DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued: May 23, 2018

In the Matter of:	:	
	:	
ROY L. PEARSON, JR.,	:	
	:	Board Docket No. 15-BD-031
Respondent.	:	Bar Docket No. 2007-D149
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration Number: 955948)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

This disciplinary matter arises out of Respondent Roy L. Pearson, Jr.'s *pro se* lawsuit in D.C. Superior Court against the owners of Custom Cleaners, from whom Respondent eventually sought more than $67 million in damages in a dispute that started when the dry cleaner allegedly lost Respondent's pants.[1]

At its inception, Respondent's civil action hinted at creative legal theories that "foster[] . . . growth in the law." *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1180 (D.C. Cir. 1985). Creativity, however, has its bounds: attorneys may not champion an issue "unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of

[1] *Pearson v. Chung*, 2005 CA 004302 (D.C. Super. Ct.).

existing law." D.C. Rule of Professional Conduct ("Rule") 3.1.[2]

There are few cases involving violations of Rule 3.1, because showing that a claim is "frivolous" is a high standard. "Frivolous" is more than "ultimately meritless," and the "good faith" exception to a Rule 3.1 violation allows a wide range of creative and aggressive challenges to existing law. As a general matter, this heightened standard is good; lawyers should be free to advocate for their clients. Attorneys in the District of Columbia should not fear discipline for making aggressive and creative arguments, bringing claims that expand existing law, or advancing novel damages claims – even if they have thin support or are unlikely to succeed. As a result, Respondent is the rare attorney who is properly disciplined for violating Rule 3.1.

At its start, the case was about a lost pair of pants. As his lawsuit progressed, Respondent alleged more and more aggressive positions, eventually demanding millions of dollars under a legal theory the Court of Appeals determined was "not supported by law or reason." *Pearson v. Chung*, 961 A.2d 1067, 1076 (D.C. 2008). His case spiraled into a "four-year, no-holds-barred crusade." HC Rpt. at 54-55.[3]

---

[2] This case involved Rule 3.1 in effect in 2005-2008, the pendency of *Pearson v. Chung*. Rule 3.1 was amended, effective February 1, 2007, to add the phrase "in law and fact." The change did not alter the type of conduct prohibited by the Rule. *See, e.g.*, *In re Yelverton*, 105 A.3d 413, 427 (D.C. 2014) (relying on *In re Spikes*, 881 A.2d 1118 (D.C. 2005), a pre-amendment case, when considering post-amendment misconduct). Thus, we refer to the language of current Rule 3.1 in our analysis.

[3] The following citation protocols are used herein: "HC Rpt." refers to the Hearing Committee Report and Recommendation; "FF" refers to the Hearing Committee's Findings of Fact; "BX" refers to Disciplinary Counsel's exhibits; "R. Br." refers to Respondent's Brief to the Board; "ODC Br." refers to Disciplinary Counsel's Brief to the Board; "R. Reply Br." refers to

Most lawyers are "wise enough to know that their most precious asset is their professional reputation. Filing unmeritorious pleadings inevitably tarnishes that asset. Those who do not understand this simple truth can be dealt with in appropriate disciplinary proceedings . . . ." *Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384, 413 (1990) (Stevens, J., concurring in part and dissenting in part). Respondent failed to recognize that maxim. As his lawsuit progressed, Respondent's liability and damages arguments morphed into the preposterous.

The Ad Hoc Hearing Committee ("Hearing Committee") consequently found that Respondent violated Rule 3.1 (bringing a frivolous proceeding or asserting a frivolous issue therein) and Rule 8.4(d) (serious interference with the administration of justice), but that he did not violate Rule 3.2(a) (delaying a proceeding when he knew or when it was obvious that such action would serve solely to harass or maliciously injure another). The Hearing Committee recommended a thirty-day suspension, stayed (with conditions) during a two-year probation period.

Disciplinary Counsel[4] does not take exception to the Hearing Committee's Report and Recommendation. Respondent, on the other hand, raises sweeping objections to the Committee's factual findings and legal conclusions, and reiterates his numerous motions to dismiss, each of which was rejected by the Committee.

Respondent's Reply Brief to the Board; and "Tr." refers to the consecutively paginated transcript of the disciplinary hearing.

[4] The petition was filed by the Office of Bar Counsel. The D.C. Court of Appeals changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We use the current title herein.

Following our review of the parties' arguments and the record in this case, we agree with the Hearing Committee that Respondent violated Rules 3.1 and 8.4(d) but did not violate Rule 3.2(a). We disagree with the Committee's recommended sanction, however. We believe the appropriate sanction for Respondent's extreme conduct is a suspension of ninety days. Contrary to the Committee's conclusion, we do not believe that the circumstances warrant a stay of that suspension. *See In re Long*, 902 A.2d 1168, 1171-72 (D.C. 2006) (per curiam).

II. FACTS

The Hearing Committee's factual findings are supported by substantial evidence, and we adopt them as our own. Board Rule 13.7; *see also In re Speights*, 173 A.3d 96, 102 (D.C. 2017) (per curiam) (weight and relevance of evidence is "within the ambit of the Hearing Committee's discretion"); *In re Szymkowicz*, 124 A.3d 1078, 1084 (D.C. 2015) (per curiam) (existence of contrary evidence is not an appropriate basis to disturb a Hearing Committee's factual findings that are supported by substantial evidence).[5]

A. Respondent's Litigation Claims

The historical facts in this case are contained in the Hearing Committee's twenty-nine-page discussion of the events in *Pearson v. Chung*. *See* FF 5-138.

[5] Respondent devotes approximately seventy pages of his 128-page brief to critiques and alternative formulations of the Committee's factual findings. Many of Respondent's claims are cumulative or irrelevant; others are unsupported by the record, and still others are purely argumentative. All are without merit. We have read and considered everything he submitted, but will not address point-by-point his many contentions.

