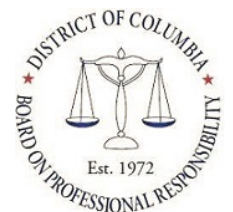


THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY



Issued
May 31, 2024

In the Matter of: :
:
KRISTOPHER E. TWOMEY, :
:
Respondent. : Board Docket No. 23-BD-013
: Disc. Docket No. 2021-D198 &
A Member of the Bar of the : 2022-D119
District of Columbia Court of Appeals :
(Bar Registration No. 979338) :

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

In its Report and Recommendation, an Ad Hoc Hearing Committee has recommended that Respondent be suspended for two years for violating D.C. Rules of Professional Conduct 1.3(c) (reasonable promptness), 1.4(a) (communication), 1.4(b) (failure to explain matter), 4.1(a) (false statement to third person), and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation). Neither party has filed an exception, the time for doing so having expired. *See* Board Rule 13.3 (providing that exceptions are due within ten days of receipt of the Hearing Committee Report). With no exceptions filed, the Board considers this matter on the record without oral argument or briefing. *See* Board Rule 13.5.

Having reviewed the record, the Board concurs with the Committee’s Findings of Fact, which are supported by substantial evidence in the record. To summarize, Respondent represented two telecommunications companies, LTD

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

Broadband and Monster Broadband, who were seeking regulatory approvals that would entitle them to federal funds for providing high-speed internet service in rural areas under the Federal Communications Commission's Rural Digital Opportunity Fund. Findings of Fact ("FF") 3, 7-8, 46. The FCC allowed companies to bid for the right to provide service in specific states. Before they could receive federal funds, the winning companies were required to apply for Eligible Telecommunication Carrier ("ETC") status in each state. FF 4. The companies would need to obtain ETC status or a formal declination of jurisdiction over their application (which would permit them to apply directly to the FCC) by a certain deadline. FF 5. The deadline could be waived if the companies certified that they had made good-faith efforts to receive a timely approval. FF 6.

Respondent was hired to apply for ETC status in three of the fifteen states awarded to LTD Broadband (California, Nebraska, and North Dakota) and both states awarded to Monster Broadband (Texas and Tennessee). FF 7-8, 13, 46. The Hearing Committee found that Respondent knew that Tennessee would decline jurisdiction, but he failed to make good-faith efforts to obtain a formal declination in time to meet the deadline. HC Rpt. at 25; FF 50-51. He also failed to tell both clients that he was not on track to timely obtain ETC status in four of the five states, which deprived them of the opportunity to reassign the state applications to other counsel and maintain their ability to seek a deadline waiver, if necessary. HC Rpt. at 27-29. And he gave affirmatively false assurances to his clients regarding the status of the ETC applications in those four states, including by (1) creating a false

docket number for the California application to cover up the fact that he had not filed it in time, which caused another attorney working on ETC applications for LTD Broadband to repeat that false statement to the FCC, and (2) instructing Monster Broadband to repeat his false claim to the FCC that the Tennessee authority had declined jurisdiction by returning his application, when in truth he had never filed it. HC Rpt. at 28-32, 35-37; FF 15-17, 23-30, 32-33, 38-39, 56, 58-64. Both clients terminated Respondent and hired successor counsel to pursue ETC designations in the states previously handled by Respondent, but the FCC declined to extend the deadline for LTD Broadband's applications. FF 44-45, 65-68.

For the reasons set forth in the Hearing Committee's Report and Recommendation, which is attached hereto and adopted and incorporated by reference, the Board concludes that Disciplinary Counsel proved by clear and convincing evidence that Respondent violated D.C. Rules of Professional Conduct 1.3(c), 1.4(a) and (b), 4.1(a), and 8.4(c) and recommends that he be suspended for two years. The Board further recommends that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 
Thomas E. Gilbertsen

All members of the Board concur in this Report and Recommendation.

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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



FILED

Apr 5 2024 11:55am

In the Matter of: :
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:
Kristopher E. Twomey, : **Board on Professional Responsibility**
: **Board Docket No. 23-BD-013**
Respondent. : **Disc. Docket Nos. 2021-D198 &**
: **2022-D119**
A Member of the Bar of the :
District of Columbia Court of Appeals :
(Bar Registration No. 979338) :

**REPORT AND RECOMMENDATION
OF AD HOC HEARING COMMITTEE**

Disciplinary Counsel charges Kristopher E. Twomey with violating D.C. Rules of Professional Conduct 1.3(c) (reasonable promptness), 1.4(a) and (b) (communication), 4.1(a) (false statement to third person), and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation). The charges arise from Mr. Twomey’s representation of two telecommunications companies that sought to benefit from the Federal Communications Commission’s Rural Digital Opportunity Fund (or RDOF), which helped fund the development of high-speed internet in rural areas. Disciplinary Counsel contends that Mr. Twomey committed each charged violation and should be suspended for two years as a sanction for his misconduct. Mr. Twomey contends that Disciplinary Counsel failed to prove any rule violations by

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

clear and convincing evidence and that, if it did prove any violations, he should receive no more than an informal admonition.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven violations of D.C. Rules of Professional Conduct 1.3(c), 1.4(a) and (b), 4.1(a), and 8.4(c) by clear and convincing evidence and recommends that Mr. Twomey be suspended for two years.¹

I. PROCEDURAL HISTORY

On February 22, 2023, Disciplinary Counsel served Mr. Twomey with a Specification of Charges. Mr. Twomey answered the specification on March 15, 2023, and this Ad Hoc Hearing Committee held a hearing on October 16 and 17,

¹ Mr. Twomey contends that the District of Columbia attorney-discipline system lacks jurisdiction over his filing of documents with state regulatory commissions outside of the District and Massachusetts, the only jurisdictions in which he is licensed to practice law, because he was acting as a “regulatory consultant” rather than as an attorney. (*See* Twomey Br. 2–3.) Mr. Twomey is incorrect. He was hired in his capacity as a lawyer to provide legal services. (*See, e.g.*, DCX 15 at 12 (fee agreement with LTD Broadband on law firm letterhead entitled “Legal Services/Fee Agreement”); DCX 38 at 34 (Mr. Twomey’s signature on a pleading referring to himself as “Counsel for Monster Broadband Inc.” and listing the address of “Law Offices of Kristopher E. Twomey, P.C.”); Tr. 298 (Baker) (Monster Broadband “retained Mr. Twomey’s legal services”); Tr. 348 (Hauer) (Mr. Twomey “was engaged as counsel to assist LTD Broadband in obtaining ETC certifications”).) Additionally, as a member of the D.C. bar, Mr. Twomey is “subject to the disciplinary authority of this jurisdiction, regardless of where [his] conduct occurs.” D.C. R. Prof’l Conduct 8.5(a).

2023. Disciplinary Counsel was represented at the hearing by Jason Horrell and Mr. Twomey represented himself.

During the hearing, Disciplinary Counsel submitted DCX 1 through 24 and 26 through 55, all of which the Hearing Committee admitted into evidence without objection. (Tr. 19, 36, 64, 81, 87, 90, 94, 101, 189, 225, 245, 326, 484.)² Disciplinary Counsel called as witnesses Stephen Coran, Martin Nakahara, Helen Mickiewicz, Sallie Dietrich, Victor Schock, Steven Baker, Corey Hauer. Mr. Twomey testified on his own behalf but did not submit exhibits or call any additional witnesses.

