infra*.

II. FINDINGS OF FACT

We agree with the Hearing Committee's findings of fact and briefly restate pertinent points here with citations to the Hearing Committee's report.

In October 2014, Respondent's then-wife, referenced herein by her initials, Y.N., filed for divorce in the Circuit Court for Montgomery County, Maryland.

FF 8. The couple had married six years earlier and had two children together. FF 3. Prior to the divorce complaint, in April 2014, the parties entered into an interim agreement providing that Y.N. would retain custody of both children, while Respondent would be entitled to visitation. FF 6.

One of the key issues in the divorce and custody proceedings was Respondent's ongoing drug use, which included illegally purchased opioids, cocaine, and marijuana. FF 5, 9. As a result, the interim agreement provided that Respondent's visitation would be supervised and he would submit to drug tests twice per week. FF 6. Respondent tested positive for drugs more than 20 times between April and November 2014. FF 7.

At a December 2015 hearing on Respondent's request for more visitation, Respondent:

- Failed to correct his counsel's false statement that Respondent had not taken opioids since April 2015 (FF 11);
- Gave false testimony to minimize the extent of his drug use (FF 14);
and
- Falsely denied knowing that a phone number he had called and texted thousands of times was that of his primary drug dealer (FF 15).

Before the visitation hearing concluded, the parties reached a consent agreement that loosened the supervised visitation requirements, increased the frequency of visitation, and decreased the frequency of drug tests. FF 17. Furthermore, the agreement provided that the drug testing results would first be sent

to Respondent, who would send them to Y.N.'s counsel. *Id.* That arrangement enabled Respondent to falsify the drug test results, as discussed below. *See* FF 34.

At a custody hearing in July 2016, Respondent admitted that he had relapsed and taken opioids illegally, but that his recovery was ongoing. FF 19-20. Also at that hearing, Respondent:

- Intentionally misrepresented his level of opioid consumption (FF 21);
- Falsely denied recent marijuana and cocaine use (FF 22);
- Falsely denied diluting his urine before drug tests (FF 23);
- Falsely denied knowing drug dealers' names and again denied recognizing his primary drug dealer's phone number (FF 24); and
- Falsely claimed to have resumed taking Suboxone, a medication to treat opioid addiction¹, after having had difficulty obtaining it (FF 25-27).²

In November 2016, despite finding that Respondent's statements at the prior hearings were false, the judge granted Respondent joint legal custody of his children based on his ability to participate in decisions regarding their well-being. FF 29-32. Y.N. retained primary physical custody of the children, and Respondent was required to produce four consecutive months of clean urine tests before being able to have unmonitored access to them. FF 32-33.

¹ Suboxone is itself technically classified as an opioid. FF 25.

² In November 2018, Respondent testified that it was always difficult to obtain Suboxone and that he had lied to the judge when he testified otherwise. FF 155. Disciplinary Counsel introduced evidence suggesting that Respondent never had difficulty obtaining Suboxone but did not establish that fact by clear and convincing evidence. FF 157-158, 162.

Between August 2016 and November 2017, Respondent falsified at least 62 drug test results and fabricated five results for tests he did not take. FF 35-36. For approximately two months thereafter, he did not undergo any testing but submitted previous results with altered dates. FF 40. He thus concealed his positive tests for various opioids, cocaine, marijuana, and methamphetamine. FF 36-37. Respondent knew at the time that it was wrong and dishonest to submit false test results, but he believed that his deception was justified in order to preserve access to his children despite his drug problem. FF 38.

During a March 2017 merits trial in the divorce case, Respondent falsely claimed to be in recovery, introduced false evidence of clean drug test results, and argued that he was entitled to unsupervised access to his children. FF 41-43. To conceal the amount of money he spent on drug purchases, Respondent altered financial records before turning them over to Y.N. FF 48-51. To conceal his dissipation of assets—another key issue at trial—Respondent gave conflicting testimony about significant payments he had made to his then-girlfriend that were unrelated to his drug use. FF 45-46, 58. He also altered an investment account statement to hide two withdrawals he made in violation of a court order, for which he was later found in contempt. FF 52-55.

In early January 2018, Y.N.'s attorneys uncovered evidence that Respondent had been altering his drug test results. FF 56. They then filed an emergency motion to modify access to the children and to modify the drug testing regimen. FF 57. The emergency motion was taken up at a January 2018 hearing, at which the judge

revoked all visitation rights pending a hearing two weeks later. FF 61. Respondent still failed to turn over the unaltered drug test results and financial records, forcing opposing counsel to subpoena the testing company and financial institutions. FF 63-66. At the same hearing, the judge also found that Respondent had dissipated nearly \$320,000 from the marital estate and ordered him to pay \$100,000 in legal fees to Y.N. FF 58-59.