On May 3, 2005, Respondent dropped off a pair of suit pants at Custom Cleaners for alterations. When he returned, the dry cleaner presented him with pants that Respondent claimed were not his.

A month later, Respondent filed a lawsuit in D.C. Superior Court against the store's owners ("Defendants"). Respondent claimed that the Defendants violated the D.C. Consumer Protection and Procedures Act ("CPPA") (Count 1), and that they committed common law fraud (Count 2), as well as negligence or conversion (Count 3). BX 6. Respondent premised his liability theories on his unique interpretation of three signs displayed by the dry cleaner:

- Respondent contended that a "Same Day Service" sign promised to provide every customer with same day service, whether or not it was requested and no matter when the clothes were dropped off. FF 79, 97.
- Respondent argued that a "Satisfaction Guaranteed" sign required the cleaner to satisfy any customer's wish, without limit. Thus, if the cleaner rejected a customer's demand for anything – even a trillion dollars – as "satisfaction," the cleaner would be liable for damages. *See* FF 21, 47, 66, 69, 94; Tr. 65-70.
- Finally, Respondent contended that an "All Work Done on Premises" sign was misleading because it did not disclose that dry cleaning for other establishments was also done on the Defendants' premises. BX 6 at 9.

Respondent's assertions of damage theories escalated dramatically as the lawsuit progressed. Prior to filing the action, Respondent realistically demanded $1,150 compensation for the purportedly lost Hickey Freeman-brand suit pants. FF 13. His Verified Complaint, filed on June 7, 2005, was more aggressive, seeking compensatory damages for, *inter alia*, emotional distress (of at least $15,000) and $15,000 in punitive damages from each Defendant. BX 6 at 9-10. By November 2005, Respondent sought $285,000 in damages, of which he attributed $31,500 to twenty-one violations of the CPPA (calculated at $1,500 per violation, multiplied by seven (for each CPPA subsection allegedly violated), and by three (for each Defendant)), all premised on the "Satisfaction Guaranteed" sign. FF 28. In September 2006, Respondent again escalated his damage theories, arguing (without citation to authority) that "[w]hen an unfair trade practice claim is based on a sign, each day the sign is displayed constitutes a separate violation and a separate cause of action." FF 59; BX 38 at 11, 15. A month later, he sought to add a claim that the "Same Day Service" and "All Work Done on Premises" signs also violated the CPPA, essentially tripling the millions of dollars he sought pursuant to his one-a-day-violation theory. FF 61.

Particularly telling, Respondent did this in defiance of an earlier grant of summary judgment for the Defendants dismissing his "All Work Done on Premises" claim. FF 55, 61; BX 62 at 2 n.2 (discovery showed that all work was actually done on the premises). Thus, in essence, Respondent alleged that he was entitled to recover on the "All Work Done on Premises" claim, and when that claim was

dismissed, he nonetheless sought to reinsert his previous claim into the case without citation or explanation for why the trial court's decision was wrong. In short, he obstinately refused to accept the trial court's ruling.

In addition to monetary damages, Respondent sought injunctive relief requiring the Defendants to provide him dry cleaning services (unless they compensated him for "having to walk 2 miles, out of his way, to another cleaners") and a judgment that if Respondent notified the Defendants that they were not providing him acceptable services, they were to pay him $10,000 within twenty-four business hours "to enable [him] to litigate or arbitrate defendants' failure to provide their services." BX 40 at 29.

Eventually, in the Joint Pre-Trial Statement, Respondent claimed that the owners of the dry cleaner owed him more than $67 million in compensatory damages, including more than $500,000 in attorney's fees, $3 million for emotional damages ($1,500,000 separately for both his statutory and common law claims), and $90,000 to lease a car ($45,000 separately for both his statutory and common law claims) so he could patronize another dry cleaner. BX 45 at 23-25; *see also* FF 70.

Respondent demanded all of this despite failing to prove at trial that his pants had been lost or damaged. FF 110. Indeed, Respondent took the position that "no proof of lost suit pants [was] required" to prove his satisfaction guaranteed claim. BX 79 at 41.

B. The Hearing Committee Report

The Hearing Committee concluded that Respondent violated Rule 3.1 because he pursued legal theories that were "impermissibly implausible" since they did not have "even a faint hope of success." *See* HC Rpt. at 44, 53-54. We agree. We reach this conclusion based on the entire course of Respondent's extreme conduct over the course of the suit and the complete lack of legal support for his liability and damages claims that were, in considerable respects, manifestly absurd.

The Hearing Committee also found that Respondent violated Rule 8.4(d) on that basis and by propounding discovery requests despite a court order precluding him from doing so (FF 38); pursuing an effort to recuse the pre-trial judge (FF 34, 47); and otherwise abusing the discovery process (FF 32, 33, 35). *See* HC Rpt. at 59-61. Once again, we agree with the Hearing Committee.

III. LEGAL CONCLUSIONS

A. Respondent Violated Rule 3.1.

Rule 3.1 provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law." This is so because frivolous contentions can have serious deleterious effects both upon the courts and upon other parties to a litigation. Such claims "waste the time and resources of th[e] court, [and] delay the hearing of cases with merit." *In re Spikes*, 881 A.2d 1118, 1127 (D.C. 2005) (quoting *Slater v. Biehl*, 793 A.2d 1268, 1277 (D.C. 2002)). As well, frivolous

claims necessarily impose "unwarranted delay and added expense" upon opposing parties (*id.*) and force them into unwarranted "legal entanglement." *In re Yelverton*, 105 A.3d 413, 427 (D.C. 2014).[6]

The most substantive discussion of Rule 3.1 by the Court of Appeals is in *Spikes*. In articulating the standard of conduct mandated by Rule 3.1, the Court considered factors pertinent to compliance with analogous provisions of Super. Ct. Civ. R. 11 (the "clarity or ambiguity of the law"; the "plausibility of the position taken"; and the "complexity of the issue") and D.C. App. R. 38 (whether, after "an objective appraisal" of the legal merits of a position, a "reasonable attorney" would conclude that [an asserted position] is so "wholly lacking in substance" that it is "not based upon even a faint hope of success on the legal merits"). *Spikes*, 881 A.2d at 1125 (internal quotation marks and citations omitted); *see also Yelverton*, 105 A.3d at 424-25.