Upon conclusion of the hearing, the Hearing Committee made a preliminary, nonbinding determination that Disciplinary Counsel had proven at least one of the ethical violations set forth in the specification of charges. (Tr. 491–92); *see* Bd. R. 11.11. Neither party presented evidence in aggravation or mitigation of sanction. (Tr. 492–93.)

Disciplinary Counsel submitted its post-hearing brief on November 9, 2023, and Mr. Twomey filed his post-hearing brief on November 20, 2023. Disciplinary Counsel replied to Mr. Twomey on December 1, 2023.

² The Hearing Committee uses “DCX” to refer Refers to Disciplinary Counsel’s exhibits and “Tr.” to refer to the transcript of the hearing held in this matter.

II. FINDINGS OF FACT

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

1. Mr. Twomey is a member of the bar of the District of Columbia Court of Appeals, having been admitted on April 14, 2008, and assigned bar number 979338. (DCX 1.) He is also a member of the Massachusetts bar. (Tr. 407 (Twomey).)

2. Mr. Twomey is a solo practitioner, and his practice is limited to regulatory issues regarding internet-service providers. (Tr. 402, 408 (Twomey).) He uses a District address for his law office but resides in California. (Tr. 408 (Twomey).) He does not have dedicated office space at the District address, but he rents office space there as needed. (Tr. 409 (Twomey).) Mail sent to his District address is forwarded to his California address or scanned and sent by email. (Tr. 410–11 (Twomey).)

A. The Rural Digital Opportunity Fund.

3. In January 2020, the Federal Communications Commission established the Rural Digital Opportunity Fund to provide financial support to internet-service providers for the deployment of high-speed broadband networks in rural areas of the United States. (DCX 5 ¶ 5, at 3; Tr. 24 (Coran).) The FCC adopted bidding procedures for the RDOF that included a reverse auction in which private businesses competed against each other by committing to provide broadband services to unserved communities in exchange for various levels of financial support. (DCX 6.) The FCC announced the winning bidders in late 2020. (DCX 8.)

4. After the auction, winning bidders were required to complete several steps to obtain RDOF funding, including submitting a long-form application to the FCC. (DCX 5 ¶ 86, at 40; Tr. 25 (Coran).) As part of that application, a winning bidder was required to show that it had been designated as an eligible telecommunication carrier (or ETC) for each geographic region where it had won RDOF support. (DCX 5 ¶ 92, at 42–43; DCX 6 ¶ 300, at 90–91; Tr. 27–28 (Coran).)

5. Winning bidders could obtain ETC designation from the relevant state agency or directly from the FCC if the state agency lacked or declined to exercise jurisdiction to issue such designations. (*See* DCX 8 ¶ 36, at 13; Tr. 28 (Coran).)

6. Winning bidders were required to document their ETC designations by June 7, 2021. (DCX 8 at 7; *id.* ¶ 36, at 13–14.) A winning bidder could seek a waiver

of the deadline from the FCC if the proceeding to obtain ETC designation had not concluded by June 7, provided the winning bidder had made a good-faith effort to obtain the ETC designation. (*Id.* ¶ 37, at 14.) The FCC presumed a bidder had made a good-faith effort if it applied for its ETC designation by January 6, 2021, thirty days after the announcement of winning bidders. (*See id.*)

B. Count I: LTD Broadband (Disciplinary Docket No. 2021-D198).

7. LTD Broadband won its bid in the RDOF for rural areas in fifteen states, including California, Nebraska, and North Dakota. (DCX 8 at 30–31.)

8. On January 4, 2021, LTD retained Mr. Twomey to assist with applying for ETC designations in those states. (DCX 15 at 12–14; Tr. 348, 352–53 (Hauer); Tr. 412 (Twomey).) Regardless of the contours of its strategy, LTD intended to apply for its ETC designations by the FCC’s deadline. (Tr. 354–55, 357 (Hauer).)

9. Mr. Twomey knew that LTD was required to obtain ETC designations by June 7, 2021, unless the FCC waived that deadline. (Tr. 416–18 (Twomey).)

10. LTD became concerned that Mr. Twomey was not working at sufficient speed to meet the deadline, particularly given the number of applications that needed to be filed and prosecuted in various states over a short period of time. (*See* Tr. 349–50 (Hauer).) LTD therefore hired Stephen Coran to assist. (Tr. 37–38 (Coran).)

11. Messrs. Coran and Twomey agreed to work together as co-counsel with the goal of ensuring that LTD obtained all necessary ETC designations by the June 7 deadline. (Tr. 39 (Coran).)

12. A Google spreadsheet was created to track the status of LTD's applications in the various states. Mr. Twomey tracked his progress by updating the spreadsheet, and he reviewed the spreadsheet with Mr. Coran and LTD during weekly conference calls. (Tr. 39–41 (Coran).) The spreadsheet included information such as whether and when an application had been filed with the appropriate state agency and what actions that agency had taken. (*Id.*; Tr. 358 (Hauer); Tr. 422, 462 (Twomey).)

13. Mr. Twomey was the sole attorney working on LTD's applications in California, Nebraska, and North Dakota. (Tr. 42–43 (Coran).)

14. Mr. Coran eventually became concerned that LTD was not on course to obtain ETC designations in several states by the June 7 deadline. (Tr. 41, 43 (Coran).) In California, for example, Mr. Coran understood that the designation could take up to eighteen months but that Mr. Twomey had applied for that designation about six weeks before the FCC deadline. (Tr. 44–45 (Coran).)

15. On June 4, 2021, Mr. Coran read in a trade publication that the California authority had not received an ETC application from LTD. (Tr. 46 (Coran).) He asked Mr. Twomey about the publication's claim, and Mr. Twomey

provided him with an altered notice of electronic submission that indicated a submission date of April 26, 2021. (DCX 27 at 17–18.; *see* Tr. 46 (Coran).) Unbeknownst to Mr. Coran, Mr. Twomey had submitted LTD’s application on June 3, 2021, and altered the submission notice to show a false submission date of April 26, which is when Mr. Twomey claims he mailed LTD’s application to California. (Tr. 72–73 (Coran); Tr. 428–37 (Twomey); DCX 27 at 11–15. *Compare* DCX 16 at 151 (original notice), *with* DCX 27 at 18 (altered notice).)

16. Mr. Coran drafted a petition to ask the FCC to waive the June 7 deadline because of his concerns that LTD would not meet it. (Tr. 50–51 (Coran).) Mr. Coran relied on false information that Mr. Twomey had provided him, including the falsified notice from the California authority showing that LTD had applied for its ETC designation on April 26, 2021. (Tr. 45–46, 52–53 (Coran).)

17. The false information Mr. Twomey provided regarding the status of applications filed in California, Nebraska, and North Dakota³ was material to LTD’s request that the FCC waive the June 7 deadline for obtaining ETC designations, since LTD needed to show that it was making a good-faith effort to comply with that deadline. (Tr. 88 (Coran); Tr. 376–77 (Hauer).) Mr. Twomey understood the importance of this information. (Tr. 417 (Twomey).)

³ The Nebraska and North Dakota applications are discussed below. (*See infra* ¶¶ 31–43.)

18. Mr. Coran emailed his draft to Mr. Twomey and asked him to provide edits and additional information in redline format. (DCX 19.) Mr. Twomey provided edits within a few hours (DCX 20), and Mr. Coran incorporated them (Tr. 64–65 (Coran)); however, Mr. Twomey did not correct the false application date of April 26, 2021. LTD reviewed the finalized waiver petition before it was filed. (Tr. 65 (Coran); Tr. 365 (Hauer).)

