



DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued: April 4, 2018

In the Matter of: :
:
RALEIGH BYNUM, II, :
:
Respondent. : Board Docket No. 16-BD-029
: Bar Docket No. 2014-D378
A Member of the Bar of the :
District of Columbia Court of Appeals :
(Bar Registration No. 503380) :

REPORT AND RECOMMENDATION
OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

The sole issue in contention before the Board is whether disbarment or a three-year suspension with a fitness requirement is the more appropriate sanction for the repeated dishonesty and other misconduct by Respondent Raleigh Bynum, II, Esquire. The misconduct arose out of (1) Respondent's joint representation of William H. Reid, Jr. and his parents in two medical malpractice actions and an estate action in South Carolina, and (2) Respondent's representation of Mr. Reid in a life insurance matter.

For the charges relating to the South Carolina matters, the Hearing Committee found violations of the following South Carolina Rules of Professional Conduct ("S.C. Rules"): 1.3 (Diligence and Promptness); 1.4(a) and (b) (Communication); 1.5(b) (Scope of Representation and Rate of Fee); 1.7(a)(2) (Concurrent Conflict of Interest); and 8.4(d) (Dishonesty).¹ For the charges related to the insurance matter,

¹ D.C. Rule 8.5(b)(1) (Choice of Law) provides that "[f]or conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the

the Committee found violations of the following District of Columbia Rules of Professional Conduct (“D.C. Rules”): 1.3(a) (Diligence), 1.3(b)(1) (Intentionally Failing to Seek Client’s Objectives), 1.3(c) (Promptness), 1.4(a) (Failing to Keep Client Reasonably Informed), and 1.4(b) (Failing to Explain Matter). The only charge not proven, in the view of the Committee, was S.C. Rule 1.5(e) (Division of Fees). For these rule violations, the Hearing Committee recommended that Respondent’s license be suspended for three years with proof of fitness upon any application for reinstatement.²

Disciplinary Counsel takes exception to the Hearing Committee’s sanction recommendation and argues that Respondent should be disbarred for his “flagrant dishonesty.” Respondent does not take exception to the Committee’s legal conclusions or its recommended sanction and argues that the Board should adopt the Hearing Committee’s sanction recommendation. Prior to the scheduled oral argument before the Board, Disciplinary Counsel filed a consent motion to submit the matter on the parties’ briefs and without argument.

tribunal sits, unless the rules of the tribunal provide otherwise” *See, e.g., In re Ponds*, 888 A.2d 234, 235-36 (D.C. 2005) (“*Ponds II*”) (Court applying Maryland Rules of Professional Conduct for misconduct related to federal court proceeding in Maryland); *In re Gonzalez*, 773 A.2d 1026, 1029, 1031 (D.C. 2001) (applying Virginia Code of Professional Responsibility and Virginia Legal Ethics Opinions).

² Respondent is only a member of the D.C. Bar, but discipline can be imposed against a member of the D.C. Bar for the violation of another jurisdiction’s rules. *See* D.C. Rule 8.5(a) (“A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs.”); *see also In re Ponds*, 876 A.2d 636, 637 (D.C. 2005) (per curiam) (“*Ponds I*”) (D.C. Court of Appeals may impose a sanction for a violation of Rule 1.6 of the Maryland Rules of Professional Conduct).

Having reviewed the record and the parties' briefs, the Board adopts the Hearing Committee's factual findings, as supported by substantial evidence in the record, and concurs with the legal conclusions as to the Rule violations. However, for the reasons stated below, the Board departs from the Committee's sanction analysis and recommends that Respondent be disbarred for his "flagrant dishonesty" – that is, his repeated dishonesty to his clients, the South Carolina Probate Court, the Office of Disciplinary Counsel, and the Hearing Committee.

I. Factual Summary

The Board adopts the Hearing Committee's findings of fact (FF 1-92), *see* HC Rpt at 6-41, pursuant to Board Rule 13.7.³ No additional findings of fact are needed, and the relevant facts that inform our sanction recommendation are set forth below.