Ultimately, the Court in *Spikes* articulated an objective test. To comply with Rule 3.1, an attorney must "undertake an 'objective appraisal of merit.'" 881 A.2d at 1125 (quoting *Tupling v. Britton*, 411 A.2d 349, 352 (D.C. 1980)). A claim is frivolous if, "after undertaking such an appraisal, a reasonable attorney would have concluded that there was not even a 'faint hope of success on the legal merits' of the action being considered." *Id.* (quoting *Slater*, 793 A.2d at 1278); *see also* Geoffrey

[6] The Defendants argued, with substantial justification, that Respondent's "trump[ed] up convoluted [and] outlandish" claims caused them to expend significant attorney's fees, intending that they would "eventually succumb to the mounting . . . fees, capitulate and pay him large sums of money for what [was] one singular pair of pants that was purportedly (though not admittedly) lost." BX 28 at 5.

C. Hazard & W. William Hodes, The Law of Lawyering § 27.12 (3d ed. Supp. 2007) ("Rule 3.1 adopts an objective as opposed to a subjective standard"); Restatement (Third) of the Law Governing Lawyers § 110, cmt. d (2000) ("A frivolous position is one that a lawyer of ordinary competence would recognize as so lacking in merit that there is no substantial possibility that the tribunal would accept it."). Rule 3.1 applies both to lawyers representing clients and to those, like Respondent, appearing *pro se*. *See In re Pelkey*, 962 A.2d 268, 280 (D.C. 2008).

Disciplinary Counsel was not obligated to prove, as Respondent suggests (*see* R. Br. at 92-93), that Respondent's *entire* complaint was frivolous. Rule 3.1 proscribes the assertion of frivolous "issues" within an otherwise legitimate action. *Spikes*, 881 A.2d at 1124 (examining each of four allegedly defamatory statements). Here, Respondent's frivolous claims were not ancillary arguments made in an otherwise meritorious brief; rather, they lay at the heart of his case. We have little trouble concluding Respondent's claims violate Rule 3.1, without needing to conclude that the entire action was frivolous. Respondent's damage theories and claims of liability are thus susceptible to discipline under Rule 3.1 if frivolous, even if other aspects of his case had merit. *See, e.g.*, *Spikes*, 881 A.2d at 1124-25 ("[W]e are satisfied that clearly frivolous claims and issues predominated the federal defamation suit.").

Nor was Disciplinary Counsel obligated to show that the claims were frivolous when first made. Rather, lawyers must continually "inform themselves about the facts of their clients' cases and the applicable law and determine that they

can make good faith arguments in support of their clients' positions." Rule 3.1, cmt. [2]. That is, even if a claim is "not frivolous at the outset, the lawyer may not stick to that position once it becomes apparent that there is no factual basis for it." ABA/BNA Lawyers' Manual on Professional Conduct, § 61–106 (1999); *see also Brunswick v. Statewide Grievance Committee*, 931 A.2d 319, 330-31 (Conn. 2007); *Kahn v. Cundiff*, 543 N.E. 2d 627, 629 (Ind. 1989) (per curiam) ("Commencing an action against a particular party will less often be frivolous, unreasonable, or groundless than continuing to litigate the same action."). The point at which an attorney must abandon a claim because it is frivolous is fact-based and not always clear. Nonetheless, Respondent was on the wrong side of the line.

Respondent asserted (and continues to proclaim) that his liability theories and damages claims concerning the "Same Day Service," "All Work Done on Premises," and "Satisfaction Guaranteed" signs were factually and legally sound. *See* R. Br. at 91-92, 99. However, all his claims were thoroughly rejected at trial – after his own witnesses failed to support them, after he acknowledged that he had never requested same-day service, and after he failed to prove that his pants had been lost. *See* FF 89-90, 94; BX 56 at 66-167. Nonetheless, Respondent obstinately filed an unsuccessful motion for reconsideration with the trial court. FF 112. He then appealed and reasserted his claims to the Court of Appeals, which firmly rejected them in uncompromising terms. *See Pearson v. Chung*, 961 A.2d at 1074-79. The Court held that "the trial court, showing basic common sense," had rejected Respondent's "unlimited view of a 'Satisfaction Guaranteed' sign," and that

Respondent had "no pertinent authority" to support it. *Id.* at 1075-76. The Court also concluded that Respondent's "Same Day Service" argument had no legal support and "frankly defie[d] logic," and that his interpretation of the CPPA was similarly "not supported by law or reason." *Id*. at 1076-77. Finally, the Court noted Respondent's basic failure of proof: "In the end, whether Pearson's claims are considered under a common law fraud claim or under the CPPA makes no difference because he was unable to establish the underlying factual basis for relief" (*i.e.*, that the Defendants had not returned his pants). *Id*. at 1076. Despite all of that, Respondent filed a Petition for Rehearing or Rehearing En Banc that, in turn, was also denied. FF 136-37.

We recognize that courts have the responsibility to address, dispose of, and sanction frivolous claims brought in matters pending before them. In this case, the trial court partially denied the Defendants' summary judgment motion and partially denied their trial motion for judgment as a matter of law.[7] FF 55, 98. The Hearing Committee was accordingly "troubled" that it was "asked to reach . . . an 'implausibility' determination when the trial court allowed the 'Same Day Service' and 'Satisfaction Guaranteed' claims to go to trial . . . ." HC Rpt. at 52-53.

