DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER THREE

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| In the Matter of: | : | |
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| WAYNE R. ROHDE, | : | D.C. App. No. 05-BG-1141 |
| | : | Board Docket No. D347-05 |
| Respondent. | : | Bar Docket No. 2005-D347 |
| | : | |
| A Member of the Bar of the | : | |
| District of Columbia Court of Appeals | : | |
| (Bar Registration No. 421213) | : | |

REPORT AND RECOMMENDATION
OF HEARING COMMITTEE NUMBER THREE

## I. INTRODUCTION

This matter is before the Hearing Committee on a referral from the Board on Professional Responsibility (the "Board") to determine whether Respondent's conviction of felony hit and run, in violation of Code of Virginia § 46.2-894 (2005), involves moral turpitude on the facts within the meaning of D.C. Code § 11-2503(a) (2001), and to determine the appropriate discipline for Respondent's conviction of a "serious crime" within the meaning of D.C. Bar R. XI, § 10(b). In addition, Bar Counsel filed a Petition Instituting Formal Disciplinary Proceedings and a Specification of Charges alleging a violation of Rule 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness) with respect to the conviction.

Respondent's conviction stemmed from a collision between his car and the car of Elvira Banks, which occurred after Respondent had been drinking heavily. Respondent asserts that he has no memory of the collision, as he was suffering an alcoholic blackout at the time. As a result of his conviction, Respondent was sentenced to a suspended period of incarceration of two years,

and placed on supervised probation for two years. Since the time of his conviction, Respondent has ceased drinking and actively pursued his rehabilitation.

As set forth below, the Hearing Committee finds that Bar Counsel failed to establish that Respondent committed a crime of moral turpitude within the meaning of D.C. Code § 11-2503(a). The Hearing Committee finds that Bar Counsel has established that Respondent violated Rule 8.4(b), and that Respondent was convicted of a "serious crime," within the meaning of D.C. Bar R. XI, § 10(b). After considering Respondent's assertion of disability mitigation pursuant to *In re Kersey*, 520 A.2d 321 (D.C. 1987), the Hearing Committee recommends that Respondent be suspended for two years, with a fitness requirement, with such suspension stayed pursuant to *Kersey*, and that Respondent be placed on probation with conditions for a period of three years.

## II. PROCEDURAL HISTORY

By letter dated October 18, 2005, Respondent, though counsel, notified the Clerk of the District of Columbia Court of Appeals (the "Court"), the Board, and Bar Counsel of his felony conviction, and provided certified copies of the order of conviction entered by the Circuit Court of Arlington County, Virginia, pursuant to D.C. Bar R. XI, § 10(a).

In addition to notifying the Court and the Board of his felony conviction, Respondent filed with the Court a "Motion to Have Felony Criminal Conviction in Virginia Treated as a 'Non-Serious' Crime or, in the Alternative, to Set Aside Order of Suspension in the Interest of Justice."[1] By Order dated December 5, 2005, the Court granted Respondent's Motion "insofar

[1] D.C. Bar R. XI, § 10(c) provides that any attorney who has been convicted of a "serious crime," as defined by subsection (b) of the Rule, shall be suspended from the practice of law on an interim basis pending final disposition of disciplinary proceedings. However, D.C. Bar R. XI,

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as the Court decline[d] to order [R]espondent's immediate suspension[,]" but "without deciding whether [R]espondent committed a 'serious crime' within the meaning of [D.C. Bar R. XI,] § 10(b)." On February 28, 2006, Bar Counsel filed an unopposed motion requesting that the Court direct the Board to institute formal proceedings to determine whether Respondent was convicted of a crime of moral turpitude and the nature of final discipline to be imposed. Bar Counsel represented that its motion was made with the consent of Respondent's counsel, and Respondent filed no timely response.

On March 16, 2006, the Court issued an order pursuant to D.C. Code § 11-2503(a) directing the Board to "institute a formal proceeding to determine the nature of the final discipline to be imposed and to review the elements of the statute of which [R]espondent was convicted to determine whether his conviction involved moral turpitude *per se* or on its facts." By letter dated April 4, 2006, the Board established a briefing schedule.

On July 27, 2006, the Board issued an order finding that Respondent's crime was not one of moral turpitude *per se*, and referring the matter to a Hearing Committee for a determination of moral turpitude on the facts and the appropriate final discipline in light of Respondent's conviction.[2] The order further provided that if Bar Counsel filed a petition charging a violation

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§ 10(c) also permits the Court to set aside the order of suspension "[u]pon good cause shown . . . when it appears in the interest of justice to do so."

[2] Bar Counsel filed a statement with the Board on April 24, 2006, arguing that Respondent's conviction required his disbarment under D.C. Code § 11-2503(a) because the crime constituted moral turpitude *per se*. In response, on June 16, 2006, Respondent filed with the Board (i) a Motion to Strike Bar Counsel's Statement Regarding Moral Turpitude *Per Se*, and for Other Relief ("Respondent's Motion to Strike"); and (ii) a Response to Bar Counsel's Statement Regarding Moral Turpitude *Per Se*, along with a Motion for Leave to File Out of Time. In his Motion to Strike, Respondent requested that the Board stay the proceedings and ask the Court to withdraw its March 16, 2006 order referring the matter to the Board as "improvidently granted,"

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of one or more Rules of Professional Conduct, the petition was to be consolidated with the moral turpitude matter. On December 19, 2006, Bar Counsel filed a Specification of Charges and Petition Instituting Formal Disciplinary Proceedings. The Specification of Charges and Petition were served upon counsel for Respondent on December 27, 2006.

The Specification of Charges alleged that Respondent violated Rule 8.4(b), that his conviction involved moral turpitude on its facts (mandating Respondent's disbarment pursuant to D.C. Code § 11-2503(a)), and that Respondent committed a "serious crime," as defined by D.C. Bar R. XI § 10(b).

On January 16, 2007, Respondent filed his Answer to the Specification of Charges. The Answer included a "Notice of Intent to Raise Disability in Mitigation," stating Respondent's intent to present his addiction to alcohol in mitigation of sanction. Answer ¶ 8. Respondent should have filed the Notice with the Board, and not the Hearing Committee, under Board Rule 7.6(a), which provides for the Notice to remain confidential as to the Hearing Committee, until after it makes a preliminary determination of a rule violation.[3] *See* Board Rule 11.11. Accordingly, by letter of January 17, 2007, the Board's office reminded Respondent about the provisions of Board Rule 7.6 and directed him to re-file his Answer, and to eliminate all references to the notice of disability, if he wished it to remain confidential. Respondent, through

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on the ground that Respondent's counsel had *not* consented to Bar Counsel's motion, and thus the Court's order was based on a misrepresentation of fact. On July 27, 2006, the Board denied as moot Respondent's Motion to Strike, having found in a separate order that Respondent's crime did not involve moral turpitude *per se*.

[3] Board Rule 7.6(a) also requires the execution of a form providing information about the alleged disability and the execution of an authorization to release medical records and files.

counsel, responded in a letter that same day, in which he waived his right to maintain the confidentiality of the Notice.

On January 19, 2007, the Hearing Committee conducted a telephonic pre-hearing conference. On January 26, 2007, the Hearing Committee Chair suspended the scheduling of the hearing to accommodate the trial schedule of Respondent's counsel,[4] and directed him to submit monthly status reports to the Board and Bar Counsel.[5]

On August 21, 2007, upon consideration of a status report filed by Respondent on July 9, 2007, the Hearing Committee scheduled the hearing for October 30, 2007, and directed Respondent, should he wish to raise disability in mitigation, to file a Notice of Intent to Raise Disability in Mitigation under Board Rule 7.6(a) within ten days of the date of the order.

On August 30, 2007, Respondent filed with the Board the Notice of Intent to Raise Disability in Mitigation pursuant to Board Rule 7.6(a), but did not file the required medical releases until September 7, 2007. Also on August 30, Respondent moved for a two-week continuance of the October 30, 2007 hearing, again based on his counsel's trial schedule. Bar Counsel did not oppose the motion for continuance, because Bar Counsel had not had the time to

[4] In a letter dated January 8, 2007, Respondent's counsel requested that the hearing be suspended until after completion of a lengthy criminal trial in the United States District Court for the District of Columbia in which he represented the lead defendant. That trial lasted from March to October of 2007.

[5] Following the suspension of the hearing, Bar Counsel, on March 16, 2007, moved to disqualify Chair Laurie B. Davis, Esquire from service on the Hearing Committee, on the grounds that her term of service had expired. The Board denied the motion, finding that D.C. Bar R. XI, § 5(a) provided for the Chair's continued service until a successor was appointed, but nonetheless replaced the Chair, and appointed Robert D. Okun, Esquire as Chair, to avoid the remote risk that Respondent "would have to go through the entire Hearing Committee/Board/Court of Appeals process twice." Order, Bar Docket No. 347-05 at 3 (BPR Mar. 28, 2007).

collect essential records and files relating to Respondent's alleged disability, given Respondent's delay in providing access to the materials.

On September 13, 2007, Bar Counsel filed with the Board an (i) Opposition to Respondent's Belated Notice of Intent to Raise Disability in Mitigation; and (ii) a Motion *In Limine* to Preclude Respondent's Evidence of Alleged Alcoholism or Alcoholic Blackout. On September 20, 2007, Respondent filed an "Interim Response" to Bar Counsel's opposition and motion *in limine*, and on September 21, 2007, Bar Counsel filed a reply.

By Order dated September 26, 2007, the Board ruled that Respondent's Board Rule 7.6(a) Notice would be treated as a motion for leave to raise the disability plea in mitigation out of time. The Board granted the motion, as it was filed more than 30 days prior to the scheduled hearing,[6] there was no prejudice to Bar Counsel by the late-filed Notice, and the seriousness of the charges against Respondent warranted acceptance of the late filing. The Board further ordered Bar Counsel and Respondent to submit proposed conditions under which Respondent would be permitted to practice law under Board Rule 7.6(c), and denied Bar Counsel's motion *in limine* to exclude evidence of alcoholism and alcoholic blackout, without prejudice.[7]

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[6] Board Rule 7.6(d)(i) provides that if a respondent wishes to raise an alleged disability in mitigation after the date the answer to the Specification of Charges is due, but more than 30 days before the scheduled hearing date, the respondent shall file a motion with the Board "setting forth good cause why respondent should be allowed to raise the plea in mitigation out of time." Board Rule 7.6(d)(i) further states that "[l]eave to assert the plea in mitigation shall be freely granted when justice so requires, and in the absence of a showing of prejudice by Bar Counsel." By contrast, under Board Rule 7.6(d)(ii), if a respondent wishes to raise an alleged disability in mitigation less than 30 days before the scheduled hearing date, such a motion will be granted only if the respondent consents to an interim suspension pending the disposition of the disciplinary proceeding.

[7] Bar Counsel submitted proposed conditions of practice on October 3, 2007. Respondent did not file any proposed conditions of practice. By order dated November 13, 2007, the Board accepted the majority of the conditions proposed by Bar Counsel, with slight modifications. On

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On October 5, 2007, Bar Counsel renewed its motion *in limine*.[8] On October 19, 2007, a telephonic pre-hearing conference was held. The Hearing Committee thereafter issued an order granting Respondent's motion for continuance and rescheduling the hearing for December 11 and 12, 2007. The Hearing Committee also denied Bar Counsel's motion *in limine*, again without prejudice to its renewal in post-hearing submissions.[9]

The hearing was held on December 11 and 12, 2007, and January 15, 2008. The Hearing Committee included Chair John C. Yang, Esquire, Eugene Sofer, public member, and Ronald Dixon, Esquire, attorney member. Bar Counsel was represented by Assistant Bar Counsel Joseph N. Bowman, Esquire, and Sara Bromberg, Esquire. Respondent was represented by Steven C. Tabackman, Esquire.

Bar Counsel called three witnesses in its case-in-chief: Elvira Banks, Duke Banks and Linda Berger. Respondent testified on his own behalf, and called Marc J. Fink, Esquire, Margaret Rohde, Joshua Horowitz, Esquire, James F. Money, and Dr. Charles L. Whitfield, an expert witness qualified in the field of alcoholism, alcohol recovery, and memory. Bar Counsel called two rebuttal witnesses: Bar Counsel investigator Charles M. Anderson and Dr. Neil Blumberg, qualified as an expert witness in forensic psychiatry. By stipulation, the parties

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November 26, 2007, Respondent filed a notice representing that he had complied with the conditions of practice imposed in the Board's November 13, 2007 Order.