William Henry Reid, Jr.'s wife, Deidre Gist Reid, died on October 7, 2008, after giving birth to a daughter in a South Carolina hospital. Based on an investigation conducted by prior counsel, including opinions of medical experts, the cause of death was related to an incorrectly placed epidural, which caused Ms. Reid to go into cardiac arrest. Her death followed a few weeks after the delivery. When she died, she had few assets, but her Estate had a medical malpractice claim against the hospital, the medical providers, and the doctors who treated her before her death.

³ The Hearing Committee's Findings of Fact are designated "FF ____" and references to its Report and Recommendation are designated "HC Rpt at ____."

Originally, Mr. Reid had applied to be appointed personal representative of his late wife's Estate, but he withdrew his application after he was charged with criminal drug offenses, and he asked his parents to request to be appointed instead.⁴ On November 10, 2008, the South Carolina Probate Court appointed Mr. Reid's parents as personal representatives to the Estate of Deidre Gist Reid. Thomas Boggs, and then Cameron Boggs, (no relation), both South Carolina lawyers, represented the parents in the probate matter. Sometime before April 2009, Cameron Boggs requested that S. Blakey Smith, a South Carolina lawyer experienced in medical malpractice, pursue the Estate's claims against the hospital, medical providers, and doctors who treated Ms. Reid before her death. In August 2009 and May 2011, Mr. Smith, who was retained by Mr. Reid's parents on behalf of the Estate, filed two wrongful death and survival actions ("the medical malpractice actions"): one against the medical providers and the hospital; and one against Dr. Gregory Pacentine, who was the anesthesiologist at the delivery. *See* FF 14 (*Reid, Sr. v. Ellington, et al.*); FF 20 (*Reid, Sr., et al. v. Pacentine*).⁵ Mr. Smith took extensive discovery and obtained experts who could testify about the defendants' negligence and the Estate's actual and punitive damages.

In July 2009, October 2009, and February 2010, Mr. Reid wrote letters (while in prison in South Carolina) to the Probate Court asking that his parents be removed

⁴ In April 2011, Mr. Reid was convicted of felony drug offenses and sentenced to eight years in prison. FF 9.

⁵ Only Mr. Reid's father was named as a plaintiff on behalf of the Estate in the action against the medical providers and hospital, but both parents were identified as plaintiffs in the action against Dr. Pacentine.

as personal representatives because of their advanced age and memory problems, but also because he was concerned that Mr. Smith was trying to persuade his parents to exclude him from participation in the medical malpractice actions and any resulting award or judgment. The Probate Court declined to remove Mr. Reid's parents as personal representatives, and they continued in that capacity at least through 2015. Mr. Smith eventually asked Mr. Reid to waive his statutory right as a beneficiary of the Estate, but Mr. Reid refused.⁶ Around the time of the mediation of the medical malpractice actions, Mr. Smith advised Mr. Reid's mother that he would seek to withdraw from the case due to disagreements with Mr. Reid. On December 5, 2011, Mr. Smith moved to withdraw as counsel for Mr. Reid's parents, and, at the same time, filed two Rule 40(j) motions, which allowed the two cases to be removed from the South Carolina court docket and restored upon motion within one year.

On another inmate's suggestion, Mr. Reid contacted Respondent to represent his parents and him in the medical malpractice actions. Respondent graduated from law school in 1998 but did not become a member of the D.C. Bar until 2007; he is not a member of any other state Bar. Mr. Reid spoke to Respondent by telephone two or three times and then met with him in late December 2011, when Respondent traveled to the South Carolina prison.

⁶ Two additional statutory beneficiaries were the child born during the delivery giving rise to Ms. Reid's injuries, and Ms. Reid's daughter from another relationship. HC Rpt at 12 n.5.

The Hearing Committee found that Mr. Reid testified credibly that (1) Respondent told him he had handled other medical malpractice actions; (2) Respondent did not tell him he was not licensed to practice law in South Carolina; and (3) Respondent did not inform him that he could not appear in court without associating with an attorney who was a member of the South Carolina Bar. FF 30. The Committee also found that Respondent's testimony, denying that he failed to inform Mr. Reid that he was not licensed in South Carolina, was intentionally false. FF 31. Mr. Reid and his mother did not learn that Respondent was not licensed to practice law in South Carolina until Mr. Reid filed an attorney discipline complaint with the South Carolina Bar in October 2014. As noted in the Committee's conclusions:

From the start, Respondent actively misled [his clients] about his ability to represent them in South Carolina, in a medical malpractice action, and jointly [H]e gave Mr. Reid the false assurance that he was competent to handle the Estate's claim [and] . . . misled Mr. Reid and his parents about his ability to represent them before the South Carolina courts. He never told them he could not appear in court unless he associated with another lawyer in the state.