The failure of a court to dismiss a claim or to sanction a lawyer is, of course, relevant to our assessment of the issues relating to Rule 3.1, but it is not determinative. We cannot blind ourselves to the rigorous standards that summary

[7] Notably, the trial court dismissed some of Respondent's claims, but he defiantly reasserted them without explanation or justification. *See* page 6, *supra*.

judgment motions must overcome.[8] Nor can we ignore the fact that, particularly in a bench trial, a court may decide to hear from the witnesses for the defense and then rule at the close of evidence. Efficient case management or inaction by the court, however, does not preclude subsequent action by the disciplinary system, which affords "a public law remedy [that] supplement[s] the private remedy [of Rule 11], prevent[s] repeat offenders from escaping notice, and build[s] confidence in the legal system as a whole." Hazard & Hodes, *supra*, § 27.12. We have taken into account the trial court's procedural rulings favorable to Respondent's claims, but those rulings do not control our disciplinary decision.

Indeed, it is apparent that, as the case neared a conclusion, the trial court recognized the frivolous nature of Respondent's claims. In order to "put [the] matter behind them," the Defendants withdrew their post-trial bill of costs and motions for attorneys' fees and sanctions. BX 72. Respondent, rather predictably, sought an

---

[8] In granting the defendants' attorneys' fees because the plaintiff's 42 U.S.C. § 1983 claim was "frivolous" pursuant to *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978), the Fourth Circuit aptly noted that:

> Plaintiffs also insist that their claim could not have been factually frivolous, because it survived defendants' motions for dismissal and for summary judgment. Plaintiffs' logic is flawed. Although in some instances a frivolous case will be quickly revealed as such, it may sometimes be necessary for defendants to blow away the smoke screens the plaintiffs ha[ve] thrown up before the defendants may prevail. . . . The court gave plaintiffs the benefit of the doubt by allowing their conspiracy claim to go to trial, but this generosity did not negate plaintiffs' responsibility to litigate a factually grounded claim. . . . [D]efendants were forced for several years, and at great expense, to fend off a claim that proved to be factually baseless.

Hutchinson v. Staton, 994 F.2d 1076, 1080-81 (4th Cir. 1993) (internal quotation marks and citations omitted).

award of *his* attorneys' fees for opposing those motions. In denying Respondent's application, the court noted:

> The merits of the [Defendants'] motions . . . are not directly before the Court, except by way of the plaintiff's request for attorney's fees or expenses. The Court recognizes that the [CPPA] was enacted to benefit consumers and that an award of attorneys' fees against a consumer plaintiff would be very unusual. *But this is an unusual case, in which the plaintiff attempted to take what was at best a misunderstanding about one pair of pants and expand it to a claim of $67 million, based on legal theories that – once they clearly were articulated – were unsupported in fact or in law.* In the circumstances, the [Defendants'] motion for sanctions hardly can be considered frivolous. The Court finds the plaintiff's request for attorney's fees or expenses to be wholly unjustified.

BX 73 (emphasis added); FF 121. Under these circumstances, the trial court's earlier unwillingness to dismiss those claims is hardly determinative of their propriety.

Throughout the proceedings in *Pearson v. Chung*, and even to the present day, Respondent failed to conduct an objective appraisal of the legal merits of his position. He made, and continues to make, arguments that no reasonable attorney would think had even a faint hope of success on the legal merits. *See Yelverton*, 105 A.3d at 425. Respondent's liability claims "frankly defie[d] logic," and his damages claims were outlandishly inappropriate. FF 134.[9] Respondent violated Rule 3.1.

It is important to stress, however, that this is a narrow conclusion we reach on these particular facts. It should not be read to limit the right of counsel to argue in

[9] Damages claims are regularly overstated for tactical reasons. We are loath to recognize a Rule 3.1 violation based on an exaggerated *ad damnum* clause or similarly optimistic damages assertion. We agree with the Hearing Committee, however, that a number of Respondent's damages claims violate Rule 3.1.

good faith, creatively, to expand the law. Courts cannot reinterpret the law if no one constructively raises new and novel legal issues. The full development of the law requires as much. Generations of lawyers have been inspired by such litigation, and rightly so. The Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), eliminated the "separate but equal" doctrine, but when *Brown* was filed, *Plessy v. Ferguson*, 163 U.S. 537 (1896), was good law. More recently, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), opened marriage to same-sex couples. Merely asserting a claim that conflicts with existing law is not sanctionable for that reason alone; Rule 3.1 recognizes that a lawyer can permissibly advocate for a "good-faith . . . extension, modification, or reversal of existing law." *Brown*, *Obergefell*, and a host of more mundane cases appropriately fall within the permissive scope of the Rule. Lawyers who seek to change or redefine the law act pursuant to one of the most noble traditions of our profession. We applaud that practice.

But that is not what Respondent did.

Moreover, we recognize that the law sometimes allows results that are counter-intuitive. We do not conclude that Respondent violated Rule 3.1 based simply on a visceral reaction that Respondent's theories or damages claims were absurd. Lawyers are free to make arguments when they are supported by fact and by existing law or a reasoned extension of the law even if they lead to results that at first appear to be unlikely, far-fetched, or questionable. Instead, we have considered the facts and the legal arguments made in Respondent's briefs before both the trial

court and the Court of Appeals, and we are convinced that no reasonable attorney would think that Respondent had even a faint hope of success in those claims.[10]

B. Respondent Violated Rule 8.4(d).

A lawyer violates Rule 8.4(d) when his conduct (1) is improper; (2) bears directly upon the judicial process with respect to an identifiable case or tribunal; and (3) potentially impacts the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996).

The Hearing Committee concluded that Respondent violated Rule 8.4(d), and it commented on the "parallels" between Respondent's misconduct and that of the respondent in *Yelverton*. HC Rpt. at 60. For example, as did Yelverton in filing a frivolous motion to recuse and "grossly unmeritorious and often totally repetitive motions," Respondent pursued his case far beyond a point at which his contentions became implausible, made unfounded allegations against the pre-trial judge in his motion (and renewed motion) for a trial by jury,[11] served repetitive discovery

---

[10] A reasonable attorney is, of course, one who has acquainted herself with the applicable law before reaching a determination that an argument does not have a faint hope of success. As a result, we have examined the law cited by Respondent in the course of the *Pearson v. Chung* litigation.