19. Both Messrs. Coran and Twomey signed the waiver petition, and Mr. Coran filed it on June 7, 2021. (DCX 21; Tr. 65–66 (Coran); Tr. 418–19 (Twomey); *see* Tr. 364–65 (Hauer).)

False Representations Regarding LTD’s Application in California

20. Upon receiving the waiver petition, the FCC contacted the California Public Utilities Commission to confirm the waiver petition’s allegations, but the California PUC could not locate an ETC application filed by LTD on April 26. (Tr. 167–68 (Mickiewicz).) An assistant general counsel for the California PUC then called Mr. Coran to ask him about the April 26 filing date and the docket number that the waiver petition alleged was assigned to that submission. (Tr. 67 (Coran); Tr. 156, 166–68 (Mickiewicz).)

21. In response, Mr. Coran emailed the assistant general counsel a copy of the falsified electronic submission notice that Mr. Twomey had provided him. (DCX 22.)

22. The California PUC initiated an investigation and determined that it had not received any application from LTD on April 26, 2021, as alleged in the waiver petition. (Tr. 170–73 (Mickiewicz).) The confirmation number on the falsified notice had been assigned to an application that Mr. Twomey filed on June 3, 2021. (Tr. 132–33 (Nakahara); Tr. 175 (Mickiewicz).) The docket number alleged in the waiver petition was also false; it was not assigned to any application submitted by LTD. (Tr. 176 (Mickiewicz).) In fact, the California PUC had not yet assigned a docket number to the June 3 application. (DCX 23 at 2.)

23. Upon learning of the California PUC’s investigation, Mr. Twomey admitted that he had not, in fact, received confirmation from the California PUC that LTD’s application for ETC designation had been filed on April 26, 2021. (DCX 26 ¶ 3, at 2.) He claimed that he mailed an application on that date but never received confirmation that the California PUC received it and that he had therefore electronically submitted the application on June 3, 2021. (*Id.*) He also admitted he altered the June 3 electronic submission notice to show a submission date of April 26 and that he made up the docket number, assuming the California PUC would assign that number to LTD’s application. (*Id.* ¶ 7, at 3; Tr. 72–73 (Coran); Tr. 367–68 (Hauer).)

24. After the investigation, the California PUC filed a statement with the FCC explaining that, contrary to the allegations made in its waiver petition, LTD

had not filed an application on April 26, 2021, that the docket number alleged to have been assigned to LTD's application did not exist, and that the authority could not verify the existence of the April 26 electronic submission notice that Mr. Twomey had provided to Mr. Coran. (DCX 23.)

25. The next day, Mr. Coran filed a supplement to LTD's waiver petition with the FCC, which included a sworn declaration from Mr. Twomey. (DCX 26.) Mr. Twomey admitted—under penalty of perjury—that he had not filed an ETC application with California on April 26, 2021; that he “created” the docket number alleged in the waiver petition; and that he falsified the electronic submission notice for his June 3 submission by editing the PDF file to show an April 26 submission date. He further admitted that neither Mr. Coran nor LTD were aware of these facts until he confessed to them during the California PUC's investigation. (*Id.* at 2–4; Tr. 450–51 (Twomey).)

26. Both Mr. Coran and LTD filed declarations with the FCC in which they averred that they were unaware of Mr. Twomey's actions until his admissions to them. (DCX 27 at 3–6, 11–15.)

27. LTD fired Mr. Twomey shortly after it discovered the submission notice had been falsified. (Tr. 367, 371 (Hauer).)

28. During the hearing in this matter, Mr. Twomey admitted that, when he was editing the draft waiver petition, he knew that the California PUC had not

confirmed receiving or processing an ETC application he purportedly mailed on April 26, 2021. (Tr. 425 (Twomey).) Nevertheless, he made no changes to this alleged submission date when editing Mr. Coran's draft. (Tr. 424 (Twomey). *Compare* DCX 20 at 5 (redlined draft), *with* DCX 21 at 6 (filed waiver petition).)

29. Mr. Twomey admitted further that the California PUC had not assigned a docket number to the June 3 application and that he made up the docket number based on the number he assumed the California PUC might assign. (Tr. 422–23, 441–43 (Twomey).) Mr. Twomey also admitted that, despite knowing the representations concerning the docket number in the waiver petition were false, he did not remove or otherwise correct those representations in the draft waiver petition. (Tr. 422–23 (Twomey). *Compare* DCX 20 at 5 (redlined draft), *with* DCX 21 at 6 (filed waiver petition).)

30. In addition, Mr. Twomey admitted that he electronically submitted LTD's California application on June 3, 2021, and then altered the PDF notice of electronic submission by erasing the submission date and inserting, "April 26, 2021." (Tr. 428–32 (Twomey).) He claimed he did this as a note to himself so he could remember the date he purportedly mailed LTD's application. (Tr. 432–37 (Twomey).) He admitted that it was not his standard practice to alter PDF filing receipts as a way of recording actions taken in a client's matter and that he made no other alterations to the notice that would indicate to a third-party that it represented

something other than an electronic submission to the California PUC. (Tr. 437, 440 (Twomey). *Compare* DCX 16 at 151 (original notice) *with* DCX 27 at 18 (altered notice).) Given those admissions, the Hearing Committee cannot credit Mr. Twomey’s explanations for manufacturing a receipt of the mailed application by altering the proof of filing he received for the electronic filing, including making up a docket number for LTD’s application. The Hearing Committee finds that Mr. Twomey created this “evidence” to cover up his failure to meet an important deadline for LTD and persisted in his false narrative up to and including his testimony in this matter.

False Representations Regarding LTD’s Application in Nebraska

31. On April 28, 2021, Mr. Twomey mailed LTD’s application for ETC designation to the Nebraska Public Service Commission, which accepted it for filing on May 3. (DCX 16 at 153; DCX 29 at 3.)

32. LTD’s waiver petition to the FCC represented that the Nebraska PSC informed Mr. Twomey that it had a “30-day approval process” for ETC applications and that LTD had submitted its application “in sufficient time to meet” the FCC’s June 7 deadline for obtaining ETC designation because it had “filed” its application on April 28. (DCX 21 at 8.)

33. In fact, Nebraska does not have a thirty-day-approval process, and the process can take three to six months. (Tr. 214–15 (Dietrich); DCX 29 at 1–2.)

Moreover, LTD's application was not filed on April 28 (the day it was mailed) but rather May 3 (the date it was accepted for filing). (Tr. 212, 221 (Dietrich); DCX 29 at 3.) Mr. Twomey knew this. (Tr. 455–56 (Twomey); DCX 16 at 35.) In an email sent more than a month before the waiver petition was filed, the Nebraska PSC told Mr. Twomey that it did not expect to approve LTD's application before the June 7 deadline. (Tr. 213–14 (Dietrich); DCX 29 at 23.)

34. Mr. Twomey did not correct the false representations regarding LTD's Nebraska application when he edited Mr. Coran's draft, and he signed the waiver petition with those same false representations. (*Supra* ¶¶ 18–19. *Compare* DCX 20 at 7 (redlined draft) *with* DCX 21 at 8 (filed waiver petition).)