[8] On October 10, 2007, the current Hearing Committee Chair was appointed to replace Mr. Okun, who *sua sponte* recused himself from the case.

[9] On October 15, 2007, Bar Counsel sought leave to file an amended Specification of Charges to correct a typographical error. Respondent did not object to Bar Counsel's request. In its order of October 23, 2007, the Hearing Committee accepted the amended Specification of Charges for filing, and treated Respondent's January 16, 2007 answer to the original Specification of Charges as his answer to the amended Specification.

agreed to introduce Bar Counsel's exhibits A through C, and 1 through 14 (Tr. I at 10), and Respondent's exhibits 1 through 18, all of which were received into evidence (Tr. I at 104, 218).[10] Subsequently, Bar Counsel's rebuttal exhibits 15 through 17, and Respondent's exhibits 19-A through 19-Y were received into evidence. Tr. II at 102.

After granting the parties a number of extensions of time, briefing was completed on August 28, 2008. On June 27, 2013, the Hearing Committee, given the passage of time since the hearing, issued an order requesting "updated information on Respondent's treatment and current state of rehabilitation, including since the date of the hearing." On July 2, 2013, Bar Counsel filed a Motion for Hearing on Respondent's rehabilitation evidence, although such evidence had not yet been submitted. On July 19, 2013, Respondent filed his Rehabilitation Submission, which included sworn declarations by Respondent, Patricia Riley, Esquire, William D. Kingery, Esquire, and Mr. Fink, as well as a report from the D.C. Bar's Lawyer Assistance Program, and an unsworn statement by Col. Ralph Tildon (Ret.).[11] On July 31, 2013, Bar Counsel filed its Submission Regarding Respondent's Rehabilitation.

By Order dated August 12, 2013, the Hearing Committee directed Bar Counsel to supplement its Motion for Hearing by identifying the specific facts asserted in Respondent's Rehabilitation Statement or in its Submission Regarding Respondent's Rehabilitation Statement that necessitated a hearing. The parties thereafter filed a number of supplements and additional

[10] The transcript of the hearing on December 11 and 12, 2007 shall be cited as "Tr. I at ___". The transcript of the hearing held on January 15, 2008 shall be cited as "Tr. II at ___."

[11] The Hearing Committee granted Respondent's motion to file his rehabilitation submission out-of-time.

memoranda bearing on the issue of Respondent's rehabilitation, all of which the Hearing Committee has carefully considered.[12]

As explained in the discussion of Respondent's *Kersey* mitigation evidence, *infra*, the Hearing Committee finds Respondent's submissions sufficient to establish his continued rehabilitation from alcoholism, without the need for a hearing.

## III. FINDINGS OF FACT

Based on the record as a whole, including our assessment of the documentary evidence, the testimony taken, and the parties post-hearing submissions, the Hearing Committee makes the following findings of fact by clear and convincing evidence:

### A. Respondent's Background

1. Respondent received a B.A., *magna cum laude*, from Lake Forest College in 1984. In 1985, Respondent earned a Master's Degree in Spanish from Middlebury College.

2. Subsequently, Respondent enrolled in a joint degree program in law and foreign service at the Georgetown University Law Center. In 1989, Respondent received his law degree, *cum laude*, and a Master's Degree in Foreign Service. Tr. I at 237-238 (Rohde).

3. Respondent was admitted on examination to the District of Columbia Bar on November 15, 1989, and assigned Bar Number 421213. BX A.[13]

4. In 1989, Respondent began working as an associate for the law firm Dow, Lohnes & Albertson, PLLC ("DLA"). In 1991, Respondent's supervisors at DLA formed a new law

[12] The parties filed a flurry of pleadings, the last of which was filed on August 27, 2014.

[13] "BX" is used to designate Bar Counsel's exhibits.

firm, Sher & Blackwell, LLP, and invited Respondent to join their new firm as an associate. Tr. I at 87-89 (Fink); Tr. I at 219 (Rohde).

5. From 1991 through August 31, 2010, Respondent practiced with Sher & Blackwell. Tr. I at 219 (Rohde); Declaration of Wayne R. Rohde, dated July 18, 2013 (the "Rohde Decl."), at 1. As of October 20, 2004, the firm's office was located at 1850 M Street, N.W. in the District of Columbia. Tr. I at 84, 88, 111 (Fink).

B. The Circumstances Surrounding Respondent's Crime

6. As an employee of Sher & Blackwell, Respondent was entitled to park in a public parking garage located in the basement of 1850 M Street, N.W. Tr. I at 111-112 (Fink); Tr. I at 257 (Rohde). Respondent did not have an assigned parking space in the garage, although he testified that he typically parked on its lowest level. Tr. I at 111-112 (Fink); Tr. I at 350-351 (Rohde).

7. After leaving work on the evening of October 20, 2004, Respondent joined two friends at Rumors, a bar located on the corner of 19th Street and M Street, N.W., across the street from Respondent's office. Tr. I at 253-254, 257 (Rohde). Respondent arrived at Rumors between 5:45 and 6:45 p.m. Tr. I at 256 (Rohde).

8. While at Rumors, Respondent consumed a large quantity of alcohol, including beer and shots of hard liquor. Tr. I at 261-263 (Rohde); BX 15 at 11.

9. At 7:37 p.m., Respondent paid a $34.27 bar tab using his American Express card, adding a $10 tip and correctly calculating the total of $44.27. RX 6; Tr. I at 261-262.[14]

[14] "RX" is used to designate Respondent's exhibits.

However, Respondent did not independently recall the act of paying his bar tab. Tr. I at 261 (Rohde).

10. Respondent estimated that he remained at Rumors until approximately 11:30 p.m. Tr. I at 263-264, 349 (Rohde).

11. After leaving Rumors, Respondent walked to the parking garage under his office at 1850 M Street, N.W. Tr. I at 349 (Rohde). Respondent used his key card to gain access to the garage. Tr. I at 350 (Rohde). Respondent located his Jeep Cherokee and made his way out from the lower levels of the garage to the street. Tr. I at 350-351 (Rohde). Respondent was required to swipe his key card again to leave the garage. Tr. I at 351 (Rohde).

12. Respondent commenced driving to his home in Arlington, Virginia. To do so, Respondent exited the parking garage at 1850 M Street, and turned left onto M Street, N.W. Tr. I at 351-352 (Rohde). Respondent then turned left again on 19th Street, N.W., and traveled south on 19th Street for approximately 11 blocks. Tr. I at 352 (Rohde); Tr. I at 541-542 (Anderson). Next, Respondent turned right onto E Street, N.W., and traveled onto a ramp to the Teddy Roosevelt Bridge. Tr. I at 352 (Rohde); Tr. I at 542 (Anderson). Respondent then entered Virginia and merged onto Interstate 66. Tr. I at 352 (Rohde); Tr. I at 542 (Anderson). Respondent traveled on Interstate 66 to Exit 73 for Lee Highway, and then continued west on Lee Highway in Arlington, Virginia. Tr. I at 352 (Rohde); Tr. I at 542 (Anderson).[15]

[15] Respondent testified that he does not recall driving home on the night of October 20, 2004, but he described his customary route. Tr. I at 259 (Rohde). Bar Counsel does not dispute that Respondent drove his typical route on the night of October 20, 2004; indeed, Bar Counsel's investigator testified that he believed that was the route Respondent took. Tr. I at 541-542; BX 12. Furthermore, the collision took place along Respondent's customary route. Based on the record and the parties' agreement on this issue, we find that Respondent drove home via the above-described route on the night of October 20, 2004.

13. There are approximately 20 traffic lights along this route between 1850 M Street, N.W. and Respondent's home on North 20th Street in Arlington, Virginia. Tr. I at 542-543 (Anderson).

14. Prior to October 20, 2004, Respondent had traveled that same route from his office to his home nearly every day for twelve years, totaling thousands of miles. Tr. I at 259, 352 (Rohde). In "at least hundreds" of instances, Respondent executed the drive home after drinking for several hours. Tr. I at 259 (Rohde).

C. Respondent's Collision with Elvira Banks

15. Near the intersection of Lee Highway and N. Taylor Street in Arlington, Virginia, Respondent had a head-on collision with a car driven by Elvira Banks ("Ms. Banks"). BX 3 at 9; Tr. I at 27-28 (E. Banks).

16. Ms. Banks's car was totaled in the collision. BX 3 at 9; BX 8 at 4-5. Respondent's car suffered significant front-end damage. Its front bumper and license plate fell off at the scene, and its front right tire was completely deflated. BX 3 at 10; Tr. I at 66 (Berger).

17. The collision was loud enough that a witness who resided one block away from the scene heard it, and got out of bed to investigate. Tr. I at 65-66 (Berger).

18. After colliding with Ms. Banks, Respondent backed his car away from the scene and then drove to his home, which was approximately four or five blocks away. BX 3 at 9-10; BX 15 at 12; Tr. I at 175-176 (Horowitz).

19. In leaving the scene of the collision, Respondent did not drive in an "out of control" manner, despite the fact that he was driving on the rim of his flat front right tire. Tr. I at 68 (Berger). Respondent drove off at a relatively fast speed, and sparks were flying from his tire rim. Tr. I at 67-68 (Berger).

20. Respondent then continued on his customary route home, making a left turn onto a narrow street, and continuing down that street without hitting any of the cars parked on either side. Tr. I at 67 (Berger).

21. Upon arriving home, Respondent parked his car in the driveway of his house. BX 2 at 68.

22. Following the collision, Respondent did not attempt to render assistance to Ms. Banks, or to report his name, address, driver's license number or vehicle registration number to law enforcement authorities or Ms. Banks. Tr. I at 31 (E. Banks); RX 9 at 2.

23. At the scene of the collision, police officers found a detached front automobile bumper with a Virginia license plate bearing the number ZLS 1162. BX 3 at 10; BX 2 at 67. The officers subsequently learned that the license plate they found at the scene belonged to a 1996 Jeep Cherokee registered to Respondent. BX 3 at 10; BX 2 at 67-68.

24. Police officers went to Respondent's home at 4419 North 20th Street, Arlington, Virginia, and found Respondent's heavily damaged Jeep Cherokee in the driveway. BX 3 at 10; BX 2 at 68. Police officers observed that the front airbags on Respondent's car had deployed, and that the car was missing its front bumper and license plate. BX 3 at 10; BX 2 at 68, 70.

25. Police officers attempted to contact Respondent by banging on the front door of his house for approximately 20 to 30 minutes, but Respondent did not answer. BX 3 at 10; BX 2 at 68-69, 80-81. Respondent's neighbor, Joshua Horowitz, telephoned Respondent sometime later that night, but Respondent did not answer. Tr. I at 148-149 (Horowitz).

26. Mr. Horowitz observed that Respondent's lights were on and that his blinds were open, which was unusual. Tr. I at 149 (Horowitz).

27. Police officers towed and impounded Respondent's Jeep Cherokee. BX 3 at 10; BX 2 at 69. After impounding Respondent's car, police officers observed blood on the driver's side airbag that they believed was left by the person driving the vehicle at the time of the collision with Ms. Banks. BX 2 at 89; BX 3 at 11. Police officers took a sample of the blood on the airbag to test for a DNA match. BX 3 at 10-11.

28. Pursuant to a search warrant, police officers obtained a DNA sample from Respondent. Respondent's DNA sample matched the blood sample police obtained from the driver's side airbag of Respondent's Jeep Cherokee. BX 3 at 11; BX 1 at 20.

D. Respondent's Virginia Conviction and Civil Settlement

29. On Mr. Horowitz's recommendation, Respondent obtained counsel, Charles Kramer, Esquire, on October 21, 2004, the day after his collision with Ms. Banks. Tr. I at 282-283 (Rohde). Mr. Kramer contacted Arlington police that day, and subsequently made arrangements for Respondent to turn himself in. Tr. I at 288, 293 (Rohde).

30. On March 22, 2005, the General District Court of Arlington County conducted a preliminary hearing in Respondent's criminal case. *See* BX 2. At the preliminary hearing, the Assistant Commonwealth's Attorney set forth the above-described evidence, indicating that Respondent was the driver who hit Ms. Banks on the night of October 20, 2004. *Id*. at 38-110. The court found probable cause and certified the matter to the Circuit Court of Arlington County. *Id*. at 111.

31. On April 18, 2005, a grand jury returned an indictment charging Respondent with felony hit and run, in violation of Code of Virginia § 46.2-894, a Class 5 felony under Virginia law. BX 1 at 14.