At a February 2018 hearing, Y.N.'s counsel confronted Respondent with evidence that the drug test results had been fabricated. FF 67-68. Respondent apologized and asked for another opportunity to gain the judge's trust but failed to disclose that he had also altered financial records.³ FF 68-69. Respondent agreed to continue his recovery program and provide for Y.N.'s counsel to receive every drug test result directly from the testing company, at which point the judge permitted him to resume supervised visitation. FF 70-73. Following the February 2018 hearing, Respondent did not take opioids illegally or alter evidence, but continued to use cocaine and marijuana and missed several drug tests. FF 76-77. Respondent later provided false excuses for those missed tests, FF 90, and falsely testified during a deposition that his last positive drug tests were from May or June 2018, when he had in fact tested positive for cocaine in July and August. FF 84-85.

At a November 2018 hearing, Respondent admitted to his drug use in August, but falsely denied more recent drug use, when in fact he had received a positive result

³ Eight months later, he again failed to disclose that he altered those records in a sworn response to an interrogatory asking him to identify "all documents that [he] altered." FF 78-83.

on the morning of the last day of the hearing.⁴ FF 89, 94. He also admitted to altering financial records, but only after it had been uncovered by Y.N.'s counsel. FF 89, 92.

In February 2019, the judge found that Respondent had been dishonest with him, Y.N., and her counsel; further restricted Respondent's access to his children; and referred his conduct to Disciplinary Counsel. FF 99-100. As of the time of the hearing, Respondent had had two or three supervised visits with his children since October 2019. FF 259. The individual who had been hired to supervise his visits quit in December 2020 after Respondent reported her to the FBI based on his belief that she was conspiring with W.N. and his ex-girlfriend to cancel his visitation rights. FF 261-264.

III. *KERSEY* MITIGATION

To prove he is entitled to *Kersey* mitigation, Respondent must “demonstrate ‘(1) by clear and convincing evidence that he had a disability [or addiction]; (2) by a preponderance of the evidence that the disability substantially affected his misconduct; and (3) by clear and convincing evidence that he has been substantially rehabilitated.’” *In re Schuman*, 251 A.3d 1044, 1055 (D.C. 2021) (quoting *In re Lopes*, 770 A.2d 561, 567 (D.C. 2001)); *see also* Board Rule 11.13.

The Hearing Committee found that Respondent carried his burden of proof on the first factor alone, by establishing that he suffered from a disability (Opioid Use

⁴ Respondent subsequently missed two drug tests and tested positive for cocaine in December 2018. FF 98.

Disorder) at the time of the misconduct. Respondent argues that he met his burden on all three factors, whereas Disciplinary Counsel argues that Respondent also failed to prove that he was suffering from a disability.

A. Standard of Review

The Board may make its own findings of fact, but it “must accept the Hearing Committee’s evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record.” *See In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam) (quoting *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam)); *see also In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (defining “substantial evidence” as “enough evidence for a reasonable mind to find sufficient to support the conclusion reached”). We review *de novo* the Hearing Committee’s legal conclusions and its determinations of ultimate fact. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194 (Board owes “no deference to the Hearing Committee’s determination of ‘ultimate facts,’ which are really conclusions of law and thus are reviewed *de novo*”).

B. First Factor: Existence of a Disability or Addiction

The Hearing Committee found that Respondent proved by clear and convincing evidence that he was suffering from both Opioid Use Disorder and Cocaine Use Disorder at the time of the misconduct. Whereas addiction to lawfully prescribed drugs qualifies as a disability under *Kersey*, *In re Temple*, 596 A.2d 585, 586 (D.C. 1991), addiction to illegal drugs does not. *See In re Marshall*, 762 A.2d 530, 538 (D.C. 2000) (“We agree with [Disciplinary] Counsel that ‘[t]o permit

mitigation on grounds of illegal drug use effectively would reward the attorney for illegal conduct occurring after he assumes his professional responsibilities.” (second alteration in original) (citation omitted)).

The Hearing Committee rejected Disciplinary Counsel’s argument that *Marshall* prohibits Respondent from relying on any non-prescribed opioid or cocaine use in his *Kersey* argument. Rather, the Hearing Committee found that Respondent’s Opioid Use Disorder qualified as a disability under *Kersey* because it arose from a *legal* prescription, thus distinguishing it from the cocaine addiction in *Marshall*, which resulted from the voluntary decision to commit a crime *See* HC Rpt. at 141 (citing *Marshall*, 762 A.2d at 537). In addition, to the extent that his conduct was caused by any illegal drug use such as cocaine or non-prescribed opioids, *Kersey* mitigation would be possible only if Respondent could prove that the illegal drug use resulted from his Opioid Use Disorder. *See* HC Rpt. at 139-145. As noted above, the Committee found that Respondent failed to make that showing with respect to his cocaine use.