35. The Nebraska PSC filed a letter with the FCC to correct the allegations made in LTD's waiver petition. (DCX 29.) Shortly thereafter, both Mr. Coran and LTD filed declarations with the FCC in which they averred that they were unaware of the misinformation until they reviewed the Nebraska PSC's letter. (DCX 30.)

36. During the hearing in this matter, Mr. Twomey admitted that he knew the Nebraska PSC would not approve LTD's application by the FCC's June 7 deadline when he edited the draft waiver petition. (Tr. 459 (Twomey).) Nevertheless, he claimed that his belief that Nebraska had a thirty-day-approval timeline, as alleged in the waiver petition, was based on his reading of an email from the Nebraska PSC. (Tr. 460 (Twomey).) But that email does not corroborate such a

belief (*see* DCX 16 at 38), and Mr. Twomey admitted that he had no other documents that would corroborate his belief (Tr. 458–59 (Twomey); *see* DCX 16 at 26–41 (response to ODC subpoena); *cf.* DCX 16 at 156.) Like his explanation for the manufactured California filing receipt, the Hearing Committee finds incredible Mr. Twomey’s explanation for the position he took with LTD.

False Representations Regarding LTD’s Application in North Dakota

37. On May 6, 2021, Mr. Twomey submitted LTD’s application for ETC designation to the North Dakota Public Service Commission, which acknowledged receipt on May 7. (DCX 16 at 159–60.)

38. Mr. Twomey allowed LTD’s waiver petition to claim falsely that North Dakota had advised him that it had a “30-day ETC application approval process (similar to Nebraska’s process)” and that LTD had submitted its ETC application in North Dakota “in sufficient time to meet” the FCC’s June 7, 2021, deadline. (DCX 21 at 8.)

39. In fact, North Dakota does not have a thirty-day-approval process for ETC-designation applications, and no one at the North Dakota PSC recalls telling Mr. Twomey that it did. (Tr. 235–37, 239 (Schock); DCX 33.) North Dakota’s process can take sixty to ninety days. (Tr. 236–37 (Schock).) Thus, contrary to Mr. Twomey’s representations to the FCC, LTD’s May 7 application to North Dakota

was not submitted in time to meet the FCC's June 7 deadline, and Mr. Twomey knew this fact. (DCX 16 at 45.)

40. Mr. Twomey did not correct the false representations regarding LTD's North Dakota application when he edited the waiver petition, and he signed the waiver petition with those same false representations. (*See supra* ¶¶ 18–19. *Compare* DCX 20 at 7 (redlined draft), *with* DCX 21 at 8 (filed waiver petition).)

41. At the hearing, Mr. Twomey admitted that he had no evidence corroborating his claim that North Dakota advised him of a thirty-day-approval process. (Tr. 469 (Twomey); *see* DCX 16 at 42–46 (response to ODC subpoena).) The Hearing Committee credits the testimony from Mr. Schock over that from Mr. Twomey. Given that North Dakota does not have a thirty-day-approval process, Mr. Twomey's testimony that someone there told him otherwise is not credible.

42. Both Mr. Coran and LTD filed declarations with the FCC in which they averred that they were unaware of the misinformation until they were contacted by the North Dakota PSC. (DCX 32.)

43. North Dakota filed a response to the waiver petition to correct the representations made by LTD to the FCC about its timeline for ETC approvals. (DCX 33.)

Subsequent Developments

44. The FCC eventually denied LTD's request to waive the June 7 deadline for obtaining ETC designation in California, Nebraska, and North Dakota. (Tr. 88–89 (Coran).) The FCC determined that LTD's delay in filing its applications in those states was unwarranted and that it had provided no compelling rationale to extend the deadline. (DCX 28 at 4 (California); DCX 34 at 4 (Nebraska and North Dakota).) LTD sought reconsideration of these denials, but those requests were denied. (Tr. 91–93 (Coran); *see* DCX 36.)

45. LTD relied on Mr. Twomey to provide it with accurate information about the matters he was handling. (Tr. 377 (Hauer).) Mr. Twomey gave LTD no indication during the representation that he would do otherwise. (Tr. 378 (Hauer).) Mr. Twomey's actions have damaged LTD's view of lawyers and the legal profession generally. (Tr. 379 (Hauer).) LTD hired counsel to replace Mr. Twomey in all three states when it learned of his dishonesty. (Tr. 372, 374–75 (Hauer).)

C. Count II: Monster Broadband (Disciplinary Docket No. 2022-D119).

46. Monster Broadband was a winning bidder in the RDOF for rural areas in Tennessee and Texas. (DCX 8 at 33; Tr. 95 (Coran); Tr. 299 (Baker).) In December 2020, Monster retained Mr. Twomey to assist it with applying for ETC designations in those states. (Tr. 298–99 (Baker).)

47. As with LTD, Mr. Twomey knew that Monster was required to obtain ETC designations by June 7, 2021, unless the FCC waived that deadline. (Tr. 416–18 (Twomey).)

48. Monster wanted to submit its applications to the relevant state authorities by January 6, 2021, to take advantage of the FCC’s presumption of good-faith compliance with its deadline to obtain ETC designations. (Tr. 301 (Baker); *see* DCX 8 ¶ 37, at 14.) Mr. Twomey told Monster he intended to submit its ETC applications by January 6. (DCX 41 at 2.)

49. On January 3, 2021, Mr. Twomey told Monster that he was in the process of drafting its ETC applications. (DCX 41 at 1–2.) He explained that Tennessee “doesn’t regulate ETCs anymore so we’ll need to file directly with the FCC” but confirmed that the application for Texas would be filed with that state’s agency. (*Id.* at 2.)

50. Mr. Twomey was correct about Tennessee. (*See* DCX 55 ¶ 5, at 3.) Mr. Twomey knew that, to obtain the designation for Tennessee from the FCC, an applicant must prove the FCC has jurisdiction. This required the submission of an affirmative statement from the Tennessee authority declining to exercise jurisdiction over the applicant’s request for ETC designation. (Tr. 472–75 (Twomey); DCX 9 at 2.) Mr. Twomey knew that an applicant could not rely on the FCC’s prior

experience with Tennessee or simply allege that the state authority lacked jurisdiction. (Tr. 472–75 (Twomey).)

51. Despite this knowledge, Mr. Twomey did not seek a statement from Tennessee declining to exercise jurisdiction by the January 6 presumption-of-good-faith deadline. (Tr. 471–72 (Twomey).)

52. On January 5, 2021, Mr. Twomey emailed Monster a draft ETC application for Texas and asked Monster to review the application and provide any changes. With respect to Tennessee, Mr. Twomey wrote that “[t]he FCC app[lication] is much the same, I’ll just carry-over the changes to that one as well.” (DCX 41 at 1.)

53. On January 6, Mr. Twomey emailed Monster proof of filing for the Texas application, but he did not provide any information or update regarding the Tennessee application. (DCX 42.)

54. Texas granted ETC designation to Monster a few days after Monster filed its petition seeking waiver of the FCC’s June 7 deadline. (DCX 36 at 3.)

55. Monster assumed Mr. Twomey had filed both applications in time to secure the January 6-based, good-faith presumption. (Tr. 303–04 (Baker).)

56. On June 2, 2021, Monster requested an update from Mr. Twomey regarding its ETC applications. (DCX 43 at 1.) Mr. Twomey replied that Texas had been taken care of. However, contrary to his prior statements about filing with the

FCC, Mr. Twomey falsely claimed that he had filed an application with the Tennessee Public Utilities Commission “on January 6th, the date by which we had to file in order to prove good faith effort in seeking ETC status for the long form.” (*Id.*; *see* DCX 55 ¶ 12, at 6.)