32. In May of 2005, Respondent retained new Virginia counsel, Nicholas Balland, Esquire. At that time, Respondent, through his counsel, opened settlement discussions with Ms. Banks and her husband, Duke Banks. Tr. I at 46, 49 (E. Banks); Tr. I at 60 (D. Banks).

33. Ultimately, Respondent settled with Ms. Banks and her husband, agreeing to pay them a total of $525,000. The settlement amount consisted of $225,000 of Respondent's own money, and $300,000 contributed by Respondent's insurer. Tr. I at 56-58 (D. Banks).

34. On August 10, 2005, Respondent pleaded guilty to felony hit and run, in violation of Code of Virginia § 46.2-894. BX 1 at 3; *see also* BX 3 at 5-9.

35. During the plea colloquy, Respondent testified, *inter alia*, that he understood (i) the nature of the charge against him; and (ii) the "particular elements of the particular crime" with which he was charged. BX 3 at 5. Also during the plea hearing, Respondent's attorney characterized the collision as "an unknowing hit and run." BX 3 at 17.

36. Following the court's acceptance of Respondent's guilty plea, the Assistant Commonwealth's Attorney made a proffer of facts. BX 3 at 9-11. Among other things, the Assistant Commonwealth's Attorney stated that Respondent had stipulated that the collision with Ms. Banks was alcohol-related. BX 3 at 11. The Assistant Commonwealth's Attorney also informed the court that at the time of the collision, Respondent was intoxicated "to the point that he didn't know what happened." BX 3 at 14.

37. On August 24, 2005, the Circuit Court of Arlington County entered an order convicting Respondent of felony hit and run. BX 1 at 3.

38. On November 18, 2005, the court conducted a sentencing hearing. At the hearing, the Assistant Commonwealth's Attorney urged the court to sentence Respondent to some period of incarceration. BX 5 at 15-16. At the sentencing hearing, Respondent's attorney

represented that Respondent "really was in a blackout[,]" and that he "did not know what happened till [sic] he was awakened by a neighbor in this matter." BX 5 at 7.

39. After hearing from Respondent's counsel, Respondent, Ms. Banks's attorney, and the Assistant Commonwealth's Attorney, the court sentenced Respondent to two years' incarceration, suspended, placed Respondent on supervised probation, and ordered Respondent to pay costs of $405.00.[16] BX 1 at 1-2.

E. Respondent's History of Substance Abuse

40. Respondent began drinking alcohol weekly at the age of 15. Tr. I at 225 (Rohde). While attending college, Respondent regularly drank to the point of intoxication. Tr. I at 227-229; BX 15 at P6.

41. Once while intoxicated, Respondent was involved in an incident that resulted in an administrative warning from his college, and Respondent "was prohibited from driving any college vehicles for the remainder of [his] time at Lake Forest [College]." Tr. I at 230-231 (Rohde).

42. While in law school, Respondent continued to drink excessively at least two or three days per week. Tr. I at 234, 238-241 (Rohde). While in college and law school, Respondent also occasionally used marijuana and cocaine. RX 9 at 8; BX 15 at P5.

[16] At the sentencing hearing, Respondent's counsel also represented to the court that Respondent was a "weekend drinker" for whom "alcohol had never really been an issue." BX 5 at 6. Such statements contradict the evidence in this proceeding concerning Respondent's history of substance abuse and alcoholism. However, in his presentence statement, Respondent explained that he was undergoing treatment for alcoholism and described his drinking habits in detail. RX 9 at 8. Respondent's presentence statement was included in the Presentence Investigation Report submitted to the court by the Virginia Department of Corrections in advance of Respondent's sentencing hearing. *Id*.

43. Respondent's drinking gradually escalated as he began his professional career. Tr. I at 243-244 (Rohde). By the late 1980's, Respondent drank in bars almost every day. BX 15 at 7.

44. By 2000, Respondent typically consumed one or two bottles of wine every night. BX 15 at 7.

45. Prior to October 20, 2004, Respondent had experienced alcoholic blackouts on numerous occasions. Tr. at 264-265 (Rohde). Respondent first suffered an alcoholic blackout during his freshman year of college. *Id*. The frequency of Respondent's blackouts increased from the late 1990's through the time of the collision. BX 15 at 7.

46. Beginning in the mid-1980's, Respondent's friends and family members repeatedly told Respondent that they believed he drank too much. Tr. I at 234-237, 246-247 (Rohde); Tr. I at 123-124 (M. Rohde).

47. On four prior occasions, Respondent was involved in alcohol-related single vehicle accidents. BX 15 at P8. In two instances, Respondent's vehicle sustained damage, but Respondent did not recall what had happened. Tr. I at 377-378 (Rohde); BX 15 at 8; Tr. I at 340-341 (Rohde).

F. Evidence of Alcoholic Blackout

(1) Respondent's Testimony

48. Respondent testified that at some point on the evening of October 20, 2004, he entered an alcoholic blackout state, and thus has no memory of much of the night, including his collision with Ms. Banks. *See generally* Tr. I at 260-280, 346-360 (Rohde).

49. Specifically, Respondent testified that he does not recall using his credit card to pay his bar tab at approximately 7:30 p.m. on October 20. Tr. I at 261, 346-348 (Rohde).

However, Respondent recalled a second bartender coming on duty after payment of the tab. Tr. I at 263 (Rohde). Respondent also remembered talking to a woman in a striped shirt, but did not know at what time. Tr. I at 263, 348 (Rohde).

50. Respondent did not recall the time he left Rumors. Tr. I at 260 (Rohde). Respondent had no recollection of going anywhere other than Rumors that night. Based on his past practice and the time of his collision with Ms. Banks, Respondent believed that he remained at Rumors between 7:30 p.m. and approximately 11:30 p.m. Tr. I at 260, 263-264, 349 (Rohde).

51. Respondent testified that he had no recollection of using his key card to access the parking garage under his office building, or of driving his car out of the garage. Tr. I at 349-350 (Rohde).

52. Respondent did not recall colliding with Ms. Banks's car. Tr. I at 273 (Rohde). Respondent also did not recall backing away from the scene of the collision, or driving on to his home in his heavily damaged car. Tr. I at 353 (Rohde).

53. Respondent never heard police knocking on his door, or his phone ringing on the night of October 20. Tr. I at 280 (Rohde). Respondent also did not hear the police tow his car from the driveway of his home. Tr. I at 280-281 (Rohde).

54. On the morning of October 21, 2004, Respondent awoke on top of his bed, still wearing clothing he had worn the day before, with only one contact lens in place. Tr. I at 273-274 (Rohde). Although on prior occasions Respondent had failed to ready himself for bed after a night of heavy drinking, Respondent typically did not wake up wearing his contact lenses and his clothes from the previous day. Tr. I at 274-275 (Rohde). When Respondent awoke, he had "no memory of the events the night before." Tr. I at 357-358 (Rohde).

55. Upon looking out of his window on the morning of October 21, Respondent noticed that his car was not in his driveway, and was "surprised and confused." Tr. I at 278. Respondent testified that he had a "vague, nagging sense that something had happened with the car the night before," but that he "couldn't pull up anything specific about what that might be." Tr. I at 278-279, 357-358 (Rohde).

56. On the morning of October 21, Respondent noticed that he had three messages on his answering machine. Tr. I at 276 (Rohde). Two messages were from Respondent's neighbors. *Id*. The third message was from a man named Chris, who left a phone number. Tr. I at 276-277 (Rohde). Respondent Googled Chris's phone number and discovered that he worked for the Arlington County Police Department. Tr. I at 277 (Rohde). However, Respondent testified that he had no idea why the police were interested in speaking with him. *Id*.

57. Respondent testified that he first learned of his collision with Ms. Banks during a conversation with his neighbor, Joshua Horowitz, and that he was shocked, "scared" and "not sure of what had happened." Tr. I at 282-283, 273 (Rohde).

58. We find all of Respondent's testimony concerning the events of the evening of October 20 and the following day, including testimony showing that he suffered an alcoholic blackout, to be credible. Our determination is based, first, on Respondent's demeanor in testifying; we find that his testimony was candid and his expressions of remorse, sincere. Respondent's testimony regarding the collision and its aftermath is also consistent with the testimony of his neighbor, Joshua Horowitz, the forensic evidence of the collision, and evidence that Respondent left the scene, drove directly to his home, and made no effort to conceal his wrecked car. *See* FF 24. It is also buttressed by the fact that Respondent did not deny or dispute evidence that might be considered damaging to his case, such as his signature on the bar tab and

his ability to drive to and from the scene of the collision without incident. *See* Tr. I at 261-262, 299-300, 347-348, 351-354 (Rohde). Finally, Respondent's testimony is consistent with the testimony of both experts concerning the nature of an alcoholic blackout.

(2) The Testimony of Joshua Horowitz

59. Around midnight on October 21, 2004, Joshua Horowitz, Respondent's neighbor, noticed the presence of police cars outside of Respondent's house. Tr. I at 147-148. Mr. Horowitz walked to Respondent's house, and saw that Respondent's car was in the driveway, "pretty beat up", with "the front end smashed" and the airbag deployed. Tr. I at 148.

60. The police officers outside Respondent's house told Mr. Horowitz that "there had been a car accident, and they thought [Respondent] might be involved, and that someone was injured." Tr. I at 161. Mr. Horowitz then saw the police tow Respondent's car from his driveway. Tr. I at 149. Mr. Horowitz telephoned Respondent, but the call was not answered. Tr. I at 148.

61. On the morning of October 21, the day after the collision, Mr. Horowitz went to Respondent's house to check on him. Tr. I at 149. At the time, Respondent was on the telephone with his parents, and seemed "relatively relaxed." Tr. I at 150. Respondent had called his parents because it was their wedding anniversary. *Id.*; Tr. I at 127 (M. Rohde). When Respondent got off the phone, Mr. Horowitz told Respondent that he had been in a "crash", and that the driver of the other car had been injured. Tr. I at 150-151; Tr. I at 281-282 (Rohde).

62. When Mr. Horowitz informed Respondent that he had been involved in a crash the night before, Respondent became agitated and his demeanor changed completely. Tr. I at 150-151. Specifically, Mr. Horowitz observed that Respondent "went white," began "pacing" and "looked very agitated," and his breathing became more rapid. Tr. I at 151. At some point

during their conversation, Respondent asked Mr. Horowitz what had happened to his car. Tr. I at 151-152 (Mr. Horowitz did not testify as to how he responded to that question).

63. Based on his observations, Mr. Horowitz concluded that Respondent "clearly had no idea . . . about the injury" to Ms. Banks. Tr. I at 151. In his frequent interactions with Respondent subsequent to October 21, 2004, Mr. Horowitz never observed anything that would cause him to believe that Respondent had any recollection of the collision with Ms. Banks. Tr. I at 154.

64. We find that Mr. Horowitz's testimony is credible. Mr. Horowitz is a neutral third party, and his relationship with Respondent is not so close as to be biased towards Respondent. His testimony was clear and consistent.

G. Expert Testimony Concerning Respondent's Alcoholic Blackout

(1) Respondent's Expert

65. Respondent relies on the testimony of Dr. Charles L. Whitfield, qualified at the hearing as an expert in alcoholism, alcohol recovery, and memory. Tr. I at 454.

66. Dr. Whitfield is a psychotherapist and addiction medicine physician who treats alcoholics and drug addicts in his private practice in Atlanta, Georgia. Tr. I at 471; RX 16. Dr. Whitfield received his M.D. from the University of North Carolina Medical School in 1965. RX 16.

67. Dr. Whitfield is a Fellow of the American Medical Society on Alcoholism, an organization he joined in 1970. *See* RX 16; Tr. I at 455. Dr. Whitfield estimates that he has treated and evaluated over 1,000 alcoholics during the course of his career. Tr. I at 460.

68. Since the 1970's, Dr. Whitfield has performed research and published many articles in peer reviewed literature, including numerous articles on the effects of alcoholism on

memory. *See* RX 16. Dr. Whitfield also authored a book entitled Memory and Abuse: Remembering and Healing the Effects of Trauma. RX 16; Tr. I at 470.