The Hearing Committee also rejected Disciplinary Counsel’s related argument that Respondent’s ability to function well in his professional life shows that he was not suffering from the ill effects of a disability at the time of the misconduct. *See* HC Rpt. at 132-33; *see also* FF 174-180 (discussing how Respondent’s substance abuse affected his work but did not prevent him from performing it successfully).

Based on the evidence in the record before the Hearing Committee, we agree there is support for its determination that Respondent proved by clear and convincing evidence that he was suffering from a disability at the time of the misconduct. The parties do not dispute that Respondent was addicted to opioids during the time of the misconduct, but Disciplinary Counsel contends that Respondent must also show that he was actually impaired – *i.e.*, disabled by his addiction. We agree with the Hearing Committee that the first factor of the *Kersey* analysis only requires Respondent to show that he suffered from an addiction, subject to the limitations set by *Marshall*, and that the degree to which Respondent was impaired by his addiction is relevant to the issue of causation.

There is also substantial support in the record that Respondent’s addiction to opioids began after he was legally prescribed the medication for health conditions suffered as an adolescent and then again as an adult. *See* FF 102-127. Thus, his obtaining of opioids by illegal methods grew out of the early addiction to legally prescribed opioid medication. *See* HC Rpt. at 139-144. That scenario presents the question, for the first time, of whether a respondent could be eligible for *Kersey* mitigation where misconduct is substantially caused by illegal drug use that was itself caused by otherwise qualifying addiction. We conclude that permitting *Kersey* mitigation here would not condone illegal opioid use, nor would it “reward the attorney for illegal conduct” in such a way that “would adversely affect the perception of the Bar.” *See Marshall*, 762 A.2d at 538 (quoting brief of Bar Counsel). Rather, as the Hearing Committee explained:

It . . . does not serve the goals of *Marshall* to treat people who come to be addicted to opioids after receiving prescriptions as if they voluntarily decided to take cocaine and became addicted. It is very difficult to think that an “informed public” would consider it to be “special grace,” 762 A.2d at 538, to consider the circumstances of a lawyer who became addicted after being prescribed opioids for severe back pain and ended up buying from dealers on the street.

HC Rpt. at 142.

We further agree with the Hearing Committee that Respondent cannot rely on cocaine use or Cocaine Use Disorder to satisfy the first prong of the *Kersey* mitigation standards. There appears to be little coherently presented support in the record for a determination that Respondent’s Cocaine Use Disorder grew out of legal use of the drug. Indeed, the Hearing Committee found that a causal connection between the Opioid Use Disorder and the Cocaine Use Disorder had not been proven. *See* HC Rpt. at 144-45. In addition, there appears to be no record evidence that Respondent ever obtained or used cocaine or any other type of stimulant in other than an illegal way. Respondent cannot rely on illegal drug use in support of *Kersey* mitigation. *Marshall*, 762 A.2d at 538.

C. Second Factor: Substantial Causation

The Hearing Committee found that Respondent failed to prove by a preponderance of the evidence that his Opioid Use Disorder was a substantial cause of the misconduct. The Hearing Committee found that both of Respondent’s substance abuse disorders appear to have affected his thought process and judgment to some extent, such as his decision to persist in dishonesty while knowing he would almost certainly be caught. FF 208-212, 220-221; *see* HC Rpt. at 147. It also noted

the absence of evidence that Respondent engaged in such behavior prior to developing his opioid addiction. *See* HC Rpt. at 148.

Nevertheless, the Hearing Committee stressed that much of Respondent's dishonest conduct was "calculated" and "meticulous" and was not caused by instances of drug intoxication, but careful planning over long periods of time. FF 266(f); *see* HC Rpt. at 149. Furthermore, Respondent admitted that he knew that what he was doing was wrong. FF 204-205, 266(f); *see* HC Rpt. at 146. The Hearing Committee also found that it was impossible, based on the record, to determine the extent to which Respondent's impairment was due to his consumption of opioids, cocaine, other stimulants, or some combination thereof. FF 266(d); *see* HC Rpt. at 150. The record also did not establish whether Respondent's substance abuse caused any particular instance of dishonesty, especially given that some of them were designed to hide his dissipation of marital assets, rather than his drug use. FF 266(e); *see* HC Rpt. at 147. Finally, the Hearing Committee found it was especially significant that Respondent continued to lie after he stopped taking opioids in January 2018. FF 205, 266(g); *see* HC Rpt. at 150-51.