HC Rpt at 51-52 (citations omitted).

Respondent knew that (1) Mr. Reid previously had tried to have the Probate Court remove his parents as personal representatives of the Estate, and (2) Mr. Reid previously had refused to renounce his statutory share to the Estate despite having been asked by his parents' prior counsel, Mr. Smith, to do so to facilitate a settlement

of the medical malpractice actions that would benefit the Estate.⁷ Respondent claimed he had explained the potential conflict of the joint representation to Mr. Reid and his parents, but the Committee found Mr. Reid's and his parents' testimony denying that Respondent had ever discussed the conflict was more credible. *See* FF 92(e). "Respondent's representations in his Answer and his testimony at the hearing – that he later discussed the conflict with both Mr. Reid and his parents – were false." HC Rpt at 58. The Hearing Committee could not determine whether proffered retainer agreements had been signed by Mr. Reid or his parents; however, the Hearing Committee concluded that "with or without a valid . . . agreement," Mr. Reid, his parents, and Respondent all understood that Respondent represented Mr. Reid and his parents and that the representation began in December 2011.

Respondent introduced O. Cyrus Hinton, an attorney licensed in South Carolina, to Mr. Reid's mother during a single conference call. At the time of the call, Mr. Hinton had already filed the Motion to Restore in one of the malpractice actions, *Reid, Sr. v. Ellington, et al.*, but not the second malpractice action, *Reid, Sr., et al. v. Pacentine*. Respondent conceded that he failed to ask Mr. Hinton to file a Motion to Restore in the *Pacentine* malpractice action. Mr. Reid's mother never heard from Mr. Hinton again after that single conference call. Respondent did not provide Mr. Reid or his parents with any writing to memorialize any agreement with

⁷ As explained to Mr. Reid's parents by another attorney, Mr. Reid needed to surrender his statutory rights in favor of Deidre Reid's two surviving daughters who were the remaining beneficiaries of the Estate, because no jury would be willing to award a money judgment that would "inure to the benefit of an incarcerated felon." HC Rpt at 21 n.7.

Mr. Hinton or any fee-sharing arrangement. Mr. Hinton, a criminal defense lawyer like Respondent, did not have prior experience with medical malpractice cases. Because a Motion to Restore was never filed in the malpractice action involving Dr. Pacentine, that case remained dismissed and the one-year period for restoring the case then expired.

On February 28, 2013, Respondent met with Mr. Reid and his mother at the prison where Mr. Reid was incarcerated. This was the first and only meeting between Mr. Reid's mother and Respondent. Respondent did not update them about the status of their case or inform them that the case involving Dr. Pacentine had been dismissed. Instead, Respondent was focused on trying to persuade Mr. Reid's mother that Mr. Reid should waive his rights as a beneficiary, which Mr. Reid still was not willing to do. During the conversation at the prison, Respondent did not address the conflict in representation or request a waiver of the conflict.

After this single meeting, Mr. Reid's mother had difficulty reaching Respondent by telephone. The one time she reached him, she complained about his failure to communicate with her son and the lack of progress in the case. Respondent told her there was nothing to report, but he would call her if something happened. That was the last time she heard from him.

After the medical malpractice action against the medical providers and hospital (*Reid, Sr. v. Ellington, et al.*) had been restored in February 2013, Respondent and Mr. Hinton did nothing to undertake discovery or further litigate the case. As a result, on December 2, 2013, the defendants' counsel moved to dismiss

the complaint for failure to prosecute, and Mr. Hinton notified Respondent. During the disciplinary hearing, Respondent testified that he never got a copy of the motion to dismiss. The Hearing Committee found that his testimony was false, and that he did, in fact, receive the motion to dismiss. Respondent did not inform Mr. Reid or his parents of the motion to dismiss, but he claimed that it was Mr. Hinton's responsibility to do so. On April 7, 2014, after Respondent did not file a response to the motion to dismiss (or ensure that Mr. Hinton filed one), the Court of Common Pleas granted the motion and dismissed the case.⁸ As described by the Hearing Committee, "Respondent was demonstrably aware of his pervasive neglect . . . [and] Respondent's fabricated excuses for his failure to act . . . demonstrate Respondent's awareness that he did not act with the necessary diligence and promptness in the medical malpractice actions." HC Rpt at 47-48.