69. Before testifying in this matter, Dr. Whitfield had Respondent complete two diagnostic questionnaires concerning his drinking history. Tr. I at 458-461; RX 2-A, RX 3.[17]

70. Prior to testifying, Dr. Whitfield also interviewed Respondent for approximately five to six hours concerning "[Respondent's] drinking history and other factors that [Dr. Whitfield] regarded as diagnostic of whether [Respondent] was an alcoholic[,]" as well as Respondent's subsequent efforts at rehabilitation. Tr. I at 461-462, 464, 505-506.

71. Dr. Whitfield concluded that Respondent was an alcoholic, and that at the time of the collision, he was in an alcoholic blackout state. Tr. I at 481, 496-497. Although Dr. Whitfield did not prepare a formal expert report, he prepared seven exhibits concerning alcoholism and memory loss, all of which were admitted into evidence. *See* RX 1, RX 2-A, RX 3, RX 4, RX 5-A, RX 5-B and RX 5-C; Tr. I at 457-461, 472-473. In one of those exhibits, RX 5-B, Dr. Whitfield summarized those characteristics of alcoholic blackouts he found to exist in Respondent's case, based on his understanding of Respondent's conduct on the evening of October 20, 2004, which is consistent with the evidence of the collision presented to the Hearing Committee. Tr. I at 473.

[17] The first questionnaire Respondent completed required Respondent to review his experience in relation to the Jellinek Curve, a descriptive diagnostic tool concerning the typical progression of alcoholism. Tr. I at 458-459. The second questionnaire consisted of a combination of the Michigan Alcoholism Screening Test, the "Mass Addendum" and the "CAGE questionnaire." Tr. I at 460-461. Dr. Whitfield testified that all three tests are recognized diagnostic tools on alcoholism. Tr. I at 461. Neither Bar Counsel nor its expert has challenged the reliability of Dr. Whitfield's evaluation protocol.

72. The record contains no other written report prepared by Dr. Whitfield, and does not show what written materials Dr. Whitfield may have reviewed prior to rendering his opinion.

73. Dr. Whitfield testified that there are three main types of memory: short term memory, long-term memory, and working or active memory. Tr. I at 473; RX 5-A. Short term memory consists of current information held for a range of three to 30 seconds. Tr. I at 474; RX 5-A.

74. In working or active memory, the brain transfers or encodes information from the short-term memory to the long-term memory. Tr. I at 497. Through this process, data stored in the long-term memory is connected with current inputs from the short-term memory, and a person is able to arrive at an "appropriate judgment." *Id*.

75. Dr. Whitfield prepared Respondent's exhibit 5-A, a list entitled "Characteristics of Alcoholic Blackouts", which states that during an alcoholic blackout, "working memory (short-term to long-term transfer & encoding), cognition (constructive thinking ability), and judgment" are lost, because alcohol "stops memory formation by blocking the neuro-transmitter glutamate to be reacted-with by the neuro-receptor NDMA (N-methyl D-aspartate) at the brain neuron synapse (nerve junction)." RX 5-A. Dr. Whitfield further wrote that this chemical reaction adversely affects the hippocampus, a brain structure that carries out memory formation and storage. RX 5-A, RX 5-C; Tr. I at 476-477.

76. Because alcohol prevents a person from processing new sensory inputs and forming working, or active memories, the drinker "is unable to react and decide in a rational and appropriate way to ordinary or extraordinary events." RX 5-A; Tr. I at 475-478. In other words, Dr. Whitfield opined that a person suffering an alcoholic blackout is incapable of connecting

new sensory inputs with his long term, pre-blackout memory bank of appropriate actions and reactions. Tr. I at 491-492, 497-498.

77. It was Dr. Whitfield's opinion that Respondent was only able to retain awareness of his collision with Ms. Banks for seconds after it occurred. Tr. I at 494-495. Because of his intoxication and blackout, Respondent was not able to convert the new sensory input into a long-term memory, or access the part of his long-term memory that would have informed a proper response to the collision. Tr. I at 496-501.

78. Dr. Whitfield testified that if Respondent had not been suffering from an alcoholic blackout at the time of the collision, he would have had the ability to conform his conduct to the requirements of the law and would not have left the scene. Tr. I at 496-497, 519.

79. Dr. Whitfield also testified that Respondent's other actions on the night of October 20, 2004 were consistent with his opinion regarding Respondent's alcoholic blackout. Specifically, Dr. Whitfield believed that Respondent was able to drive from 19$^{th}$ and M Streets, N.W., in Washington, D.C. to the scene of the collision, and from there to his home, because Respondent had performed the same drive many times over the course of twelve years, and such routine actions were stored in Respondent's procedural memory. Tr. I at 484-486. In Dr. Whitfield's opinion, Respondent's procedural memory would not have been affected by his intoxication or blackout state. Tr. I at 484, 486-487, 510-511, 523.

80. Dr. Whitfield testified that it was also his opinion that Respondent's actions in retrieving his car from the parking garage and driving home were consistent with an alcoholic blackout, as many other patients Dr. Whitfield had treated were able to use their "pre-blackout long-term memory" to complete routine tasks despite suffering an alcoholic blackout. Tr. I at 486-487 (Whitfield).

(2) Bar Counsel's Expert

81. Bar Counsel presented Dr. Neil Blumberg to rebut the testimony of Dr. Whitfield. Dr. Blumberg was qualified as an expert in forensic psychiatry. Tr. II at 12.

82. Dr. Blumberg is a psychiatrist who earned his M.D. from the George Washington University School of Medicine in 1977. BX 14 at 6; Tr. II at 4. Dr. Blumberg specializes in forensic psychiatry, which is a subspecialty of psychiatry concerning the evaluation of an individual's mental state in legal proceedings. Tr. II at 4-5. Dr. Blumberg is board-certified in psychiatry (1983) and forensic psychiatry (1986). Tr. II at 8 (Blumberg); BX 14.

83. Dr. Blumberg has maintained a private practice in general and forensic psychiatry since 1981. BX 14.

84. Between 1996 and 2003, Dr. Blumberg also served as a forensic psychiatric consultant for the Circuit and District Courts of Baltimore County and Baltimore City. BX 14. From 1996 to 1999, Dr. Blumberg also acted as the Director of Forensic Evaluation at Spring Grove Hospital Center. *Id*. In both positions, Dr. Blumberg was required to evaluate defendants to determine competence to stand trial and level of criminal responsibility. *Id*.

85. Dr. Blumberg has performed approximately 5,000 forensic evaluations, and testified that alcoholism has been an issue in many of those cases. Tr. II at 12-14.

86. Dr. Blumberg submitted a written report (BX 15), which he prepared after reviewing the written materials set out in BX 15 at 2-3 (Tr. II at 14-16), interviewing Respondent

for approximately three and a half hours, and administering a battery of psychiatric tests over the course of an additional two and a half hours. BX 15 at 3; Tr. II at 16-17.[18]

87. Dr. Blumberg defined an alcoholic blackout as "a period of memory loss for events that occurred during the time the individual was drinking, usually heavily." Tr. II at 20.

88. Dr. Blumberg agreed with Dr. Whitfield that Respondent was an alcoholic, and that Respondent suffered an alcoholic blackout at the time of the collision. Tr. II at 18, 27; BX 15 at 15.

89. Dr. Blumberg agreed with Dr. Whitfield that alcohol interferes with memory formation, and with the transfer of information from a person's short term memory to his long term memory. BX 15 at 15; Tr. II at 22-23.

90. However, Dr. Blumberg disagreed with Dr. Whitfield concerning the effects of an alcoholic blackout. Specifically, Dr. Blumberg testified that a person suffering an alcoholic blackout can still access his long term memory, and would still know right from wrong. BX 15 at 16; Tr. II at 23. Dr. Blumberg stated that intoxicated people still know when their behavior is illegal or unethical. Tr. II at 24.

91. Dr. Blumberg further testified that the judgment of a person suffering an alcoholic blackout would be impeded, such that the ability of the drinker to access his long term memory would be significantly impaired. BX 15 at 16; Tr. II at 31.

92. Dr. Blumberg testified that at the time of his collision with Ms. Banks, Respondent was aware that he was in a collision, and that Respondent would have understood

[18] Dr. Blumberg identified the diagnostic tests he administered as the Minnesota Multiphasic Personality Inventory-2 (MMPI-2); the Millon Clinical Multiaxial Inventory-III (MCMI-III) and the Validity Indicator Profile (VIP). BX 15 at 3; Tr. II at 17.

that it was wrong to leave the scene, even if he did not subsequently remember having such knowledge or awareness. Tr. II at 29-30, 38.

93. Dr. Blumberg opined that even though Respondent was drunk, he did not lose the ability to appreciate the wrongfulness of his conduct, or the ability to conform his conduct to the requirements of the law, despite the fact that Respondent was suffering an alcoholic blackout at the time he committed the hit and run. Tr. II at 32. Dr. Blumberg testified that Respondent had the ability to form the specific intent to stop and render aid to Ms. Banks. Tr. II at 37-38. Although Respondent's judgment was impaired, he did not lose the capacity to choose the proper course of conduct. *Id*.; *see also* BX 15 at 16.

94. As support for his opinion, Dr. Blumberg observed that Respondent successfully executed a number of other tasks during his alcoholic blackout, including: socializing with others at Rumors; paying his bar tab, with tip; retrieving his car from the parking garage; driving to the scene of the collision without incident; and driving home after hitting Ms. Banks. BX 15 at 16; Tr. II at 76-80, 84.

95. Dr. Blumberg specifically noted that Respondent's ability to drive home after the collision "suggests an awareness, at least at that time, that he was involved in an accident and that he was choosing to leave the scene of that accident." Tr. II at 35.

96. Dr. Blumberg agreed with Dr. Whitfield that but for Respondent's intoxication, Respondent would not have left the scene of his collision with Ms. Banks. Tr. II at 83.

97. Dr. Blumberg did not observe any other personality disorders or traits that would have caused Respondent to fail to distinguish right from wrong and commit felony hit and run. Tr. II at 63-64; BX 15 at 14-15.

(3) Evaluation of the Expert Testimony

98. Based upon the foregoing testimony and evidentiary record, we credit Dr. Whitfield's expert opinion in its entirety, and credit those aspects of Dr. Blumberg's expert opinion that are consistent with Dr. Whitfield's.

99. Specifically, both expert witnesses have long years of clinical experience in evaluating and treating alcoholics. Additionally, both experts used essentially the same method to evaluate Respondent: they both had Respondent complete written questionnaires, and then interviewed Respondent for several hours.

100. Based on these similar examinations, both experts concluded that at the time of the collision, Respondent was an alcoholic, and was suffering an alcoholic blackout. We agree with those conclusions and find that they are supported by the evidence.

101. The experts disagree as to the nature of an alcoholic blackout and its effect on Respondent's ability to act in conformance with the law following the collision. Respondent's expert, Dr. Whitfield, testified that Respondent was not capable of deciding to remain at the scene of the collision and render aid to Ms. Banks. In Dr. Whitfield's opinion, a person suffering an alcoholic blackout is too impaired to connect his current observations with his underlying knowledge of right and wrong. Tr. I at 491-492 (Whitfield); RX 5-A. Thus, Respondent's drunkenness impaired his ability to connect new information – the collision with Ms. Banks – with the knowledge stored in his long-term memory, which would have permitted him to react appropriately. Tr. I at 496-501 (Whitfield).

102. In contrast, Bar Counsel's expert, Dr. Blumberg, testified that although Respondent's judgment was impaired, he still knew right from wrong. Tr. II at 32, 37-38, 63-64, 76-80 (Blumberg); BX 15 at 16. Dr. Blumberg agreed that intoxication impairs the ability to

process information, but testified that a person suffering an alcoholic blackout is still able to access the "long term memory," which would have informed Respondent's conduct. Tr. II at 23 (Blumberg); BX 15 at 15-16. Dr. Blumberg testified that although Respondent was in a blackout state when the collision occurred, he was alert, he knew that he had been in a collision, he knew right from wrong, and he knew that he should not have left the scene. *See* Findings of Fact ("FF") 90-91.

103. In support of his opinion, Dr. Blumberg pointed to a number of other purposeful tasks Respondent successfully performed while in a blackout state, including: (i) paying his bar tab and correctly calculating the tip; (ii) using his key card to gain access to the parking garage; (iii) finding and retrieving his car from the parking garage; (iv) using his key card to exit the parking garage; (iv) navigating approximately 20 traffic lights while driving from downtown Washington, D.C. to the scene of the collision; and (v) driving away from the scene of the collision and to his home in a controlled manner, without further incident. Tr. II at 76-80, 84 (Blumberg); BX 15 at 16.