We agree with the Hearing Committee's findings as applied to Opioid Use Disorder. For the reasons detailed above in Section B, Cocaine Use Disorder cannot under the facts in the matter support a request for *Kersey* mitigation.

D. Third Factor: Substantial Rehabilitation

The Hearing Committee found that Respondent failed to prove that he has been substantially rehabilitated. While Respondent has refrained from opioid use

since January 2018 and continues to undergo counseling, he has continued to use cocaine through at least September 2020. *See* HC Rpt. at 152, 155. He schedules his own drug tests—a system he described as prone to manipulation by addicts. *See* HC Rpt. at 155; FF 34. Even one year after Respondent stopped taking opioids, the judge in the divorce case found that Respondent still could not be trusted to make sound decisions on behalf of his children, and that the risk he posed could not be managed through conditions that previously proved ineffective. *See* HC Rpt. at 153-54. Respondent's own therapist expressed concern that Respondent lacked a formal sponsor and was not working with an addiction specialist. FF 254-56; *see* HC Rpt. at 153. Furthermore, the Respondents' doctors and therapists testified that Respondent has not been forthcoming about his drug use and misconduct. *See* HC Rpt. at 155-56. And Respondent's request that the Hearing Committee craft conditions that would help him maintain his sobriety was seen as a tacit admission that he has not been substantially rehabilitated. *See id.* at 163.

The Hearing Committee also found that Respondent gave conflicting and unsupported testimony regarding his addiction, his motives, and his perception of events. *See id.* at 155. He had no explanation for why he stopped seeing his children for a period of 18 months, having previously engaged in egregious dishonesty to maintain his access to them. *See id.* at 156-57. And he had a tendency to blame others, including the judge, his then-girlfriend, and his attorneys, whom he accused of, *inter alia*, recommending methods of evading drug tests. *See id.* at 157-161. Upon reading his psychotherapist's report, which would be offered as an exhibit by

Disciplinary Counsel, he emailed the psychotherapist, saying that such “pathologizing exhibits,” rather than his own misconduct, would “end [his] law career.” FF 203; *see* HC Rpt. at 160. And he has continued to accuse the judge in the divorce case of being biased against him, even though the judge treated him with “superhuman patience,” sympathized with his struggle with addiction, and consistently found ways to maintain Respondent’s access to his children. *See* HC Rpt. at 161-62.

We agree with the Hearing Committee’s finding that Respondent has not been substantially rehabilitated from Opioid Use Disorder.

IV. SANCTION

The sanction imposed in an attorney disciplinary matter must protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g., In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). “In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney.” *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam). The sanction must not “foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted.” D.C. Bar R. XI, § 9(h)(1); *see, e.g., Hutchinson*, 534 A.2d at 923-24; *Martin*, 67 A.3d at 1053; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

The Hearing Committee found that Respondent engaged in flagrant dishonesty, which the Court has defined as ““reflect[ing] a continuing and pervasive indifference to the obligations of honesty in the judicial system.”” *In re Pennington*, 921 A.2d 135, 141 (D.C. 2007) (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)); *see* HC Rpt. at 163-69. Flagrant dishonesty includes dishonesty that is “aggravated and prolonged.” *See In re Omwenga*, 49 A.3d 1235, 1238 (D.C. 2012) (per curiam) (citation omitted); *see also, e.g., In re O’Neill*, 276 A.3d 492, 503 (D.C. 2022) (finding flagrant dishonesty based on the respondent’s “pattern of telling a falsehood, admitting that it was not true, and then telling another falsehood”); *In re Howes*, 39 A.3d 1, 16-18 (D.C. 2012) (finding flagrant dishonesty based on the respondent’s long course of dishonest conduct including false certifications, deliberate withholding of exculpatory evidence, and false and misleading statements).

We agree with the Hearing Committee’s findings.

The appropriate sanction for Respondent’s flagrant dishonesty is disbarment, *In re Cleaver-Bascombe*, 986 A.2d 1191 (D.C. 2010) (per curiam); *In re Pelkey*, 962 A.2d 268, 281 (D.C. 2008), and Respondent’s counsel conceded at oral argument that disbarment would be the appropriate sanction absent *Kersey* mitigation.

V. CONCLUSION

For the reasons discussed above, we find that Respondent violated Maryland Rules 19-303.3(a)(1), 19-303.3(a)(4), 19-303.4(a), 19-303.4(b), 19-308.4(b), 19-308.4(c), and 19-308.4(d) and recommend that he be disbarred. We further

recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: *Bernadette C. Sargeant*
Bernadette C. Sargeant

All members of the Board concur in this Report and Recommendation except Ms. Blumenthal and Mr. Gilbertsen, who did not participate.