57. On June 7, 2021, Monster and Mr. Twomey exchanged emails about filing a petition to waive the FCC’s June 7 deadline to obtain ETC designations. Monster had not yet received designations in either Texas or Tennessee. Mr. Twomey agreed to draft a waiver petition and reiterated that he had filed ETC applications for both Texas and Tennessee on January 6. (DCX 44.)

58. Later that day, Mr. Twomey filed both a waiver petition and a petition for ETC designation regarding Tennessee with the FCC. (DCX 46.) The waiver petition alleged that Monster had applied for ETC designation with Tennessee on January 6, 2021, but that the Tennessee authority “declined jurisdiction returning the application and suggested seeking ETC authority from the FCC.” (*Id.* at 2.) These allegations were an attempt to invoke the FCC’s presumption of good faith. (Tr. 476 (Twomey).) The ETC petition likewise alleged that “Tennessee has declined jurisdiction.” (DCX 45 at 2.)

59. Several weeks later, the FCC asked Monster when Tennessee declined jurisdiction over its application and why Monster had waited until June 7 to seek ETC designation from the FCC. (DCX 47 at 2–3.) Mr. Twomey advised Monster to

tell the FCC that Tennessee declined jurisdiction in January 2021 and that he had attempted to file an ETC application with the FCC in February but that he re-filed in June after being unable to locate the application on the FCC's docket. (*Id.* at 2.) Monster followed Mr. Twomey's advice and relayed these claims to the FCC. (DCX 48 at 1–2.)

60. On December 7, 2021, the Tennessee PUC filed a letter with the FCC stating that it had not received an ETC application from Monster, that it “does not return filings,” and that “at no time has the [Tennessee PUC] declined jurisdiction” regarding an ETC application from Monster. (DCX 49.)

61. The next day, Mr. Twomey filed a supplement to Monster's waiver petition, in which he claimed that “apparently the application was returned by the postal service, not by the [Tennessee PUC] as stated in the original waiver petition.” (DCX 50 at 2 n.2.)

62. During the hearing, Mr. Twomey admitted that Tennessee had not explicitly declined jurisdiction over Monster's request for ETC designation when he filed the waiver petition and ETC petition with the FCC. (Tr. 475–76 (Twomey).) Indeed, he had not sought such a declination. (Tr. 471–72 (Twomey).) He also admitted that he had no evidence to corroborate the allegations that he mailed an application to Tennessee, that the postal service had returned that application, or that the Tennessee authority had advised him to seek ETC designation from the FCC.

(Tr. 480–83 (Twomey).) The Hearing Committee expects that attorneys keep records of the important items they entrust with the U.S. Postal Service or a commercial delivery vendor and use a delivery method for such items that is capable of being tracked. In addition, the Hearing Committee expects that Mr. Twomey would have followed up on an application mailed in January to ensure that Tennessee docketed it. Mr. Twomey’s lack of a record of the transmission or follow-up effort and Tennessee’s evidence that it received no such filing from Monster renders incredible Mr. Twomey’s testimony that he filed Monster’s application by mail in January.

63. Kelly Cashman-Grams, the general counsel to the Tennessee PUC and person who signed the Tennessee PUC’s letter to the FCC (DCX 49), investigated the allegations made in Monster’s waiver petition after the FCC contacted the Tennessee authority in November 2021. She determined that Monster had not filed a request for ETC designation on January 6, 2021, or at any time thereafter. Ms. Cashman-Grams explained the process that the Tennessee PUC would have followed had it received an ETC application from Monster, and she included the docket and other information in a similar matter by way of illustration. Ms. Cashman-Grams spoke with Mr. Twomey during her investigation, and he told her

that he was going through a divorce and that “something may have ‘slipped’ past him.” (DCX 55.)⁴

64. Mr. Twomey did not inform Monster that Tennessee challenged certain allegations in his waiver petition, or that he had filed a supplement to the waiver petition. Monster learned about these filings during a telephone conversation with the FCC in March 2022. (DCX 38 at 6–7; DCX 53 ¶ 18, at 5; *id.* at 8; Tr. 316, 323, 331 (Baker).)

65. On May 4, 2022, Monster terminated Mr. Twomey’s services in connection with Monster’s ETC applications after learning at a trade conference about the issues regarding his representation of LTD Broadband. (DCX 51; Tr. 319–20 (Baker).) Monster hired Mr. Coran to take over the representation. (Tr. 321–22 (Baker).)

66. Mr. Coran filed with the FCC a supplement to Monster’s ETC petition, to which he attached a letter he obtained from Tennessee formally declining jurisdiction. (DCX 52.)

⁴ Ms. Cashman-Grams’s testimony came in the form of an affidavit, admitted into evidence as DCX 55, rather than live testimony. Mr. Twomey complains that he did not have the opportunity to cross examine Ms. Cashman-Grams as to her knowledge of her office’s handling of documents during the relevant time period (*see* Twomey Br. 9, 12), but that was the effect of his lack of objection to Disciplinary Counsel’s use of written instead of live testimony for her (*see* Tr. 255, 293–94).

67. Mr. Coran also filed a supplement to Monster’s waiver petition, which included sworn declarations from Monster averring that it was previously unaware of the falsity of, and had been misled by, Mr. Twomey’s statements regarding Monster’s application for ETC designation in Tennessee. (DCX 53.)

68. The FCC eventually granted Monster’s waiver request and provided it with conditional ETC designation for Tennessee. (DCX 36 at 3–5.)

69. Monster relied on Mr. Twomey to provide it with accurate information about the matters he was handling. (Tr. 324 (Baker).) Mr. Twomey gave Monster no indication during the representation that he would do otherwise. (*Id.*) Monster was “betrayed” by Mr. Twomey’s actions, and Mr. Twomey’s conduct has left a “black mark” on its impression of lawyers generally. (Tr. 324–25 (Baker).)

III. CONCLUSIONS OF LAW

At bottom, this case is about a lawyer’s efforts to make up for missing or nearly missing material deadlines for clients. To be sure, Mr. Twomey could have done better in keeping LTD and Monster informed about the work he was doing for them and the prospect that significant deadlines might not be met and taking prompt steps to meet those deadlines. But Mr. Twomey compounded his Rule 1.3 and 1.4 violations by committing significant acts of dishonesty, the most serious of which was the manufacturing of a filing receipt and presenting that to his co-counsel and an agency of the federal government.

A. Rule 1.3(c) (Reasonable Promptness).

An attorney “shall act with reasonable promptness in representing a client.” D.C. R. Prof’l Conduct 1.3(c). “Perhaps no professional shortcoming is more widely resented by clients than procrastination,” and “in extreme instances, as when a lawyer overlooks a statute of limitations, the client’s legal position may be destroyed.” *Id.* cmt. [8]. The Court has held that an attorney’s significant delay in furthering a client’s cause—whether prejudice to the client results or not—violates Rule 1.3(c). *See, e.g., In re Speights*, 173 A.3d 96, 101 (D.C. 2017) (per curiam). “Even when the client’s interests are not affected in substance . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness,” making such delay a “serious violation.” D.C. R. Prof’l Conduct 1.3 cmt. [8].