[11] On December 28, 2005, Respondent filed an untimely Motion for Trial by Jury, arguing that because Judge Kravitz improperly denied his motions for partial summary judgment and to compel discovery (*see* FF 31), he was biased:

> [P]laintiff could not have foreseen, when he filed this action, that it would be assigned to a judge who, at the outset of the litigation and prior to any briefing of the issues, would voice the firm view that the case should not be litigated. No person in their right mind would want a jurist to act as a trier of fact who reaches that factual and legal conclusion without the benefit of briefing or argument . . . .

demands, and refiled meritless discovery motions. HC Rpt. at 60. Then, like the respondent in *Spikes*, even after resoundingly losing at trial, he "persiste[d] in maintaining [his] frivolous suit, including an appeal," *Spikes*, 881 A.2d at 1119, and a petition for rehearing.

We agree with the Hearing Committee's conclusion. Respondent's pursuit of unwarranted tactics and frivolous issues in Superior Court and the Court of Appeals burdened the judicial system sufficiently to constitute a violation of Rule 8.4(d). *See In re Fastov*, Board Docket No. 10-BD-096, at 36 (BPR July 31, 2013) (Rule 8.4(d) violation where the respondent pursued frivolous breach of contract and intentional infliction of emotional distress claims, among others). In *Fastov*, the Board noted:

> In pursuing those [frivolous] claims, Respondent flooded the courts with voluminous, duplicative, and meritless motions. His conduct directly burdened the . . . courts in which he filed his actions and, while his pleadings may have been summarily denied, by requiring those courts to wade through his verbose and repetitive pleadings, Respondent abused the judicial process.

BX 16 at 4. Judge Kravitz summarily denied the motion:

> The plaintiff premises his motion upon two accusations of judicial misconduct . . . . Neither of the two bases upon which the plaintiff has premised his motion has any merit whatsoever. . . . The transcript – a copy of which is attached to this order – speaks for itself, and . . . the plaintiff's bold accusation of misconduct by the Court at the scheduling conference finds no support whatsoever in the record.

BX 19 at 1-2. Four months later, Respondent renewed the motion, repeating essentially the same arguments. The court again denied the motion, observing that "plaintiff's [renewed] motion contains the same false and wholly unsubstantiated accusations." FF 50; BX 29. (By the time Respondent sought to remove Judge Kravitz, Respondent *already* had made one recusal motion that removed D.C Superior Court Judge Melvin Wright, who was initially assigned to *Pearson v. Chung*. BX 5 at 8.).

Id.[12] Respondent's conduct underlying the violation of Rule 3.1, accompanied by his scorched-earth litigation strategies, violated Rule 8.4(d).

Respondent contends, however, that the Hearing Committee improperly considered the discovery process, the motion for jury trial, and the violation of the court's discovery order when it found that Respondent violated Rule 8.4(d) because the Specification of Charges did not give him adequate notice of that theory of liability. *See* R. Br. at 109 n.15, 112. We disagree.

Although not providing detail, paragraph 15 of the Specification of Charges referred to the "extensive discovery and motions practice" in *Pearson v. Chung*. During the disciplinary hearing, Respondent himself introduced in evidence his multiple motions to compel, thereby placing the issue of the discovery process squarely before the Committee. *See* Tr. 230-35. During the hearing, the Chair commented that the Committee would be considering allegations of misconduct related to the discovery process. Tr. 232-33 ("I just put you on notice . . . that you want to be sure to give us your side of the story" concerning the necessity of filing the multiple discovery motions). Indeed, at the close of the hearing, the Chair explicitly advised Respondent that he needed to brief the Rule 8.4(d) charge *separately* from the allegations concerning the Rule 3.1 and 3.2 violations, despite Respondent's assertion in his opening statement that it "piggyback[ed]" on the other charges. Tr. 406-07. Accordingly, the Hearing Committee appropriately considered

[12] Because the respondent died before the Court issued its opinion, the Court vacated its opinion and dismissed the matter as moot. *See In re Fastov*, No. 13-BG-850 (D.C. Sept. 18, 2014), *vacated*, No. 13-BG-850 (D.C. Sept. 26, 2014) (per curiam) (dismissing all charges as moot).

Respondent's misconduct in the discovery process. *See* HC Rpt. at 60; *see also In re Slattery*, 767 A.2d 203, 211 (D.C. 2001) (due process not violated where "issues involved the scope of the original charges" (quoting *In re James*, 452 A.2d 163, 168 n.3 (D.C. 1982))).

C. Respondent Did Not Violate Rule 3.2.

The Hearing Committee found that Disciplinary Counsel did not prove a violation of Rule 3.2 by clear and convincing evidence. Disciplinary Counsel does not take an exception to that conclusion. We adopt the Committee's findings of fact and conclusions of law on this point, and incorporate them here. HC Rpt. at 55-58.

D. Respondent's Motions

1. Motions to Dismiss

We reject the litany of procedural and due process arguments Respondent has made for the first time to the Board. All are frivolous and none requires extended discussion, but in the aggregate they share the troubling characteristics of Respondent's "overzealous conduct in the underlying matters." *See In re Barber*, Board Docket Nos. 10-BD-076 & 11-BD-068, at 18 (BPR Dec. 31, 2013), *recommendation adopted*, 128 A.3d 637, 643 (D.C. 2015) (per curiam).

In this case, Respondent also peppered the Hearing Committee with motions, all of which it recommended be denied. A hearing committee is not authorized to rule on a motion to dismiss, but instead must include a recommended disposition of the motion in its report to the Board. *See* Board Rule 7.16(a); *In re Ontell*, 593 A.2d

1038, 1040 (D.C. 1991). We agree with the Hearing Committee's recommendations, and with its reasoning, as follows:

Failure to allege the elements: We agree with and incorporate the Hearing Committee's analysis and recommendation to deny Respondent's motions to dismiss the Rule 3.1, 3.2(a), and 8.4(d) charges for failure to allege all the elements of a disciplinary violation. *See* HC Rpt. at 37, 40-43.