In regard to Respondent's representation of Mr. Reid's parents in the probate matter, Respondent did not enter an appearance or request that Mr. Hinton do so.

⁸ Only the defendants' counsel appeared at the hearing on the motion to dismiss. In its subsequent written order dismissing the case, the court noted:

Plaintiffs chose to wait over a year, until December 6, 2012, to have new counsel file a motion to restore the case. Even after the year-plus delay, Plaintiffs did not pay the mandatory restoration fee for over 9 months. Moreover, Plaintiffs' counsel failed to respond to Defendants' inquiries about a revised scheduling order or other action on the case. Further, Defendants showed that Plaintiffs have not filed any motions, attempted to conduct any discovery, or otherwise done anything to prosecute the case in the last two years. In short, Defendants argue that Plaintiffs have done nothing to prosecute this action since failing to meaningfully participate in mediation back in October of 2011.

FF 67 (Order Dismissing Plaintiffs' Claims with Prejudice, Apr. 14, 2014).

Respondent, instead, sent letters to the Probate Court that stated he was the lead counsel and that “The Bynum Law Firm’s” representation of the Estate of Deidre Gist Reid in the malpractice litigation was ongoing. The Hearing Committee concluded that Respondent delayed several months before responding to the Probate Court’s request for status updates concerning the medical malpractice action, and his response “misrepresented” the case status because it “dishonestly claimed to the Probate Court that he was in discussions with defense counsel.” HC Rpt at 60-61; FF 63. In March 2014, Respondent falsely represented to the Probate Court that the delay was “due to complexities in the litigation.” In truth, Respondent was not in discussion with defense counsel, was not furthering the case by any means, and had not even responded to the defendants’ motion to dismiss. HC Rpt at 61; FF 63-65.

On the question of Mr. Hinton’s role in the case, the Hearing Committee found that Respondent falsely stated in his verified Answer that he had referred the medical malpractice actions to Mr. Hinton, who was to take over as lead counsel in the case. The Committee found that Respondent also falsely stated in his Answer that he had told Mr. Reid and his parents that Mr. Hinton was lead counsel. The Committee also did not credit Respondent’s testimony at the hearing that Mr. Hinton had ultimate responsibility for communicating with and representing Mr. Reid and his parents. The Hearing Committee clearly was not persuaded by Respondent’s defense that he was not lead counsel. *See* HC Rpt at 44 (“Respondent’s attempt to lay blame for

each of the charges on the deceased Mr. Hinton is unconvincing.”).⁹ The Committee determined that his testimony on the matter was intentionally dishonest:

Respondent’s claim that he had a fee-sharing arrangement with Mr. Hinton is a fabrication . . . Respondent was intentionally dishonest in testifying that he agreed to only a referral fee due to his limited role in the case All the record evidence repeatedly points toward a conclusion that Respondent fabricated the lead role Mr. Hinton was to play for the purpose of defending against the disciplinary charges.

HC Rpt at 55-56. The Committee supported this finding by noting that when initially questioned by the Office of Disciplinary Counsel (before Respondent was cognizant of the seriousness of the charges), Respondent claimed he was the lead attorney. In addition, the Committee cited Respondent’s March 2014 letter to the Probate Court, in which he represented that his law firm continued its representation in the medical malpractice action. *Id.* at 45; FF 64, 88. The Hearing Committee found, and the Board agrees, that Respondent was lead counsel and his contrary testimony was false.