Disciplinary Counsel alleges that Mr. Twomey violated Rule 1.3(c) in Count II by waiting until June 7, 2021, to file a petition for ETC designation in Tennessee on behalf of Monster when that was the deadline for filing proof that the designation had been granted or that the state had declined jurisdiction. (*See* ODC Br. 28–30.) Mr. Twomey contends that he in fact filed the application by mail on January 6, 2021, pursuant to Monster’s requests. (*See* Twomey Br. 8, 11–12.)

The evidence, however, does not support Mr. Twomey’s version of events. He has nothing beyond his hearing testimony and post-hearing argument to support

that he timely sought an ETC designation for Monster in Tennessee. (*Supra* Findings of Fact ¶ 62.) And the Tennessee PUC’s general counsel testified that the Tennessee authority received no such application from Monster in January 2021 and that it would not have returned an application sent in by mail. (*Id.* ¶ 63.) The Hearing Committee credits this testimony over Mr. Twomey’s testimony and assertions and finds, by clear and convincing evidence, that Mr. Twomey violated Rule 1.3(c) in connection with Monster’s application for a Tennessee ETC designation.

B. Rules 1.4(a) and (b) (Communication).

“A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” D.C. R. Prof’l Conduct 1.4(a). Under Rule 1.4(a), an attorney must not only respond to client inquiries but must also initiate contact to provide information when needed. *See, e.g., In re Robbins*, 192 A.3d 558, 564–65 (D.C. 2018) (per curiam); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The purpose of this part of the rule is to enable clients to “participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.” D.C. R. Prof’l Conduct 1.4 cmt. [1]. To that end, a lawyer must provide the client with “accurate information about [the] lawyer’s actions on his behalf” throughout the representation. *See In re Brown*, No. 20-BG-0589, 2024 WL 972227, at *6 (D.C. Mar. 7, 2024).

Similarly, an attorney “shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” *Id.* R. 1.4(b). This part of the rule provides that the attorney “must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations.” *Id.* cmt. [2]. The attorney has the burden to “initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete.” *Id.*

In determining whether Disciplinary Counsel has established a violation of Rule 1.4(a) and (b), the question is whether Mr. Twomey fulfilled his clients’ reasonable expectations for information. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (citing D.C. R. Prof’l Conduct 1.4 cmt. [3]). Attorneys are obligated to respond to client requests for information even when there are no new developments to report. *See In re Lattimer*, 223 A.3d 437, 440–43 (D.C. 2020) (per curiam). In addition to responding to client inquiries, a lawyer must initiate communications when necessary. *See In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (citing D.C. R. Prof’l Conduct 1.4 cmt. [1]).

Disciplinary Counsel contends that Mr. Twomey violated Rule 1.4(a) and (b) in Counts I and II by misinforming both LTD and Monster about central aspects of the representation, thus depriving them of the ability to make informed decisions.

(*See* ODC Br. 27.) Mr. Twomey’s response lists examples of his communications with both clients. (*See* Twomey Br. 12–13.)

The evidence supports a finding that Mr. Twomey violated Rule 1.4(a) by failing to keep his clients reasonably informed about the status of their cases and promptly complying with their reasonable requests for information. To be sure, he did communicate with his clients, but the amount of his communication was insufficient to meet Rule 1.4(a)’s standards. For example, LTD engaged Mr. Twomey to assist with several ETC-designation applications, each of which had important deadlines that needed to be met on a compressed schedule. Yet Mr. Twomey did not regularly inform LTD about his progress on the applications. It was only once LTD hired co-counsel for Mr. Twomey that LTD received regular and systematic updates on its applications.⁵ Given that Monster terminated Mr. Twomey when it learned about his handling of LTD’s matter, it is reasonable to conclude that, had Mr. Twomey given Monster timely updates on the Tennessee ETC application, Monster would have had an earlier opportunity to secure replacement counsel to obtain its desired relief. *See Brown*, 2024 WL 972227, at *6 (informing the client of the lawyer’s inaction “would have given [the client] the change to evaluate whether he should look elsewhere for more competent representation”). In any event, both

⁵ Unfortunately for LTD, those updates contained misinformation, as discussed below. (*See infra* Part III.D.)

clients testified that Mr. Twomey's handling of their matters disappointed them and caused them to think poorly not just of him but the legal profession generally. Finally, Mr. Twomey may complain that his clients did not ask for more updates than he provided them, but it was his obligation to keep his clients informed on the matter; he cannot rely solely on clients' requests to him for information.

Furthermore, the evidence supports a finding that Mr. Twomey violated Rule 1.4(b) by providing inaccurate information that interfered with his clients' ability to make informed decisions regarding the representation. Specifically, he led LTD to believe that the California, Nebraska, and North Dakota ETC applications were on track because he had filed the California application in April and Nebraska and North Dakota had 30-day approval processes. (*Supra* Findings of Fact ¶¶ 15, 32, 38.) All three statements were false and prevented LTD from making an informed decision as to whether to hire other counsel to pursue those applications. (*Id.* ¶¶ 15, 23–24, 33, 39.) Similarly, Mr. Twomey advised Monster on September 8, 2021, to tell the FCC that Tennessee had declined jurisdiction in January 2021, which led to unnecessary exchanges with the FCC and Tennessee PUC. (*Id.* ¶¶ 59–64.) Because it was misinformed about the status of the Tennessee application, Monster did not hire Mr. Coran to take over the application until approximately May 12, 2022, and did not receive approval until August 10, 2022. (*Id.* ¶¶ 65–68; DCX 52; DCX 36.)

Accordingly, the Hearing Committee finds, by clear and convincing evidence, that Mr. Twomey violated Rule 1.4(a) and (b) in connection with his work for LTD and Monster.

C. Rule 4.1(a) (False Statement to Third Person).

“In the course of representing a client, a lawyer shall not knowingly . . . [m]ake a false statement of material fact or law to a third person.” D.C. R. Prof'l Conduct 4.1(a). A “third person” is defined as “any person or entity other than the lawyer’s client.” *Id.* cmt. [1]. The rule applies to both affirmative false statements and partially true but misleading statements or omissions. *Id.* Whether an attorney acted knowingly and whether a statement is “material” may be inferred from the circumstances. *Id.* cmt. [2]; *id.* R. 1.0(f).

Disciplinary Counsel contends that Mr. Twomey violated Rule 4.1(a) in Count I when he gave Mr. Coran a false docket number and altered filing receipt for LTD’s ETC application in California, misrepresented to Mr. Coran the approval procedures in Nebraska and North Dakota, and falsely assured him that the state-level applications had been filed in time to obtain final FCC approval, all of which was repeated to the FCC. (*See* ODC Br. 25–26.) Mr. Twomey contends that he did mail LTD’s California application, that the false docket number was a guess, he did not intend for the altered receipt to be sent to the FCC, and that his statements about

the filings and processes for approving ETC applications in Nebraska and North Dakota were based on his understanding at the time. (*See* Twomey Br. 10–11.)

Mr. Twomey’s attempts to explain away the evidence in this matter fail. Turning first to LTD’s California application, Mr. Twomey presented no evidence to corroborate his testimony that he mailed the application on April 26, 2021, which the Hearing Committee does not credit. (*Supra* Findings of Fact ¶ 30.) And the Hearing Committee credits the testimony provided by the California PUC that it did not receive an application from LTD until Mr. Twomey filed one electronically on June 3, 2021. (*Id.* ¶¶ 22, 24.) But even if he had mailed an application on April 26, Mr. Twomey admits that he never received an acknowledgment from the California PUC that it received the purportedly mailed application. (*Id.* ¶ 23.)