104. In response, Dr. Whitfield testified that such actions were governed by Respondent's "procedural memory," which would not have been affected by his intoxication or blackout state. Tr. I at 484, 486-487, 510-511, 523 (Whitfield). Thus, Dr. Whitfield opined that Respondent would have been able to successfully retrieve his car and drive home along his customary route even while unable to react appropriately following the collision. *Id*. Additionally, Respondent's own actions in the wake of the collision support that he did not act consciously in leaving the scene of the collision. Specifically, Respondent left his front bumper and license plate at the scene, and parked his car in plain view in the driveway of his house. Dr. Whitfield opined that Respondent was still in a blackout state when he drove home, and thus, his

leaving the scene of the collision does not bear on whether he appreciated what he had done. *See* FF 75-77.

105. Although we find it a close question, we credit Dr. Whitfield's opinion over Dr. Blumberg's on the effects of an alcoholic blackout in general and specifically with respect to Respondent's actions following the collision. Our reliance on Dr. Whitfield is based on (i) his specialized training and primary practice in the area of alcoholism, contrasted with Dr. Blumberg's more general knowledge and understanding of alcoholism, *see* FF 63-66 (Dr. Whitfield's relevant experience); 80-83 (Dr. Blumberg's relevant experience); and (ii) the fact that Respondent's conduct following the collision, including leaving his front bumper and license plate at the scene, and parking his damaged vehicle at his house in plain sight, is more consistent with Dr. Whitfield's opinion that Respondent was not consciously aware of the collision and that his subsequent conduct was not a deliberate effort to conceal his involvement. We do not find Dr. Blumberg's opinion to the contrary to be persuasive.

106. Dr. Whitfield's expert opinion is also independently corroborated by Mr. Horowitz, who testified that when he told Respondent that his car had been in a "crash", Respondent expressed concern, surprise, and showed a change in demeanor (he turned white). Tr. I at 150-151 (Horowitz). Dr. Whitfield's conclusions are also consistent with Respondent's credible testimony. Respondent never denied involvement in the collision with Ms. Banks, but credibly testified that he did not remember the event as a result of his blackout state. Tr. I at 299-300 (Rohde).

107. The Hearing Committee thus finds that Respondent's actions, considered as a whole, show that he maintained awareness of the collision for only seconds, left the scene not realizing what he had done, and thereafter conducted himself in a way that showed he had no

memory of the event. Thus, the evidence supports Dr. Whitfield's opinion that Respondent's actions following the collision were not a deliberate effort to elude the authorities or escape responsibility. *See* FF 73-76 (due to Respondent's intoxication and blackout, he could not call on his long-term memory for a proper response to the collision).

H. Respondent's Rehabilitation and Recovery

108. On October 21, 2004, the day after the collision with Ms. Banks, Respondent contacted the Lawyers' Assistance Program of the District of Columbia Bar ("LAP"). Tr. I at 293-294 (Rohde). Respondent met with a LAP counselor, contacted an attorney volunteer and began attending Alcoholics Anonymous ("AA") meetings once a week. Tr. I at 295-297 (Rohde).

109. In December 2004, Respondent considered enrolling in an outpatient treatment program at the Kolmac Clinic in Washington, D.C., but ultimately decided not to enter that program because he had remained sober since the time of the collision, and the program's requirements would have interfered with his work obligations. Tr. I at 298-299 (Rohde).

110. In May 2005, on the advice of his new Virginia attorney, Respondent entered an outpatient treatment program at the Virginia Hospital Center in Arlington, Virginia. Tr. I at 307-309 (Rohde). Respondent completed the Virginia Hospital Center outpatient treatment program in October 2005. RX 18; Tr. I at 308 (Rohde).

111. Also in May 2005, Respondent obtained an AA sponsor, and began attending at least three AA meetings per week. Tr. I at 310-311 (Rohde). Throughout most of 2007, Respondent attended a daily AA meeting beginning at 6:00 or 6:15 a.m. RX 14.

112. Respondent was active in his AA chapter, served as the chapter's treasurer and sought to assist other members. Tr. I at 329-331 (Rohde); RX 15.

113. On November 18, 2007, Respondent successfully completed his probation obligations. RX 10.

114. Both Dr. Whitfield and Dr. Blumberg agreed that as of the date of the hearing, Respondent was taking his rehabilitation seriously and had an excellent prognosis for continued sobriety. Tr. I at 464, 468-469 (Whitfield); Tr. II at 70-72 (Blumberg).

115. Since October 20, 2004, and as of July of 2013, Respondent's AA acquaintances, family members and friends noticed that Respondent remained committed to his sobriety and recovery from alcoholism. Tr. I at 447-449 (Money); Tr. I at 155-158 (Horowitz).

116. As of July 2013, Respondent continued to attend an average of four AA meetings a week, and to meet with his AA sponsor once a week. Rohde Decl. at 1. Respondent also sponsored three other men in AA, meeting often with each. *Id*. at 2.

117. As of July of 2013, Respondent continued to meet with a counselor from LAP once a month. Rohde Decl. at 2.[19]

118. Respondent volunteers for LAP, meeting with other attorneys with alcohol problems, and speaking at local law schools. Rohde Decl. at 2.

119. Respondent serves on the Board of the Arlington Hospital Addiction Treatment Alumni Association. Rohde Decl. at 2.

120. Respondent has expressed sincere remorse for his conduct and the resulting injuries to Ms. Banks. BX 15 at 12; Tr. I. at 450 (Money).

[19] The most recent evidence of Respondent's rehabilitation from alcoholism was submitted in July 2013. There is no basis to believe that there has been a change in Respondent's sobriety or his compliance with treatment for alcoholism since that time. Accordingly, and as explained below, the Hearing Committee is satisfied that the record establishes Respondent's rehabilitation from alcoholism.

I. Respondent's Post-Hearing Conduct

121. On November 16, 2010, Respondent filed an Application to Qualify as a Foreign Attorney Under Local Civil Rule 83.1(D) and Local Criminal Rule 57.4 in the United States District Court for the Eastern District of Virginia (the "Virginia *Pro Hac* Application") in a matter captioned *Damco A/S v. Draft Cargoways India (Pvt.) Ltd.*, 10-cv-00929. Respondent's firm acted as counsel for plaintiff Damco A/S. Supplement to Bar Counsel's Motion for Hearing, Attachment 1 to the Affidavit of Kathryn Ruth Yingling Schellenger, dated Aug. 19, 2013. Respondent signed the Virginia *Pro Hac* Application, on which he represented "I have not been reprimanded in any court nor has there been any action in any court pertaining to my conduct or fitness as a member of the bar." *Id.*

122. On December 15, 2010, David Y. Loh, a partner at Cozen O'Connor, filed on Respondent's behalf a Motion to Admit Counsel *Pro Hac Vice* in the United States District Court for the Southern District of New York (the "New York *Pro Hac* Application") in a matter captioned *Damco A/S v. Draft-Cargoways India (Pvt.) Ltd.*, 10 Civ. 9117 (LAK)(GLG). *See* Bar Counsel's Supplement to Bar Counsel's Reply to Respondent's Corrected Memorandum in Opposition to Bar Counsel's Rehabilitation Submission, Attachment at 1. Respondent's firm again represented plaintiff Damco A/S. *Id.* On the New York *Pro Hac* Motion, Mr. Loh represented that "[t]here are no pending disciplinary proceedings against [Respondent] in any State or Federal court." *Id.* Respondent did not sign the New York *Pro Hac* Application. *Id.*

## IV. CONCLUSIONS OF LAW

Bar Counsel has charged Respondent with (i) a crime of moral turpitude, warranting disbarment pursuant to D.C. Code § 11-2503(a); (ii) a "serious crime," as defined in D.C. Bar R. XI, § 10(b); and (iii) a violation of Rule 8.4(b) of the D.C. Rules of Professional Conduct.

As set forth below, we find that Respondent's crime does not involve moral turpitude on the facts, that it does constitute a "serious crime" within the meaning of D.C. Bar R. XI, § 10(b), and that Respondent violated Rule 8.4(b).

### A. Bar Counsel Failed to Establish that Respondent's Crime Involved Moral Turpitude on the Facts.

D.C. Code § 11-2503(a) provides that any attorney convicted of a crime involving moral turpitude shall be disbarred. The Court has defined moral turpitude as an "act denounced by the statute [that] offends the generally accepted moral code of mankind[,]" an act involving "baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man[,]" or an act "contrary to justice, honesty, modesty, or good morals." *In re Colson*, 412 A.2d 1160, 1168 (D.C. 1979) (en banc). Thus, in determining whether a given crime is one of moral turpitude, the finder of fact must "examine whether the prohibited conduct is base, vile or depraved, or whether society manifests a revulsion toward such conduct because it offends generally accepted morals." *In re Sims*, 844 A.2d 353, 361-362 (D.C. 2004). Ultimately, the question is "whether [R]espondent's conduct 'offends the generally accepted moral code.'" *In re Spiridon*, 755 A.2d 463, 468 (D.C. 2000) (quoting *Colson*, 412 A.2d at 1168).

Bar Counsel bears the burden of proving the existence of moral turpitude by clear and convincing evidence. *See In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011). Under this standard, Bar

Counsel must show that Respondent's conduct "[rose] to such a level that the legislature would have intended as a consequence the automatic disbarment of the attorney in question." *Id*. at 1185 (quoting *Spiridon*, 755 A.2d at 468).

For the reasons set forth below, we find that Bar Counsel has not established by clear and convincing evidence that Respondent's crime involved moral turpitude on the facts.

1. The Evidentiary Record Does Not Support a Finding of Moral Turpitude.

To support a finding of moral turpitude, Bar Counsel asserts that at the time of the collision with Ms. Banks, Respondent, though heavily intoxicated, was sufficiently alert to know right from wrong, and that Respondent consciously decided to leave the scene of the collision, in violation of the law. Bar Counsel's Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanction ("B.C. Br.") at 37-38. In response, Respondent argues that at the time of the collision, he was suffering an alcoholic blackout that rendered him unable to conform his conduct to the requirements of the law, and that he thus did not act with moral turpitude. Respondent's Proposed Findings of Fact and Conclusions of Law and Recommendation as to Sanction ("Resp. Br.") at 2-4.

The primary evidence of Respondent's impairment is his own testimony, which we credit. As detailed above, Respondent credibly testified that he drank heavily at Rumors, and that he did not recall paying his bar tab or leaving the bar. *See* FF 48-50, 58. Respondent further testified that he did not recall retrieving his car from his office parking garage, or driving home. FF 51. Respondent also did not remember the collision with Ms. Banks, and did not notice the extensive police activity outside his home following the collision. FF 52-53. Respondent specifically testified that upon waking in a disheveled state on the morning of October 21, 2004, he had "no memory of the events the night before[,]" and that he was "surprised and confused" to find that his vehicle was not in his driveway. FF 54-55.

Respondent's testimony is corroborated by his neighbor, Joshua Horowitz, who credibly testified that after he visited Respondent and informed him of the collision of the previous night, Respondent "went white," began pacing and breathing rapidly, and "looked very agitated[.]" FF 61-63**.** Based on his observations, Mr. Horowitz concluded that, prior to that conversation, Respondent "clearly had no idea . . .about the injury" to Ms. Banks. FF 63.

Respondent's testimony is further corroborated by Bar Counsel's and Respondent's expert witnesses, who agreed that at the time of the collision, Respondent was suffering an alcoholic blackout, and that but for his extreme drunkenness, Respondent would not have left the scene of the collision. *See* FF 79, 88, 96; *see also* Tr. I at 462, 519; RX 5-B (Whitfield); Tr. II at 18, 27, 83 (Blumberg); BX 15 at 15.

Upon these facts, we find that Bar Counsel has failed to prove by clear and convincing evidence that Respondent's conduct offended "the generally accepted moral code" and thus involved moral turpitude. There is no dispute about the existence of Respondent's alcoholic blackout. The key issue in determining whether his conduct was "base, vile, or depraved," is whether Respondent left the scene deliberately, to avoid being apprehended, or whether he acted without an understanding of what had just occurred. As explained above, we credit Respondent's testimony that he had no memory of the collision and, more importantly, Dr. Whitfield's opinion that *at the time* Respondent left the scene, he was incapable of properly responding – by remaining to assist Ms. Banks and accepting the consequences of his actions. Because Bar Counsel did not establish that Respondent acted with the requisite mental state, we find the evidence insufficient to establish moral turpitude. *See Allen*, 27 A.3d at 1187-1188.