In regard to Respondent’s neglect and failure to communicate in his handling of Mr. Reid’s insurance matter, the Committee did not credit Respondent’s claim that his delay in contacting the insurance company was due to Mr. Reid. FF 73. Respondent testified that Mr. Reid did not ask for his assistance in the insurance matter until 2013, but Mr. Reid gave Respondent a copy of the life insurance policy in 2011, and written communications confirm that Respondent was representing Mr. Reid in the insurance matter in 2012. Even after the disciplinary complaint was filed

⁹ Mr. Hinton was murdered by his own son on April 12, 2015.

in October 2014, Respondent did not respond to Mr. Reid’s request for the return of his copy of his deceased wife’s life insurance policy. At the time of the hearing, Respondent still had not returned the document.

Finally, the Committee rejected Respondent’s claim and testimony that his health was to blame for the misconduct. It found that Respondent falsely stated in his Answer that his health prevented him from appearing *pro hac vice* and that he had told Mr. Reid and his parents that he could no longer represent them due to his health problems. FF 92(c).¹⁰ When confronted with the filings and active legal representation in his other cases during the same time period, Respondent admitted that he had not been too ill to file pleadings or to make appearances in multiple matters from August 2011 through July 2014.

The Hearing Committee concluded that Respondent violated S.C. Rules 1.3, 1.4(a), 1.4(b), 1.5(b), 1.7(a)(2), and 8.4(d) in connection with his misconduct in the South Carolina matters and D.C. Rules 1.3(a), 1.3(b)(1), 1.3(c), 1.4(a), and 1.4(b) in connection with his representation in the insurance matter. The Committee emphasized that throughout the representation, the investigation, and the hearing, Respondent misrepresented facts and was intentionally dishonest: “All these factors point to one conclusion – Respondent intentionally misrepresented key facts

¹⁰ In 2004, three years before he became a member of the D.C. Bar, Respondent suffered a stroke due to cardiomyopathy. In response to the disciplinary investigation, Respondent claimed he had congestive heart failure since at least 2006 when he had his first defibrillator implanted. He had surgery in June 2015 and February 2016 to have it replaced. FF 80.

throughout.” HC Rpt at 61. We agree with the Hearing Committee regarding the Rule violations, and Respondent’s intentional, protracted dishonesty.

II. Disbarment is the Appropriate Sanction

Before explaining our reasons for the recommendation of disbarment, we commend the Hearing Committee’s extensive and thorough factual findings. On the important issue of Respondent’s credibility, the Committee meticulously compared all of Respondent’s testimony and that of Mr. Reid and his parents, examined Respondent’s answers to the verified Complaint and his prior statements to Disciplinary Counsel, and considered documents that had been created by Respondent. Based on its careful review of the record, the Committee had “no difficulty concluding that numerous statements and representations by Respondent during his hearing testimony were, in fact, intentionally false.” HC Rpt at 45.

The Committee also properly considered the factors relevant to making a recommendation for sanction: (1) seriousness of the misconduct; (2) prejudice, if any, to the client; (3) whether the conduct involves dishonesty and/or misrepresentation; (4) violations of any other disciplinary rules; (5) whether the attorney had a previous disciplinary history; (6) whether the attorney acknowledges the wrongful conduct; and (7) circumstances in mitigation and aggravation. *In re Vohra*, 68 A.3d 766, 771 (D.C. 2013); *see* HC Rpt at 62-69 (analyzing each factor).

The Committee noted that Respondent’s misconduct was “serious and protracted” and continued for three years; the misconduct “severely prejudiced his clients who lost claims that had been developed and supported by evidence obtained

through prior counsel's discovery and retention of medical experts"; and the misconduct involved six violations of the South Carolina Rules and five violations of the D.C. Rules. HC Rpt at 63. The only mitigating factor was Respondent's lack of a prior disciplinary record (the Hearing Committee rejected the suggestion that poor health was a mitigating circumstance because Respondent did not establish a causal connection between the misconduct and his alleged poor health). *Id.* at 67-69. The Committee found that Respondent did *not* express any remorse for his actions or the resulting harm but, instead, during his testimony "he lied and stated he had withdrawn from the representation and advised his clients he had done so — testimony that was contrary to his representations to his clients (FF 71-72), to the South Carolina Probate Court (FF 64, 66), and to Disciplinary Counsel as late as April 2016." *Id.* at 66. In addition to the several Rule violations and the severe prejudice to his clients, the Committee described Respondent's false testimony as an aggravating factor. *Id.* at 69.