Delay in prosecution: Respondent complains that the seven-year delay between Disciplinary Counsel beginning its investigation and the date of the filing of the Specification of Charges deprived him of due process, and that the further delay in the Hearing Committee's issuance of its Report and Recommendation warrants a dismissal of the charges.

We agree with the Hearing Committee that Respondent failed to establish that he was prejudiced by delay preceding the Specification of Charges. HC Rpt. at 39-40. Accordingly, we deny Respondent's Motion to Dismiss. *See, e.g.*, *In re Saint-Louis*, 147 A.3d 1135, 1148-49 (D.C. 2016); *In re Howes*, 39 A.3d 1, 19 n.24 (D.C. 2012); *see also* Tr. 362-77. We similarly reject Respondent's argument based on delay in the issuance of the Hearing Committee's Report. *See In re Green*, 136 A.3d 699, 700 (D.C. 2016) (per curiam) ("Mere delay without a showing of substantial prejudice poses no impediment to disciplinary action . . . ."). Indeed, we note that Respondent himself has delayed the disciplinary process, not only by seeking extensions of time and permission to file overly long and prolix briefs, but by his excessive motions practice.

2. Transcript and Improper Denial of Motion in *Limine*

Despite the Hearing Committee Chair's order finding that Respondent had not shown any prejudice resulting from alleged errors in the transcript of the evidentiary hearing *and* the Board's similar order denying Respondent's Renewed Motion to Replace Error-Riddled Transcript With Corrected Transcripts, Respondent continues to pursue this meritless argument.[13] We again reject Respondent's baseless argument that the Hearing Committee relied on a hearing transcript "riddled with hundreds of materially prejudicial transcription errors." *See* R. Br. at 79. Respondent has failed to show error in the Hearing Committee's conscientious conclusions.

We are similarly unpersuaded by Respondent's arguments concerning the Chair's denial of the Motion in *Limine*. Respondent filed that motion seeking to preclude the admission of various pleadings in *Pearson v. Chung* into evidence. The Chair properly denied the motion. There is no doubt that the observations and findings of the trial court and the Court of Appeals are relevant to these disciplinary proceedings, and no procedural error occurred in their admission into evidence, as they were not treated as dispositive of the alleged Rule violations. *See* HC Rpt. at 38-39.

[13] In seeking to substitute his own annotated transcript for that prepared by the court reporter, Respondent tendered a hand-edited copy of the entire 419 pages. The Chair of the Hearing Committee denied the motion. Having "meticulously reviewed each of the two volumes of the transcript" upon receipt and for a second time while preparing the Hearing Committee's report, the Chair "found no instances in which the transcript was indecipherable and no instances of material errors . . . [n]or has Respondent identified any material errors or any prejudice to his defense from the problems with the transcript." Jan. 13, 2016 Order of the Ad Hoc Hearing Committee.

3. Respondent's Claims of Immunity and Allegations of Disciplinary Counsel's Rule Violations

Respondent alleges in his Verified Answer that (1) Disciplinary Counsel violated the D.C. Rules of Professional Conduct and (2) Respondent was immune from disciplinary charges because he had been acting as a "private attorney general" in the *Pearson v. Chung* litigation. BX 4 at 7; *see also* R. Reply Br. at 23. According to Respondent, he "was deputized by the statute under which he brought suit (the D.C. Consumer Protection Procedures Act) to act as a 'private attorney general,' in furtherance of the public interest in removing and penalizing deceptive advertisements, [and thus] performed a statutorily authorized and ***immunized*** public service by expertly researching and prosecuting *Pearson v. Chung* over a three year period." BX 4 at 14 (emphasis in original).

As did the Hearing Committee, we reject Respondent's claim that Disciplinary Counsel violated the Rules of Professional Conduct by filing the Specification of Charges, which Respondent contends was "wholly false, misleading, unlawful and frivolous." *See* HC Rpt. 39-41 (quoting BX 4 at 31). The Specification was approved by a Contact Member; the Hearing Committee found two Rule violations; and the Board agrees with the Hearing Committee's conclusions. The Hearing Committee did not find a violation of Rule 3.2(a), but we note that had Disciplinary Counsel filed an exception, we would have addressed the merits of that claim which, at least according to one judge who viewed Respondent's

conduct closely, was worth pursuing.[14] Respondent's claims of misconduct by Disciplinary Counsel are meritless.

As well, Respondent's contention that he was deputized to act as a private attorney general and that the CPPA immunizes him from the ethical duties that apply to all other lawyers has no basis in fact and law. As repeatedly pointed out by the Superior Court, Respondent's lawsuit was in his name only – not in the name of the District of Columbia – and in any event, government attorneys acting on behalf of the public are still subject to discipline imposed by the Court of Appeals. BX 56 at 259; *see, e.g.*, *In re Kline*, 113 A.3d 202, 204-06 (D.C. 2015); *Howes*, 39 A.3d at 4-7.

4. Respondent's Other Claims for Dismissal

Respondent seeks rejection of the Hearing Committee Report based on a litany of additional arguments that we have reviewed and find to be utterly without significance. R. Br. at 79-80.[15] Indeed, some of Respondent's representations and citations (*e.g.*, R. Br. at 79 (citing Tr. 9-10, 324) are contrary to the transcript record in this case.

---

[14] Judge Kravitz described Respondent's discovery requests as "excessive and disproportionate," "burdensome, intrusive, and calculated to harass the defendant." BX 20 at 2-3 (Jan. 26, 2006 Order).