Our findings distinguish this case from *In re Tidwell*, 831 A.2d 953 (D.C. 2003), upon which Bar Counsel principally relies to support a finding of moral turpitude. *See* B.C. Br. at 35-

38. In that case, the Court found that the respondent's conviction in New York of felony hit and run involved moral turpitude on the facts. *Tidwell*, 831 A.2d at 956-57. The evidence showed that Tidwell struck and killed a cyclist while driving drunk. *Id*. at 955. At the time of the incident, Tidwell was aware that he had "hit something" with enough force to shatter his car's windshield. *Id*. at 961. The moral turpitude determination was based on the Hearing Committee's express finding that Tidwell was not so drunk "as to lose his cognitive abilities or his moral sense[.]" *In re Tidwell*, Bar Docket No. 403-99 at 18-19 (HC Oct. 4, 2001). Further, after the collision, Tidwell attempted to conceal his damaged car and actively impeded the police investigation. 831 A.2d at 956; HC Rpt. at 20 (documenting actions taken by Tidwell following the collision that were inconsistent "with an innocent mind"). In ultimately pleading guilty to felony hit and run, Tidwell admitted that he had been capable of reporting the hit and run at the time it happened, but that he "panicked" and was "in denial" about the event. 831 A.2d at 956 n.5; HC Rpt. at 13.[20] Finally, Tidwell's evidence concerning alcoholic blackout was speculative and weak, and contradicted the admissions he made during his plea hearing. *Id*.; 831 A.2d at 959-960.

In contrast, Respondent consistently and credibly testified that he does not remember driving home or colliding with Ms. Banks, which was corroborated by the testimony of Mr. Horowitz. Unlike Tidwell, Respondent left his car outside his house, in open view, and made no attempt to impede the police investigation. Further, the evidence of alcoholic blackout is not

[20] Although Tidwell argued before the Board that he was suffering an alcoholic blackout at the time of the hit and run, that evidence was rejected as untimely, because it had not been presented to the Hearing Committee. *Tidwell*, 831 A.2d at 960.

contradicted by any statements made by Respondent in the Virginia criminal case. *See infra* at 39-41. Accordingly, *Tidwell* does not support a finding of moral turpitude in this case.

2. Respondent's Evidence of Alcoholism and Alcoholic Blackout Is Admissible.

Separately, Bar Counsel asserts that the Hearing Committee should exclude Respondent's evidence of alcoholism or alcoholic blackout because (i) such evidence is inadmissible under *In re Hopmayer*, 625 A.2d 290 (D.C. 1993); and (ii) the evidence is inconsistent with the elements of Section 46.2-894 of the Code of Virginia, the crime to which Respondent pleaded guilty. *See* B.C. Br. at 37. For the following reasons, the Hearing Committee finds that Respondent's evidence is admissible.

First, Bar Counsel argues that *Hopmayer* precludes Respondent from relying on any evidence of disability, such as alcohol-induced blackout, "to negate the moral turpitude arising from the facts and circumstances of his offense." B.C. Br. at 41. However, in *Spiridon*, the Court expressly rejected that argument, holding that *Hopmayer* does not bar consideration of "mitigating circumstances," such as substance abuse, "in making the determination in the first instance whether moral turpitude exist[s] on the facts of a particular case." *Spiridon*, 755 A.2d at 467. The Court explained that *Hopmayer* merely "precludes consideration of mitigating circumstances *after a determination of moral turpitude has been made*," because D.C. Code § 11-2503(a) mandates disbarment for any offense involving moral turpitude. *Id*. (emphasis added). But where the crime at issue does not involve moral turpitude *per se*, "a hearing committee must examine the facts and circumstances of the crime to determine whether it involved moral turpitude." *Id*. at 466 (citing *Colson*, 412 A.2d at 1165). Accordingly, the Court has considered alcoholism, drug addiction, or other psychological issues in determining whether a crime involves moral turpitude on the facts. *See Spiridon*, 755 A.2d at 468-69 (no moral

turpitude where the respondent suffered "psychological disturbances," including alcoholism); *In re Soininen*, 783 A.2d 619, 621 (D.C. 2001) (no moral turpitude where the respondent's conduct was "substantially affected by her addiction" to alcohol and prescription drugs); *Allen*, 27 A.3d at 1187-1188 (no moral turpitude based upon evidence that the respondent was under extraordinary stress).

Here, the Hearing Committee similarly is tasked with making a determination "in the first instance" whether moral turpitude exists on the facts of this case. Thus, *Hopmayer* does not preclude the Hearing Committee from considering Respondent's evidence of alcoholism and alcoholic blackout in determining whether he committed a crime of moral turpitude.

Second, we find that Respondent's evidence of alcoholism and alcoholic blackout is consistent with his guilty plea and conviction for felony hit and run. Section 46.2-894 of the Code of Virginia, the statute to which Respondent pleaded guilty, provides in relevant part:

> The driver of any vehicle involved in an accident in which a person is killed or injured . . .shall immediately stop as close to the scene of the accident as possible without obstructing traffic . . .and report his name, address, driver's license number, and vehicle registration number forthwith to the State Police or local law-enforcement agency, to the person struck and injured if such person appears to be capable of understanding and retaining the information, or to the driver or some other occupant of the vehicle collided with or to the custodian of other damaged property.

To obtain a felony conviction under the statute, the prosecution "must prove that the defendant possessed actual knowledge of the occurrence of the accident, and such knowledge of the injury which would be attributed to a reasonable person under the circumstances of the case." *Kil v. Commonwealth*, 407 S.E.2d 674, 679 (Va. Ct. App. 1991). This standard "require[s] subjective knowledge of the collision while holding the driver to a stricter reasonable man standard as to the fact or extent of the injury." *Id*. (quoting *Commonwealth v. Kauffman*, 470

A.2d 634, 637 (Pa. Super. 1983)). Moreover, "[k]nowledge of injury may be imputed to the driver 'where the fact of personal injury is visible or where the seriousness of the collision would lead a reasonable person to assume there must have been resulting injuries.'" *Neel v. Commonwealth*, 641 S.E.2d 775, 778 (Va. Ct. App. 2007) (quoting *People v. Carter*, 243 Cal. App. 2d 239 (Cal. Ct. App. 1966)). Thus, under Virginia law, a defendant may be convicted of felony hit and run absent evidence that the defendant actually knew that the victim was injured; such knowledge may be imputed to the defendant based on the surrounding facts and circumstances.

Under this standard, Respondent's guilty plea was not an admission that he left the scene, knowing that he had injured someone. Instead, the plea constituted an admission that Respondent (i) was aware of the collision at the instant it occurred; and (ii) under the circumstances, a reasonable person would have known that someone had been injured. *See Kil*, 407 S.E.2d at 679. Respondent's plea is thus entirely consistent with Dr. Whitfield's testimony that Respondent was immediately aware of the collision, but retained an awareness of it for only seconds after, as Respondent was unable to access the part of his long term memory that would have informed a proper response. *See* FF 77.

Thus, Respondent's defense of alcoholic blackout is reconcilable with representations made in the underlying criminal matter. Moreover, it is clear that in accepting Respondent's guilty plea, the Virginia court was fully aware of Respondent's alcoholic blackout. Thus, at the plea hearing, the prosecutor informed the court that Respondent was intoxicated "to the point that he didn't know what happened." BX 5 at 14 (transcript of Respondent's sentencing hearing); *see also* BX 5 at 7; BX 3 at 17 (transcript of Respondent's plea hearing, in which Respondent's counsel asserts that "[it] was an unknowing hit and run"); BX 4 at ¶ 7 (Affidavit of

Wayne Rohde, dated November 4, 2005, stating that Respondent does not recall the accident). And at sentencing, Respondent's counsel represented that Respondent "really was in a blackout[,]" and "that he did not know what happened till [sic] he was awakened by a neighbor in this matter." BX 5 at 7.

Absent an admission in the criminal case that, as a matter of fact, Respondent left the scene, knowing that he had caused injury to another, we cannot find that Respondent's guilty plea and conviction contradict the fact and expert evidence of alcohol-induced blackout.[21]

B. Respondent Violated Rule 8.4(b).

Rule 8.4(b) provides that "[i]t is professional misconduct for a lawyer to . . . [c]ommit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects[.]" The Rule is intended to "sanction only those criminal acts that implicate and call into question the fundamental characteristics we wish attorneys to possess." *In re Harkins*, 899 A.2d 755, 759 (D.C. 2006). The focus should be on "whether the offense 'indicate[s] [a] lack of those characteristics relevant to law practice,' and '[a] pattern of repeated offenses, even ones of minor significance [which] when considered separately, can indicate

[21] For the same reasons, we deny Bar Counsel's motion *in limine* to exclude Respondent's evidence of alcoholism or alcoholic blackout. As noted above, on September 13, 2007, Bar Counsel filed with the Board a motion *in limine* to exclude evidence of Respondent's alcoholism or alcoholic blackout, arguing that such evidence represented an attempt by Respondent to deny an element of the offense of which he had been convicted. By Order dated September 26, 2007, the Board denied Bar Counsel's motion *in limine*, without prejudice to renew the motion before the Hearing Committee. On October 5, 2007, Bar Counsel renewed its motion *in limine*. Following a pre-hearing conference, the Hearing Committee issued an order, dated October 23, 2007, denying Bar Counsel's motion *in limine*, without prejudice to its renewal in post-hearing submissions. In its post-hearing briefs, Bar Counsel referenced, but did not explicitly renew its motion *in limine*. B.C. Br. at 8; Bar Counsel's Reply to Respondent's Proposed Findings of Fact and Conclusions of Law and Recommendation as to Sanction at 11-12. However, Bar Counsel's post-hearing submissions advance substantially the same argument as the motion *in limine*. Thus, we will treat Bar Counsel's motion as renewed, and deny it here.

indifference to legal obligation.'" *In re Reynolds*, 649 A.2d 818, 819 (D.C. 1994) (per curiam) (Farrell, J., concurring) (citing Comment [1] to Rule 8.4(b)).

We find that Bar Counsel has proven, by clear and convincing evidence, that Respondent violated Rule 8.4(b). In pleading guilty to felony hit and run, Respondent admitted that (1) he was at least momentarily aware of the collision (*see supra* at 40); and (2) under those facts, a reasonable person would have known that another person had been injured or killed in the collision. Thus, despite having no subsequent memory of the collision, Respondent has admitted that his conduct failed to conform to that reasonably expected of a Virginia driver. Respondent further conceded, both in this disciplinary matter and in his criminal case, that the collision resulted from his extreme intoxication. He has also supplied evidence establishing that he habitually abused alcohol for many years prior to the collision, and that he frequently drove drunk. Indeed, the evidence shows that prior to the collision, Respondent had been involved in at least four single-car accidents while drunk.

In the context of his history of alcohol abuse and drunk driving, Respondent's hit and run fits within a pattern of indifference to legal obligation, and reflects adversely upon his fitness as an attorney. Indeed, in similar cases, the Court has found that pattern of alcohol abuse and drunk driving, culminating in a drunk-driving related accident and conviction, constitutes a violation of Rule 8.4(b). *See In re Reynolds*, 763 A.2d 713-714 (D.C. 2000) (per curiam) ("*Reynolds II*") (no moral turpitude, but violation of Rule 8.4(b) where respondent was convicted of two counts of DWI, felony hit and run, and eluding; no injury to another person, but evidence of "an extended pattern of alcohol abuse over more than a decade."); *In re Small*, 760 A.2d 612, 613-614 (D.C. 2000) (per curiam) (no moral turpitude, but violation of Rule 8.4(b) where respondent was

convicted of vehicular negligent homicide as a result of an alcohol-related collision; evidence of a pattern of prior traffic violations established a pattern of indifference to the rule of law).[22]

Accordingly, we find that Respondent violated Rule 8.4(b).

C. Respondent Committed a Serious Crime Under D.C. Bar R. XI, § 10(b).

Bar Counsel also asserts that Respondent's crime constitutes a "serious crime" under D.C. Bar R. XI, § 10(b). That section defines a "serious crime" as:

> (1) any felony, and (2) any other crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

D.C. Bar R. XI, § 10(b).

Respondent argues that his crime is not a "serious crime," as defined by § 10(b), because the analogous offense of hit and run is a misdemeanor in the District of Columbia. Resp. Br. at 71-76. Respondent further emphasizes that at the outset of this case, the Court, in an Order dated December 5, 2005, granted Respondent's Motion to Have Felony Criminal Conviction in Virginia Treated as a "Non-Serious" Crime or, in the Alternative, to Set Aside Order of Suspension in the Interest of Justice. *Id*. at 52-53.