Our point of disagreement with the Hearing Committee is its legal conclusion that Respondent's conduct did not amount to "flagrant dishonesty." Citing *In re Corizzi* and *In re Goffe*, the Committee concluded that Respondent's misconduct was not flagrant dishonesty because "Respondent's falsehoods do not involve schemes to obtain client or public funds directly or a crime, a feature of many disbarment cases." *Id.* at 64.

We disagree with the Hearing Committee's position that dishonesty is "flagrant" only where some sort of financial embezzlement or fraudulent pecuniary

gain has occurred. The Court has defined flagrant dishonesty as “reflect[ing] a continuing and pervasive indifference to the obligations of honesty in the judicial system.” *In re Pennington*, 921 A.2d 135, 141 (D.C. 2007) (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)). “Flagrant dishonesty” includes dishonesty that is “aggravated and prolonged,” as is the case here. *See In re Omwenga*, 49 A.3d 1235, 1238 (D.C. 2012) (per curiam) (citation omitted); *see also In re Howes*, 39 A.3d 1, 16-18 (D.C. 2012) (“flagrant dishonesty” where long course of dishonest conduct including false certifications, deliberate withholding of exculpatory evidence, and false and misleading statements). Respondent’s dishonesty began at the outset of his representation of the Reids in 2011 and continued during Disciplinary Counsel’s investigation and throughout the hearing before the Committee in 2016. The dishonesty was aggravated by Respondent’s neglect of his clients’ cases, resulting in the dismissal of two substantial medical malpractice actions in which prior counsel had already taken depositions of witnesses and medical experts. Finally, Respondent’s lack of remorse and his repeated efforts to falsely lay blame on others (the Reids and Mr. Hinton) are additional “hallmarks of flagrant dishonesty.” *See, e.g., In re McClure*, Bar Docket No. 2010-D152, at 38-39 (BPR Dec. 31, 2015) (describing intent to deceive, woeful lack of competence, and continued lack of remorse, as bearing the “hallmarks” of flagrant dishonesty), *recommendation adopted*, 144 A.3d 570 (D.C. 2016) (per curiam). In our opinion, the Hearing Committee exercised an overly restrictive reading of the meaning of

“flagrant dishonesty,” as defined by the Court and as applied to the facts of this particular case.

One relevant case the Hearing Committee did not address in its brief discussion of “flagrant dishonesty” was *In re Cleaver-Bascombe*, where the Court ordered disbarment for the respondent’s submission of a falsified timekeeping voucher and for her false testimony about it at the hearing. The Board had recommended a sanction of a two-year suspension with a fitness requirement, but the Court increased the sanction to disbarment in large part because of the respondent’s fabrications in her sworn testimony before the Committee. Quoting the Board Report, the Court reiterated: “‘The attempted cover-up often exceeds the initial misconduct. It did so here.’” *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) (per curiam). Here, Respondent likewise gave intentionally false testimony (detailed repeatedly in the Hearing Committee Report) to cover up the neglect, conflict of interest, and failure to communicate.

We also believe the Hearing Committee’s reliance on *Vohra* as a basis for a sanction short of disbarment is misplaced given the facts here. In *Vohra*, the Court imposed a three-year suspension with fitness for the respondent’s signing of his clients’ names (without authorization) on immigration applications. When the respondent was notified of his error in filing the wrong forms for his clients’ visa applications, he did not inform the clients but, instead, submitted the correct forms while signing their names, without permission. However, once the clients hired new counsel after learning that the visas had been denied, the respondent *helped*

successor counsel by signing an affidavit in which he took the blame for the incomplete second submission and for the late filings. In agreeing with the Board that disbarment was not appropriate, the Court of Appeals stressed that “respondent at a critical time took full responsibility for his failures.” *Vorha*, 68 A.3d at 773. The Court also emphasized that the respondent sought to make his former clients whole, refunding the entire \$5,000 retainer fee. *Id.*

In contrast, here, Respondent has not taken full responsibility or shown any remorse. He continues to argue before the Board that his misconduct was due to his health issues, a position rejected by the Hearing Committee. *See* Respondent’s Brief at 4 (arguing in his brief that he “did not make knowing false representations” but, instead, his “illness impacted the representation of the complainant William Reid”); *see also Omwenga*, 49 A.3d at 1239 (repeated dishonesty in dealing with clients, the courts, Disciplinary Counsel, and the Hearing Committee warrants disbarment where the respondent refuses to take responsibility for his actions, is indifferent to client’s interests, and lacks remorse). In addition, unlike the respondent in *Vohra*, here the Committee determined that Respondent gave intentionally false testimony at the hearing – an aggravating circumstance often present in flagrant dishonesty cases.