[15] Among these, Respondent contends that the Committee improperly applied the collateral estoppel doctrine when considering the litigation in *Pearson v. Chung*. *See* R. Br. at 9 n.2. It did not. *See* HC Rpt. at 37-39. Disciplinary Counsel expressly stated that it would not rely on this doctrine. *See* Transcript of May 28, 2015 Pre-Hearing Conference at 14; *see also* Tr. 380. Because Defendants withdrew their motion for Rule 11 sanctions after the judgment issued, the question of Respondent's frivolous conduct was not directly addressed by the Superior Court. We conclude that the Hearing Committee came to its own independent conclusion concerning the Rule 3.1 violation.

IV. SANCTION

In determining the appropriate sanction for a disciplinary infraction, the factors we are to consider include (1) the nature and seriousness of the misconduct, (2) the prejudice to the client, (3) whether the conduct involved dishonesty or misrepresentation, (4) violation of other disciplinary rules, (5) Respondent's prior disciplinary history, (6) Respondent's attitude toward the underlying conduct, and (7) mitigating or aggravating circumstances. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citation omitted); *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc). The disciplinary system does not seek to punish lawyers; rather, its purposes are to maintain the integrity of the legal profession, protect the public and the courts, and deter future or similar misconduct by the respondents and others. *Hutchinson*, 534 A.2d at 924; *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc). In addition, sanctions imposed must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar Rule XI, § 9(h)(1).

Here, the Hearing Committee recommended that Respondent be suspended for thirty days, to be stayed on condition of successful completion of a two-year probation during which Respondent "shall not make assertions in litigation unless there is a basis in law or [*sic*] fact[16] for doing so that is not frivolous and shall not be sanctioned by a court for litigation related conduct; and that any clients Respondent represents in litigation during the period of his probation be informed of the fact of his probation." HC Rpt. at 2-3. Respondent takes exception, arguing

[16] Rule 3.1 requires that assertions have a basis in law *and* fact but the Report and Recommendation incorrectly states "law *or* fact" in its conditions of probation.

that the Board should order a dismissal. Disciplinary Counsel originally recommended a ninety-day suspension, but it does not take exception to the Committee's recommendation of a lesser sanction. We disagree with the Hearing Committee's sanction analysis because we believe that a ninety-day suspension, without a stay, is an appropriate sanction for Respondent's violations of Rules 3.1 and 8.4(d).

A. Analysis of Factors

1. Nature and Seriousness of the Misconduct

In assessing the seriousness of Respondent's misconduct, we cannot ignore a recurring and disturbing pattern underlying his frivolous liability and damages claims.

First, Respondent never claimed he was seeking a modification or extension of existing law, but instead argued that current law was on his side. Yet it became clear that he was misciting or mischaracterizing that law. For example, the trial court pointed out that he was "not being completely accurate" as to the facts of a case in his closing argument and also expressed its serious concern that *none* of the several cases cited in Respondent's pre-trial statement supported his "Satisfaction Guaranteed" claim in the way he claimed. *See* FF 104 (court admonishing Respondent: "you have an obligation to the Court to be accurate in the representations you make with regard to what cases are about").

Second, Respondent repeatedly misrepresented procedural facts in motions, even when he should have been aware that the deciding judge had first-hand

knowledge of the actual record. *See, e.g.*, FF 34 (the court denied Respondent's motion for trial by jury because "neither of the two bases upon which the plaintiff has premised his motion has any merit whatsoever [and] [t]he transcript . . . speaks for itself"); FF 50 (court denying Respondent's renewed motion because it contained "the same false and wholly unsubstantiated" factual claims); BX 25 at 1-2 (in an order denying motion to have matters deemed admitted, the court quoted the prior discovery order in which it had been explicit in *not* extending the deadline for propounding discovery, contrary to Respondent's assertion that the deadline had been extended implicitly).[17]

In sum, Respondent's misrepresentations render more serious the Hearing Committee's conclusion that his "litigation tactics went beyond aggressiveness and crossed the boundary into abusiveness." HC Rpt. at 63.

2. Prejudice to the Client

Respondent was, of course, his own client. The Hearing Committee noted that as the "client," Respondent was prejudiced by the loss of a significant settlement offer of $12,000 for the misplaced pants. HC Rpt. at 66; FF 73. The Hearing Committee also concluded that as a result of his misconduct, Respondent came very

---

[17] The Hearing Committee Report reiterated these concerns:

> [T]he Hearing Committee notes that the trial judge raised a question about the accuracy of Respondent's representations about the facts and/or law of some of the cases that he relied upon. FF 104. Having reviewed the case law at issue and Respondent's discussion of it in his papers and during oral arguments, the Hearing Committee shares this concern. *See* FF 29, 131, 155.

HC Rpt. at 64.

close to being assessed attorney's fees, costs, and fines in the $100,000 range before the Defendants withdrew their Rule 11 motion. HC Rpt. at 66; FF 111, 119. Although they would have been appropriate in a matter where Respondent represented a client, we do not believe that the notions of "client" harm identified by the Hearing Committee conceptually apply to this *pro se* case.

3. Dishonesty

Disciplinary Counsel did not charge Respondent with Rule violations involving dishonesty and does not allege any instance of false testimony. When addressing dishonesty as it relates to sanction, Disciplinary Counsel suggests that it generally "has concerns that Respondent . . . has made multiple inaccurate representations about the factual record in these proceedings, echoing his behavior in the *Pearson v. Chung* litigation. *See* ODC Br. at 26. Absent a showing of intentional false testimony or deliberate dishonesty in these proceedings, we do not find that the aggravating factor of dishonesty has been proven by clear and convincing evidence.

4. Other Rule Violations

Respondent violated two D.C. Rules of Professional Conduct.

5. Prior Discipline

Respondent has no prior disciplinary history. The Hearing Committee, however, discussed Respondent's conduct beginning in February 2003 during his *pro se* divorce litigation in Virginia. *See* FF 3. In ordering Respondent to pay $12,000 of his former wife's attorney's fees, the Fairfax County Circuit Court found

that Respondent had been "in good part . . . responsible for excessive[ly] driving up everything that went on here," and pursued "unnecessary litigation" such that the litigation was ultimately disproportionate to the simplicity of the case. *Id.* Respondent appealed the court's decision, and the Virginia Court of Appeals upheld the court's findings. *Id.* While the sanction imposed by the Virginia courts does not constitute attorney discipline, both the trial court in *Pearson v. Chung* and the Hearing Committee found it relevant to their findings. *See* BX 62 at 5-6 & n.6; HC Rpt. at 4. We similarly find it relevant because of the parallels to Respondent's conduct in this case, and because it occurred close in time to the *Pearson v. Chung* litigation.