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[22] The Court reached a different result in *In re Hoare*, 727 A.2d 316 (D.C. 1999) (per curiam). In that case, the respondent was convicted of aggravated reckless homicide after causing the death of another person while driving drunk. *Id*. at 316. The Board found, and the Court agreed, that the respondent had not violated Rule 8.4(b), because the accident in question was an isolated act. The Board noted, however, that its "conclusion might be otherwise if [the respondent] had a history of drug or alcohol abuse and had failed to take remedial action." *In re Hoare*, Bar Docket No. 241-96 at 5 (BPR Oct. 19, 1998). Here, the record shows that Respondent had such a history of alcohol abuse and of alcohol-related accidents, yet failed to take remedial action or to cease driving drunk.

Respondent's position that he was not convicted of a "serious crime" is entirely lacking in support. First, Respondent's crime of felony hit and run in violation of Code of Virginia § 46.2-894 is clearly a "serious crime," because it is a felony punishable by up to ten years' imprisonment. *See In re McBride*, 602 A.2d 626, 632 (D.C. 1992) (en banc) (explaining that a misdemeanor is a crime for which "the legislature has determined that particular conduct, though criminal, is not serious enough to warrant punishment beyond the misdemeanor range," and defining "misdemeanor range" as one year of imprisonment).[23] Moreover, there is no precedent requiring the Court to identify the analogous District of Columbia offense, where an attorney is subject to disciplinary proceedings based on a conviction in a foreign jurisdiction, before determining whether the conviction is for a "serious crime." Instead, the Court has routinely found a "serious crime" based on a conviction in another jurisdiction of a crime classified by that jurisdiction as a felony. *See*, *e.g.*, *Hoare*, 727 A.2d at 316 (respondent convicted of aggravated reckless homicide, an Illinois felony).

*In re Brown*, Bar Docket No. 88-97 (BPR Dec. 10, 2003), *recommendation adopted*, 851 A.2d 1278, 1279 (D.C. 2004) (per curiam), cited by Respondent, is not to the contrary. *See* Resp. Br. at 72-73. In that case, the respondent was convicted in New Jersey of third degree securities fraud, which was classified as a misdemeanor punishable by up to five years in prison. *Brown*, Board Report at 17. Although the crime was classified in New Jersey as a misdemeanor, the Board found that it was a "serious crime," because under New Jersey law, the distinction between felonies and misdemeanors is different than in the District of Columbia, and thus the

[23] A "felony" under District of Columbia law has been defined as "any offense for which the maximum penalty is imprisonment for more than one year," and a misdemeanor is a crime punishable by a maximum term of imprisonment of no more than one year. *See Henson v. United States*, 399 A.2d 16, 20 (D.C. 1979).

New Jersey "misdemeanor" classification was not useful. *Id*. at 16. Rather, in those unique circumstances, the Board evaluated the seriousness of the crime by looking at the maximum sentence respondent was subject to in New Jersey, and the classification of the same crime under District of Columbia law. *Id*. at 17. Because both New Jersey and the District of Columbia applied a maximum punishment of more than one year in prison, the crime was properly classified as a felony, and thus was a "serious crime." *Id*. at 17-18.

Here, Virginia classifies Respondent's crime as a felony, punishable in the felony range. Thus, there is no need to identify an analogous District of Columbia offense in order to evaluate whether Respondent committed a "serious crime." Further, we reject Respondent's argument that in every attorney discipline case based on a conviction in another state, the Court must determine whether the offense at issue is a "serious crime" by identifying an "analogous" District of Columbia statute. As a matter of comity, it is appropriate to abide by the classification in the state where the attorney was convicted whenever possible. In a case like *Brown*, where the foreign state classifies the crime as a misdemeanor, but the respondent is subject to a maximum sentence in the felony range, it may be appropriate to look to District of Columbia law for guidance in evaluating the seriousness of the offense. However, that analysis is not necessary where, as here, the foreign state has classified the crime as a felony, and Respondent was subject to a maximum sentence in the felony range. Additionally, Respondent's proposed approach would be difficult to implement because in many cases, there may not be a readily apparent analogous District of Columbia offense.

Finally, in its December 5, 2005 Order, the Court expressly withheld judgment as to whether Respondent committed a "serious crime" within the meaning of D.C. Bar R. XI, § 10(b)

when it declined to order his immediate suspension.[24] Accordingly, nothing in that Order affects our conclusion that Respondent's crime, classified as a felony punishable by up to ten years imprisonment, constitutes a "serious crime."[25]

## V. SANCTION

We turn to the appropriate sanction for Respondent's violation of Rule 8.4(b), and his commission of a "serious crime" as defined by D.C. Bar R. XI, § 10(b).

For the reasons set forth below, we recommend that Respondent be suspended for two years, with a fitness requirement, with the suspension stayed and Respondent placed on probation for a period of three years, contingent upon his continuing sobriety and adherence to a program of alcohol rehabilitation.

### A. Standard of Review

"The appropriate sanction is what is necessary to protect the public and the courts, to maintain the integrity of the profession, and to deter other attorneys from engaging in similar misconduct." *In re Evans*, 902 A.2d 56, 74 (D.C. 2006) (per curiam) (quoting *In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002)). An appropriate sanction is determined by considering the following factors: the nature and seriousness of the misconduct, prior discipline, prejudice to the

[24] D.C. Bar R. XI, § 10(c) provides that any attorney who has been convicted of a "serious crime" shall be suspended pending final disposition of any disciplinary proceedings, but further states that the Court may set aside the order of suspension "[u]pon good cause shown . . . when it appears in the interest of justice to do so."

[25] Bar Counsel also asserts that Respondent's crime constitutes a "serious crime" because it involves serious interference with the administration of justice. *See* B.C. Br. at 45-46. Bar Counsel's argument is inapplicable to Respondent, because he was convicted of a felony, and any felony is a "serious crime" under D.C. Bar R. XI, § 10(b). Under subsection 10(b), misdemeanors involving certain enumerated elements, including interference with the administration of justice, also are classified as "serious crimes."

client (if any), the respondent's attitude, and circumstances in aggravation and mitigation. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)); *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc). Under D.C. Bar R. XI, § 9(h), the sanction imposed also must be consistent with cases involving comparable misconduct.

B. Application of the Sanction Factors

Respondent violated Rule 8.4(b) and committed a "serious crime" under D.C. Bar R. XI, § 10(b). Respondent's conduct was indisputably serious, as it resulted in severe injuries to an innocent bystander. We find that Respondent has expressed genuine remorse for his criminal conduct, and particularly note that Respondent sought to compensate the victim of his crime, ceased drinking and has actively sought treatment for his alcoholism since the time of the collision. Respondent has no record of prior discipline. Finally, Respondent's misconduct was not related to the practice of law, and had no potential to harm any client.

C. The Mandate to Achieve Consistency

In recommending an appropriate sanction, the Hearing Committee must comply with the mandate to achieve consistency under D.C. Bar R. XI, § 9(h)(1). Based on an examination of Respondent's misconduct in light of the applicable sanction factors and case law, we have concluded that the appropriate sanction is a two-year suspension.

As discussed above, there is ample precedent to guide the sanction determination here. In *Hoare*, for example, the respondent drove drunk and collided with another car, killing its driver. The respondent was found to have committed a "serious crime," but not to have committed a crime of moral turpitude or a violation of Rule 8.4(b), where the respondent did not leave the scene of the accident, and had no history of alcohol abuse or prior disciplinary violations. The Board concluded that "[i]n the absence of aggravating factors, we do not believe that an aberrant

act of vehicular homicide exposes ethical infirmities that warrant disbarment." *Hoare*, Board Report at 4. The Court adopted the Board's recommendation of a two-year suspension. *Hoare*, 727 A.2d at 317.

Similarly, in *Small*, the respondent was convicted of negligent homicide and DWI after driving drunk and killing another person. The respondent was found to have violated Rule 8.4(b), and also Rule 8.1(b), based on his failure to disclose his negligent homicide conviction to the District of Columbia Bar while his Bar application was pending. *Small*, 760 A.2d at 613. The Court accepted the Board's recommendation of a three-year suspension with a fitness requirement, noting that the respondent's repeated traffic violations and disregard for the law, as well as his lack of candor on his D.C. Bar application, reflected adversely on his fitness as a lawyer. *Id*. at 614. In *Reynolds*, the respondent was convicted in Virginia of DWI, hit and run, and eluding a police officer after driving drunk and leading police on a high speed chase. *See In re Reynolds*, Bar Docket Nos. 506-97 and 238-99 at 7-8 (BPR May 8, 2000). The Court found that the respondent had violated Rule 8.4(b), but had not committed a crime of moral turpitude, and accepted the Board's recommendation of a six-month suspension with a fitness requirement. *Reynolds II*, 763 A.2d at 715. Finally, in *Tidwell*, discussed above, the respondent drove drunk and killed a cyclist, and ultimately was convicted of felony hit and run. 831 A.2d at 954. Based upon evidence that the respondent consciously left the scene of the accident and then attempted to conceal his involvement, the Court found that the respondent's crime involved moral turpitude, and thus disbarred him pursuant to D.C. Code § 11-2503(a). *Id*. at 954-55.

Based on the foregoing, we find that a two-year suspension best meets the consistency requirement of D.C. Bar R. XI, § 9(g). We find *Hoare* to be the most comparable case, because it also involved a drunk driving-related offense classified as a "serious crime." We recognize

that *Hoare* is distinguishable insofar as the respondent did not leave the scene of the accident and had no history of alcohol abuse (unlike the Respondent here). However, we have found that because of his alcoholic blackout, Respondent left the scene unaware that a collision had occurred. We thus consider Respondent's level of culpability equivalent to *Hoare*. We understand that Respondent has a history of alcohol abuse, while Hoare did not, but believe that this is best addressed under the *Kersey* probation we recommend, and not by increasing the underlying sanction beyond a two-year suspension. *See infra* at 51-57.

We also find Respondent's misconduct less serious than *Small*, where a three-year suspension was imposed. Unlike *Small*, Respondent was not found to have violated any other disciplinary rules, and otherwise has not shown a disregard for the law or his ethical obligations.[26]

D. Fitness Requirement

In charging Respondent with a crime of moral turpitude and seeking his disbarment, Bar Counsel has implicitly asserted that a fitness requirement should be imposed. As discussed below, the Hearing Committee agrees that a fitness requirement should be included as part of the underlying sanction in this case.

The Court established the standard for the imposition of a fitness requirement in *In re Cater*, 887 A.2d 1 (D.C. 2005). The Court held that "to justify requiring a suspended attorney to

[26] The Hearing Committee recognizes the substantial delay that has occurred since this matter commenced. The delay, as significant as it is, however, is insufficient to mitigate the two-year suspension otherwise necessary to protect the public. *See In re Howes*, 52 A.3d 1, 18 n.22 (D.C. 2012) (the mere fact of delay does not warrant mitigating the sanction necessary to protect the public; there must be "unique and compelling" reasons to reduce the otherwise appropriate sanction). Moreover, we note that Respondent has had the benefit of retaining his license to practice throughout the duration of this proceeding.

prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id*. at 6. Proof of a "serious doubt" under *Cater* involves more than "no confidence that a Respondent will not engage in similar conduct in the future." *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes instead "real skepticism, not just a lack of certainty." *Id*. (quoting *Cater*, 887 A.2d at 24).

In determining whether a fitness requirement is appropriate, the Court has found that the five factors for reinstatement set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985), should be applied. They include:

> (1) the nature and circumstances of the misconduct for which the attorney was disciplined;
>
> (2) whether the attorney recognizes the seriousness of the misconduct;
>
> (3) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;
>
> (4) the attorney's present character; and
>
> (5) the attorney's present qualifications and competence to practice law.

*Cater*, 887 A.2d at 21, 25. However, the Court has further explained that "[i]n most cases, it is the attorney's misconduct that casts the requisite serious doubt on the attorney's fitness." *In re Bradley*, 70 A.3d 1189, 1196 (D.C. 2013) (per curiam) (quoting *Cater*, 887 A.2d at 24-25).