Mr. Twomey claims that the altered record was for his own files, but he provided the record to Mr. Coran, violating Rule 4.1(a). There should be little question about the materiality of the misinformation about LTD’s California application: it was the key to LTD’s petition to the FCC for relief from the June 7 deadline for obtaining an ETC designation from California. Indeed, in preparing the waiver request, Mr. Twomey had an acute opportunity to prevent the misinformation from spreading further than it already had. He persisted with his fictional narrative. And the repetition of that narrative to the FCC, by both Mr. Coran and Mr. Twomey, compounded the Rule 4.1(a) violation.

Mr. Twomey's misinformation on the Nebraska and North Dakota applications is less jarring but no less a violation of Rule 4.1(a). Mr. Twomey's conflation of when he transmitted or sent the Nebraska application with when Nebraska docketed the application may be immaterial, given the difference in dates may not have impacted the FCC's decision to deny LTD's request for a waiver of the June 7 deadline, i.e., even the earlier date may not have been sufficiently early to show a good-faith effort to meet the deadline. But Mr. Twomey stated that Nebraska and North Dakota have thirty-day-approval processes when the evidence shows that they do not. (*Supra* Findings of Fact ¶¶ 32–33, 38–39.) Given Mr. Twomey's experience in FCC matters and with ETC applications (*see, e.g.*, Tr. 413–14, 417–18 (Twomey)), the Hearing Committee finds these statements to be intentional misstatements of fact and not misunderstandings. As with California, the Hearing Committee finds that Mr. Twomey made these misstatements to deflect away from his failure to file LTD's ETC applications earlier than he did.

In sum, the Hearing Committee finds, by clear and convincing evidence, that Mr. Twomey violated Rule 4.1(a) by knowingly making misstatements of fact or law to third parties regarding LTD's ETC applications to California, Nebraska, and North Dakota.

D. Rule 8.4(c) (Dishonesty and Misrepresentation).⁶

“It is professional misconduct for a lawyer to . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” D.C. R. Prof'l Conduct 8.4(c). The Court has held that each of these terms encompassed within Rule 8.4(c) “should be understood as separate categories, denoting differences in meaning or degree.” *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam). Each category requires proof of different elements. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

Dishonesty is the most general of these categories. It includes “not only fraudulent, deceitful or misrepresentative conduct, but also ‘conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.’ ” *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (quoting *Shorter*, 570 A.2d at 767–68). The Court holds lawyers to a “high standard of honesty, no matter what role the lawyer is filling,” *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994) (per curiam) (appended Board Report), because “[l]awyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is ‘basic’ to the

⁶ Although the specification of charges alleges that Mr. Twomey violated Rule 8.4(c) by committing “dishonesty, fraud, deceit, or misrepresentation,” Disciplinary Counsel’s brief limits the charge to dishonesty and misrepresentation. (ODC Br. 22.)

practice of law,” *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc) (quoting *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc)).

If the dishonest conduct is “obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation.” *Romansky*, 825 A.2d at 315. Conversely, “when the act itself is not of a kind that is clearly wrongful, or not intentional, [Disciplinary] Counsel has the additional burden of showing the requisite dishonest intent.” *Id.*; see also *In re Uchendu*, 812 A.2d 933, 939 (D.C. 2002) (“[S]ome evidence of a dishonest state of mind is necessary to prove an 8.4(c) violation”). Dishonest intent can be established by proof of recklessness. See *Romansky*, 825 A.2d at 315, 317. To prove recklessness, Disciplinary Counsel must establish by clear and convincing evidence that the respondent “consciously disregarded the risk” created by his actions. *Id.*; see, e.g., *In re Boykins*, 999 A.2d 166, 171–72 (D.C. 2010) (finding reckless dishonesty where the respondent falsely represented to Disciplinary Counsel that medical provider bills had been paid, without attempting to verify his memory of events from more than four years prior, and despite the fact that he had recently received notice of non-payment from one of the providers). The entire context of the attorney’s actions, including their credibility at the hearing, is relevant to a determination of intent. See *In re Ekekwe-Kauffman*, 210 A.3d 775, 796–97 (D.C. 2019) (per curiam).

Misrepresentation is a “statement . . . that a thing is in fact a particular way, when it is not so.” *Shorter*, 570 A.2d at 767 n.12 (internal quotation marks omitted). Misrepresentation requires active deception or a positive falsehood. *See id.* at 767–68. The failure to disclose a material fact also constitutes a misrepresentation. *In re Outlaw*, 917 A.2d 684, 688 (D.C. 2007) (per curiam) (“Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation.” (internal quotation marks omitted)); *see, e.g., Lattimer*, 223 A.3d at 450–51 (respondent stated as fact a proposition that was contradicted by the only relevant evidence in the record); *In re Scanio*, 919 A.2d 1137, 1139–44 (D.C. 2007) (respondent failed to disclose that he was salaried employee when he made a claim for lost income to insurance company measured by lost hours multiplied by billing rate); *Reback*, 513 A.2d at 228–29 (respondents neglected a claim, failed to inform client of dismissal of the case, forged a client’s signature onto second complaint, and had the complaint falsely notarized).

As with dishonesty, Disciplinary Counsel does not need to establish that a misrepresentation was deliberate, only that it was made with “reckless disregard for the truth.” *In re Brown*, 112 A.3d 913, 916, 918 (D.C. 2015) (per curiam); *see, e.g., In re Jones-Terrell*, 712 A.2d 496, 499 (D.C. 1998) (“Even if they were, at least in part, attributable to Respondent’s haste in preparing the petition, the false statement and omissions were of such significance to the issues before the court that we believe

her conduct was at least reckless and sufficient to sustain a violation of the rule.” (quoting Board Report)).

Disciplinary Counsel contends that Mr. Twomey violated Rule 8.4(c) in Count I based on the same set of facts that supports the Rule 4.1(a) violation. Specifically, he provided a false docket number and altered receipt for LTD’s California ETC application and misled Mr. Coran regarding the timelines for approval in Nebraska and North Dakota. (*See* ODC Br. 23; *supra* Part III.C.) Disciplinary Counsel further contends that Mr. Twomey engaged in dishonesty and misrepresentation in Count II when he falsely told Monster Broadband that he had filed an ETC application in Tennessee on January 6, 2021, and with the FCC the following month; rather, he filed with the FCC in June 2021 without telling the client. (*See* ODC Br. 24; DCX 53 ¶¶ 13–15, at 4–5.) Mr. Twomey disputes Disciplinary Counsel’s contentions. (*See* Twomey Br. 12.)

The evidence supports Disciplinary Counsel’s narrative and the Hearing Committee’s observations regarding Mr. Twomey’s misstatements of fact or law with respect to his work for LTD apply equally with respect to Rule 8.4(c). His statements were, at a minimum, misrepresentations made with reckless disregard for how his clients, co-counsel, and the FCC would understand them. But the context in which they were made—missed or threatened-to-be-missed deadlines—leads the Hearing Committee to conclude that the statements were dishonest. (*Supra* Findings

of Fact ¶¶ 25, 29–30.) His statements to Monster are in the same vein. There is no evidence to corroborate Mr. Twomey’s statement that he filed an application with Tennessee in January 2021, and the evidence provided by the general counsel of the Tennessee PUC demonstrated that an application had not been filed. (*Id.* ¶¶ 62–63.) As with the LTD statements, the Hearing Committee finds these statements to be dishonest.