Even though the Hearing Committee alluded that a “single cause of action . . . forms the core of Respondent’s violations here,” *see* HC Rpt at 65, the representation involved three clients (Mr. Reid, his mother, and his father), two

medical malpractice suits, one probate matter, and one insurance claim. We believe Respondent's misconduct cannot be described as limited to a single matter.¹¹

Respondent's repeated dishonesty may not have resulted in his own personal profit ultimately, but the absence or presence of financial gain is not necessarily determinative. As noted by the Court in describing the flagrant dishonesty of the respondent in *Corizzi*:

What his precise motives were or *whether he benefitted financially is not determinative* [T]hese ethical violations do not each stand alone as a single incident . . . but also in conjunction with a series of additional serious violations Respondent has failed to admit any wrongdoing and has shown no remorse [R]espondent's overall conduct reflects a continuing and pervasive indifference to the obligations of honesty in the judicial system and to the duty of loyalty to the interests of his clients.

Corizzi, 803 A.2d at 443 (emphasis added) (citations omitted) (affirming the Board's disbarment recommendation). Accordingly, the fact that Respondent ultimately did not benefit financially from his dishonesty is not decisive on the question of whether his misconduct constitutes "flagrant dishonesty."

Finally, we cannot overlook the *number* of false statements made before this Hearing Committee and the *repetitive* nature of Respondent's dishonesty in whatever situation he found himself. *See, e.g., In re Goffe*, 641 A.2d 458, 464-65 (D.C. 1994) (per curiam) ("repetitive nature" of the dishonesty where respondent

¹¹ Moreover, in *Cleaver-Bascombe*, a single fraudulent CJA voucher was involved, yet the Court still found that disbarment was the sanction necessary to protect the public and to deter future similar conduct especially in light of respondent's intentionally false testimony. *Cleaver-Bascombe*, 986 A.2d at 1199-1201.

“has chosen to use deceit and misrepresentation as a principal means of dealing with the legal system”). We view his false testimony as equal to that of the respondent in *Goffe*. Here, Respondent chose to fabricate answers when confronted by the Probate Court’s request for information and when he realized the seriousness of Disciplinary Counsel’s investigation and, in that sense, the Court’s comments in *Goffe* are equally applicable:

[T]here is no suggestion that respondent understands the impropriety of his conduct. A respondent is entitled to require proof of his misconduct and to contest the existence of the misconduct or the appropriateness of particular sanctions. But respondent testified falsely about his conduct. It is not just that the evidence was contrary to his testimony. Seeing him and hearing him as a witness, the committee was left with the strong impression that he had testified falsely, as he had done earlier in the Tax Court and in Superior Court.

Goffe, 641 A.2d at 466.


In short, relying on the Committee’s carefully considered factual findings of Respondent’s repeated and protracted dishonesty to his clients, the South Carolina Probate Court, the Office of Disciplinary Counsel, and the Hearing Committee, we recommend that he be disbarred for his “flagrant dishonesty.” *In re Pelkey*, 962 A.2d 268, 281 (D.C. 2008) (dishonesty which rises to the level of being “flagrant,” provides basis for disbarment).

CONCLUSION

For the foregoing reasons, the Board adopts the findings of fact of the Hearing Committee and its conclusions of law, with the exception of its recommended sanction. Respondent violated Rules 1.3, 1.4(a), 1.4(b), 1.5(b), 1.7(a)(2), and 8.4(d)

of the South Carolina Rules of Professional Conduct and Rules 1.3(a), 1.3(b)(1), 1.3(c), 1.4(a), and 1.4(b) of the D.C. Rules of Professional Conduct. The Board recommends that Respondent be disbarred because he engaged in flagrant dishonesty.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Thomas R. Bundy, III

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