Respondent's misconduct was sufficiently serious to warrant the imposition of a fitness requirement. We recognize that Respondent has acknowledged the seriousness of his crime, and that since the time of the collision, Respondent compensated the victim, Ms. Banks, and successfully pursued treatment for his alcoholism. Further, Respondent's crime did not concern his qualifications or competence to practice law, which have never been questioned. At the same

time, Respondent's pattern of disregard for the law, culminating in his conviction, is extremely troubling. Respondent admitted that prior to his collision with Ms. Banks, he had driven home drunk "at least hundreds" of times. FF 14. Respondent previously was involved in at least four single car accidents while drunk. FF 47. With respect to two of those accidents, Respondent did not recall what had happened. *Id*. Respondent routinely drank excessively and suffered alcoholic blackouts. FF 44-46.

In short, Respondent's pattern of disregard for the law culminated in his head-on collision with Ms. Banks, which caused her severe injuries. Respondent's habit of drunk driving easily could have caused the death of Ms. Banks, or another innocent victim. Based on the foregoing, we find clear and convincing evidence that raises a serious doubt concerning Respondent's fitness to practice. *See Cater*, 887 A.2d at 24; *see also Bradley*, 70 A.3d at 1196 (fitness requirement appropriate based on severity of misconduct).

E. *Kersey* Mitigation

The Court has permitted mitigation of sanction where a respondent's misconduct was shown to be caused by a disabling addiction, such as chronic alcoholism. *See Kersey*, 520 A.2d at 326-327. As explained below, we find that Respondent has established his eligibility for *Kersey* mitigation.

*Kersey* mitigation is available where the respondent demonstrates:

> (1) By clear and convincing evidence that the respondent had a disability;
>
> (2) By a preponderance of the evidence that the disability substantially affected the respondent's misconduct; and
>
> (3) By clear and convincing evidence that the respondent has been substantially rehabilitated.

*See In re Stanback*, 681 A.2d 1109, 1114-1115 (D.C. 1996); Board Rule 11.13. If Respondent satisfies his burden of proof, he is eligible to be placed on probation in lieu of part or all of a suspension or disbarment. *Id*. As explained below, the Hearing Committee finds that Respondent has satisfied the three factors necessary to establish *Kersey* mitigation.

1. Respondent Suffered from a Disability.

There is no dispute that at the time of the collision, Respondent was an alcoholic, a well-recognized disability that qualifies for *Kersey* mitigation. *See, e.g., Kersey* 520 A.2d at 327; *In re Whitehead*, 883 A.2d 153, 154 (D.C. 2005) (per curiam). Respondent presented clear and convincing evidence, none of it disputed by Bar Counsel, showing that he had routinely abused alcohol for many years prior to the collision. Thus we find that Respondent has satisfied the first *Kersey* factor.

2. Respondent Established the Required Nexus Between His Alcoholism and His Crime.

To establish the second *Kersey* factor, Respondent must prove by a preponderance of the evidence that there is "a sufficient nexus between [his disability] and his misconduct" and that "removal of the substantial contributing factor . . . would eliminate the offensive conduct, even if there are other reasons for some of the misconduct." *In re Zakroff*, 943 A.2d 409, 423 (D.C. 2007) (citing *Kersey*, 520 A.2d at 327 n.16); *see also In re Temple*, 596 A.2d 585, 590 (D.C. 1991) (explaining "that there must be a close nexus between the misconduct and the mitigating factor proffered, whether alcoholism, drug addiction or mental illness[,]" and holding that this test was met even though the respondent "was able to manage an appearance of normalcy in his law practice[.]").

On this issue, though Dr. Whitfield and Dr. Blumberg disagreed on the effects of Respondent's alcoholic blackout, both experts concurred that Respondent's misconduct would

not have occurred but for his alcoholism. Thus, we find that Respondent has established by a preponderance of the evidence that his alcoholism substantially caused him to engage in the misconduct at issue.[27] *Stanback*, 681 A.2d at 1114-1115.

3. Rehabilitation

To satisfy the final *Kersey* factor, Respondent must show by clear and convincing evidence that he has been "substantially rehabilitated." The Court considers evidence of rehabilitation, because "an attorney should not be punished simply for punishment's sake. If the attorney no longer poses a threat to the public welfare, or if that threat is manageable and may be controlled by a period of probation, then disbarment or a period of actual suspension may be unnecessary." *In re Appler*, 669 A.2d 731, 740 (D.C. 1995). The Court has observed that "[t]he 'substantial rehabilitation' prong of *Kersey* in essence imposes a sort of fitness requirement on the attorney who seeks mitigation of sanctions under this doctrine." *In re Robinson*, 736 A.2d 983, 989 (D.C. 1999).

Respondent has presented clear and convincing evidence that he is substantially rehabilitated from his alcoholism. There is no dispute that Respondent ceased drinking after the collision. Both expert witnesses agreed that, as of the date of the hearing in this case, Respondent's prognosis for recovery from alcoholism was excellent. FF 114. The record shows that since that time, Respondent has actively sought treatment for his alcoholism by, among other things, enrolling in a substance abuse treatment program, and regularly participating in

[27] We recognize that it may appear incongruous to conclude that Respondent's alcoholism is a mitigating factor in determining the sanction to be imposed for his conviction of an alcohol-related offense. However, nothing in *Kersey* or its progeny prohibits its application to a crime involving substance abuse, where, as here, it is clear that the substance abuse was a substantial cause of the criminal conduct.

Alcoholics Anonymous meetings over the course of nearly ten years. FF 116. In particular, Respondent's continued sobriety and rehabilitation are substantiated by members of the District of Columbia Bar's Lawyer Assistance Program, other AA members, and Respondent's professional supervisor. FF 115-117.

Bar Counsel does not dispute the adequacy of Respondent's rehabilitation evidence relating to his ongoing abstinence from alcohol. However, Bar Counsel argues that Respondent's failure to disclose the existence of this pending disciplinary proceeding in two *pro hac vice* applications, filed in 2010 in two related matters (the "Damco Litigations") in the United States District Courts for the Eastern District of Virginia and the Southern District of New York, shows that he has not been rehabilitated.[28]

Bar Counsel maintains that Respondent failed to disclose this information in order avoid losing a client or disappointing his employer, Cozen O'Connor. In Bar Counsel's view, Respondent's *pro hac vice* applications show that he continues to engage in dishonesty when it is in his personal interest to do so, and demonstrate a lack of credibility that precludes a finding that Respondent has been substantially rehabilitated. Respondent counters that he was not required to disclose the existence of this proceeding on either *pro hac vice* application, because the applications only requested information concerning disciplinary proceedings pending before a "court," and the Board and its hearing committees are not "courts." *See* Respondent's Response to Bar Counsel's Supplement to Bar Counsel's Reply to Respondent's Corrected Memorandum

[28] In the Virginia *Pro Hac* Application, Respondent asserted that "I have not been reprimanded in any court nor has there been any action in any court pertaining to my conduct or fitness as a member of the bar." *See* FF 121. Respondent did not make a statement regarding the pending disciplinary proceeding in the New York *Pro Hac* Application. However, another lawyer with Respondent's firm represented that "[t]here are no pending disciplinary proceedings against Wayne Rohde in any State or Federal court [sic]." FF 122.

in Opposition to Bar Counsel's Rehabilitation Submission at 2. In addition, Respondent notes that he consulted with a partner, Marc Fink, prior to filing the Virginia *Pro Hac* Application, and that they jointly determined, in good faith, that Respondent was not required to disclose the existence this proceeding. *See Id*., Declaration of Marc J. Fink, (attached to Respondent's Memorandum in Opposition to Bar Counsel's Motion for a Hearing and in Reply to Bar Counsel's Rehabilitation Submission) at ¶ 8. Respondent maintains that his consultation with Mr. Fink shows that the subsequent New York *Pro Hac* Application, which was part of the same underlying proceeding, also was filed in good faith. Respondent's Response to Bar Counsel's Reply to Respondent's Corrected Memorandum in Opposition to Bar Counsel's Rehabilitation Submission at 2-3. Respondent's position is supported by Mr. Fink, who refuted Bar Counsel's argument that Respondent could have lost a client or disappointed his employer if he had been unable to obtain *pro hac* admission in either of the Damco Litigations. He explained that Damco was not Respondent's client, but instead a client of another attorney at the firm, and that Respondent's law firm was well aware of this disciplinary proceeding. Fink Decl. at ¶¶ 4-7.

Respondent's responses in his *pro hac vice* applications, that he did not have any disciplinary matter pending before any "court," while perhaps "technically true", could be interpreted as misleading. *See In re Shorter*, 570 A.2d 760, 768 (D.C. 1990) (per curiam) (a "technically true" statement was dishonest because "respondent knew what information the IRS was after" but did not provide it because "the IRS did not ask just the right questions[.]"). Although the Board is not a "court," this matter was referred to the Board by the District of Columbia Court of Appeals, and is conducted pursuant to the Court's jurisdiction over attorney discipline. *See* D.C. Bar R. XI, § 1(a). Furthermore, at the outset of this case, Respondent litigated the issue of his temporary suspension before the Court.

At the same time, Bar Counsel has failed to establish that Respondent had any motive or intent to mislead the District Courts or to conceal the existence of this proceeding in order to obtain *pro hac vice* admission. As Respondent notes, his employer already was aware of the existence of this disciplinary proceeding. Fink Decl. ¶ 5. Second, in each of the two cases at issue, at least one other attorney from Respondent's firm obtained *pro hac vice* admission; thus, in no case was Respondent the only attorney capable of representing the client before the federal courts. Fink Decl. ¶ 4. Additionally, Respondent was not the responsible, or "originating" attorney in either case, and the client at issue was not Respondent's client; thus, it is unlikely that Cozen O'Connor would have lost the client if Respondent had not been able to obtain *pro hac vice* admission. *Id*. Based on the foregoing, we find that Bar Counsel has failed to establish that Respondent intended to mislead the United States District Courts for the Eastern District of Virginia and the Southern District of New York when he submitted *pro hac vice* applications in the Damco Litigations. Accordingly, the *pro hac vice* applications do not affect the Hearing Committee's view of Respondent's credibility, or our finding that he has established his rehabilitation from alcoholism, a finding that is based on overwhelming evidence and is not seriously contested by Bar Counsel.

Thus, there is no basis to refer this matter for a hearing to expand the record on the question of Respondent's rehabilitation, including whether Respondent provided technically true, but misleading statements in the two *pro hac vice* applications at issue. We thus deny Bar Counsel's motion for a hearing with respect to Respondent's rehabilitation evidence.

4. Probation

A respondent who establishes all three *Kersey* factors may be entitled to have his entire sanction stayed in favor of probation. *See, e.g.*, *Kersey*, 520 A.2d at 528 (disbarment stayed in

favor of probation); *Temple*, 629 A.2d at 1210 (D.C. 1993) (same); *In re Verra*, 932 A.2d 503, 505 (D.C. 2007) (same). D.C. Bar R. XI, § 3(a)(7) provides that any period of probation shall be no longer than three years.

Here, we recommend that the entirety of Respondent's two year suspension be stayed, in favor of a three-year period of supervised probation, subject to the following conditions. Respondent shall:

(a) not commit any other disciplinary rule violations;

(b) maintain his sobriety;

(c) be subject to sobriety monitoring;

(d) meet as frequently as necessary to maintain his sobriety with a representative of the D.C. Bar Lawyer Assistance Program[29] ; and

(e) attend Alcoholics Anonymous meetings as often as he, his LAP representative, and other involved experts deem necessary.

If Bar Counsel has probable cause to believe that Respondent has violated any of the terms of probation, Bar Counsel may seek to revoke Respondent's probation, pursuant to Board Rule 18.3.

[29] Respondent will be required to sign a confidentiality waiver so that a LAP representative may confirm his compliance with this condition of probation.

## VI. CONCLUSION

The Hearing Committee finds that Respondent violated Rule 8.4(b) and committed a "serious crime" within the meaning of D.C. Bar R. XI, § 10(b). The Hearing Committee further finds that Bar Counsel failed to prove that Respondent's crime involved moral turpitude within the meaning of D.C. Code § 11-2503(a). For this misconduct, the Hearing Committee recommends that Respondent be suspended for two years with a requirement to prove fitness as a condition of reinstatement, and that the suspension be stayed and Respondent placed on three years of supervised probation, with the conditions set forth above.

HEARING COMMITTEE NUMBER THREE

/JCY/
John C. Yang
Chair

/ES/
Eugene Sofer
Public Member

/RD/
Ronald Dixon
Attorney Member

Dated: January 16, 2015