Accordingly, the Hearing Committee finds, by clear and convincing evidence, that Mr. Twomey violated Rule 8.4(c) by making dishonest statements regarding LTD’s ETC applications to California, Nebraska, and North Dakota and Monster’s ETC petition for Tennessee.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel asks the Hearing Committee to recommend a two-year suspension for the misconduct set forth above. Mr. Twomey urges the Hearing Committee to recommend an informal admonition. For the reasons described below, the Hearing Committee recommends that Mr. Twomey be suspended for two years.

A. Standard of Review.

The sanction imposed in an attorney-disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar

misconduct. *See, e.g., Hutchinson*, 534 A.2d at 924; *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *Cater*, 887 A.2d at 17. “In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney.” *Reback*, 513 A.2d at 231 (internal quotation marks omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

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

B. Application of the Sanction Factors.

The Seriousness of the Misconduct

Mr. Twomey's misconduct in this matter is serious. As discussed, this is primarily a case about dishonesty, one of the more serious forms of misconduct under the rules. Lawyers are expected—by their clients, by tribunals, and by the public—to act with honesty and integrity. *See Hutchinson*, 534 A.2d at 924.

In this matter, however, Mr. Twomey made several misstatements to detract from missing or nearly missing material deadlines for his clients. These misstatements included manufacturing a filing receipt and allowing it to be submitted to the FCC in support of a client's petition for relief from the deadline Mr. Twomey was in danger of missing. His misstatements triggered filings with the FCC by several state regulatory authorities correcting the record. Tellingly, both LTD's and Monster's opinion of the legal profession worsened after observing what Mr. Twomey did as their lawyer.

Prejudice to the Client

Fortunately, Monster did not suffer significant prejudice from Mr. Twomey's misconduct in connection with its ETC petition for Tennessee. It had to retain another lawyer to do so, but Monster received conditional ETC designation from the FCC. LTD was not so lucky. The FCC denied LTD's petition for relief from the June 7 deadline, finding that LTD had not made a good-faith effort to secure the

ETC designations at an earlier time. As a minimum, Mr. Twomey was responsible for the diligence of his efforts on behalf of LTD. But the dishonesty in connection with LTD's applications may have soured the FCC on LTD. In other words, Mr. Twomey's dishonest conduct could have eroded LTD's credibility before the FCC.

Dishonesty

As discussed, the Hearing Committee finds that Mr. Twomey was dishonest in connection with his work for LTD and Monster and perpetuated a dishonest version of events in his testimony in this proceeding. (*Supra* Findings of Fact ¶¶ 30, 36, 41, 62.)

Violations of Other Disciplinary Rules

Although the central violations found by the Hearing Committee are those of Rules 4.1(a) and 8.4(c), the Hearing Committee also finds Mr. Twomey violated Rules 1.3 and 1.4. Indeed, the Hearing Committee concludes that Mr. Twomey's dishonest conduct arises from his failures to promptly satisfy his clients' objectives and keep them adequately informed about their matters.

Previous Disciplinary History

The record contains no evidence of any prior discipline of Mr. Twomey.

Acknowledgement of Wrongful Conduct

Mr. Twomey conducted himself professionally in this matter and at the hearing. However, he has not acknowledged and may not appreciate the seriousness

of his misconduct in this matter, even as he has acknowledged under oath that certain, prior statements of his were not correct.

Other Circumstances in Aggravation and Mitigation

Neither party presented evidence of other aggravating or mitigating circumstances.

C. Sanctions Imposed for Comparable Misconduct.

As noted, the Hearing Committee sees this as a dishonesty case and the violations of Rules 1.3 and 1.4 as less material to the appropriate sanction. Minor, isolated instances of dishonesty have resulted in brief suspensions, *see, e.g., In re Owens*, 806 A.2d 1230, 1231 (D.C. 2002) (per curiam) (thirty-day suspension), whereas in egregious cases of dishonest conduct the Court has disbarred attorneys. For example, an attorney's "continu[ous] and pervasive indifference to the obligations of honesty in the judicial system" that included advising clients to lie resulted in disbarment. *In re Corizzi*, 803 A.2d 438, 440, 443 (D.C. 2002). An attorney who "manufactured evidence for use before [a federal agency], lied under oath to [a court], and continued to lie about his actions to the [h]earing [c]ommittee" was also disbarred. *Goffe*, 641 A.2d at 465, 467. This matter bears some resemblance to *Goffe*, but the Hearing Committee shares Disciplinary Counsel's apparent view that Mr. Twomey's conduct does not rise to the level of lengthy, pervasive, and egregious dishonesty on display in *Goffe* or *Corizzi*.

Rather, this case looks more like examples where the attorney resorted to dishonesty to cover up earlier, less egregious conduct. For example, the Court imposed a six-month suspension where the respondents failed to tell their client that her case had been dismissed in order to conceal their neglect, then falsified the client's signature on a pleading, which they notarized and filed with the court, causing prejudice to the administration of justice, but not the client. *Reback*, 513 A.2d at 231–32. The Court subsequently imposed an eighteen-month suspension where an attorney falsely represented to his superiors that he had filed an appeal on behalf of a client, falsified filing stamps on the purported appeal papers in the client file, and provided misleading status reports on the client's matter in a year-long pattern of dishonesty, where there were several mitigating factors. *In re Guberman*, 978 A.2d 200, 203–04, 215 (D.C. 2009) (imposing nonidentical reciprocal discipline).

On the more serious end of the spectrum, an attorney who told a client that her complaint for divorce remained pending but inactive because she had not paid an expense, when the complaint had been dismissed and the attorney had taken inadequate steps to locate the defendant, aggravated by false statements to Disciplinary Counsel, disciplinary history that involved deceit, and an “almost total lack of understanding of the ethical code,” received a three-year suspension with fitness required for reinstatement. *In re Haupt*, 422 A.2d 768, 769, 771–72 (D.C.

1980) (per curiam). The Court levied an identical sanction on a lawyer who was a sole practitioner; neglected five clients to their detriment; had no disciplinary history; and was dishonest with clients, tribunals, and other lawyers. *In re Steele*, 868 A.2d 146, 153–54 (D.C. 2005). The Court again administered a three-year suspension with a fitness requirement to a lawyer who failed to disclose to the D.C. bar pending disciplinary matters in North Carolina and gave false testimony about the matter before a hearing committee in the District, where one year of the suspension accounted for the underlying conduct in the reciprocal matter based on the North Carolina discipline, specifically, neglect, failure to communicate, failure to refund an unearned fee, and failure to respond to fee-dispute petitions and disciplinary inquiries. *In re Scott*, 19 A.3d 774, 780–83 (D.C. 2011).


The Hearing Committee finds that Mr. Twomey’s conduct is consistent with that observed in *Guberman*, *Haupt*, *Steele*, and *Scott*, and that informs its recommended sanction.

V. CONCLUSION

For the foregoing reasons, the Hering Committee finds that Mr. Twomey violated District of Columbia Rules of Professional Conduct 1.3(c), 1.4(a) and (b), 4.1(a), and 8.4(c) and recommends that he be suspended from the practice of law for two years. The Hearing Committee further recommends that Mr. Twomey’s

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

AD HOC HEARING COMMITTEE



Joshua D. Rogaczewski, Chair



Sally Winthrop, Public Member



Francine K. Weiss, Attorney Member