6. Respondent's Attitude

Respondent's attitude has been problematic throughout both his *pro se* litigation in *Pearson v. Chung* and his *pro se* defense in the disciplinary process. Respondent has never acknowledged his misconduct or shown remorse. To the contrary, he has continued to engage in frivolous motions practice before the Hearing Committee and the Board:

> [F]rom the very beginning of and then throughout the litigation, and from the very beginning of and then throughout the disciplinary process, Respondent has obstinately refused even to consider the possibility that his theories, even though arguably not foreclosed as a technical legal matter, were so extreme as to breach, at least at some point after he had had a fair opportunity to test them, the bounds of reasonableness and of ethical litigation conduct. FF 29, 47, 66, 69, 77, 80, 88, 93, 94, 114, 123, 140, 151, 152, 155; Tr. 61. He consistently characterized his theories as "unambiguous," "obvious," deriving from "plain meaning," based on "plain English," subject to "no debate" and "well-established." FF 29, 47, 114.

HC Rpt. at 63.

Indeed, Respondent ironically – and utterly frivolously – accused Disciplinary Counsel of engaging in the very same types of misconduct that are the bases for the charges against Respondent:

> Respondent improperly and groundlessly accuses Disciplinary Counsel of "a transparently frivolous effort to interfere with the administration of justice . . . and to harass or maliciously injure the Respondent," of a "ploy" of submitting "144 paragraphs of inflammatory, prejudicial and legally unfounded alleged facts," of bringing a disciplinary charge that is "slapstick, ludicrous and nightmarish," of submitting a brief consisting of a "conglomeration of gibberish," of failing to understand[] Respondent's theories "that any sentient person would understand," and of pursing a disciplinary action that is "an abuse of prosecutorial powers."

HC Rpt. at 64 (quoting Respondent's Proposed Findings of Fact, Conclusions of Law and Recommendation at 1, 2 n.1, 3, 50, 56, 57, 63).

We thus agree with the Hearing Committee that Respondent's obstinacy is a significant aggravating factor.

7. Other Mitigating and Aggravating Circumstances

Respondent's lack of a prior disciplinary history is the only mitigating factor here. In particular, despite Respondent's proclamations that he was acting for the public good, the Hearing Committee found – and we agree – that "Respondent's course of action was an *unacceptable perversion and betrayal* of the noble law reform work that his former, distinguished legal services organization and other such entities properly pursue." *Id*. at 55 (emphasis added).

We cannot blind ourselves to the impact that Respondent's frivolous claims had on the resources of the Superior Court and on the Defendants, all of whom had to respond to them. The trial court was forced time and again to confront Respondent's irresponsible claims and, although the Defendants apparently benefited from public contributions toward their attorney's fees (BX 72), they were forced to endure a major litigation that more properly belonged in Small Claims court. *See* BX 28 at 5.

B. Comparable Cases[18]

Past cases involving violations of Rules 3.1 and 8.4(d) have resulted in a range of sanctions, from a thirty-day suspension to an eighteen-month suspension.[19]

In *Spikes*, the respondent filed a frivolous defamation claim that interfered with Disciplinary Counsel's investigation and burdened the federal trial and appellate courts in more than a *de minimis* way. 881 A.2d at 1126-27. However, when adopting the Board's sanction recommendation of a thirty-day suspension (to which only the respondent filed an exception), the Court focused its inquiry only on comparable cases involving an attorney's failure to cooperate with a Disciplinary

[18] When addressing sanctions for frivolous litigation, the Court has cited both cases where it imposed reciprocal discipline and cases from other jurisdictions. *See, e.g., Yelverton,* 105 A.3d at 424, n.15 (citing four reciprocal discipline cases involving non-meritorious claims and frivolous motions); *Spikes*, 881 A.2d at 1127 n.9 (deferring to Board's sanction recommendation, but "tak[ing] notice" of "harsher sanctions" imposed by other jurisdictions). However, we limit our discussion to cases involving violations of our own Rules 3.1 and 8.4(d).

[19] We believe *Pelkey*, 962 A.2d at 280-82 (filing frivolous appeal in California courts) is not an appropriate case to consider for Rule 3.1 comparability analysis because it also included a finding of flagrant dishonesty, which drove the disbarment sanction.

Counsel's investigation. *See id*. at 1127 ("A review of our recent [Rule 8.4(d)] cases imposing sanctions for [refusing to cooperate with Disciplinary Counsel] shows that a thirty-day suspension has been imposed several times within the past few years . . . ."). Here, the misconduct is more serious than a failure to cooperate.

In *In re Thyden*, 877 A.2d 129, 142-45 (D.C. 2005), the Court adopted the Board's recommendation of a thirty-day suspension where the respondent filed a frivolous action in a bankruptcy proceeding that burdened the administration of justice, but the main misconduct addressed by the Court was the respondent's neglect. As a result, the comparability analysis focused on sanctions imposed for comparable acts of neglect. 877 A.2d at 144 (noting that "[p]ast cases involving client neglect have resulted in a range of sanctions, from public censure to a period of a suspension of thirty days or longer"). Accordingly, the case is of limited relevance here.

In *Yelverton*, the focus of the disciplinary proceedings was the respondent's frivolous filings seeking a mistrial in a criminal assault case (on behalf of a client who was merely a witness) after the defendant had been acquitted. 105 A.3d at 417. In limiting the suspension period to thirty days where the Board had recommended ninety days, the Court emphasized that the respondent's misconduct "was undertaken not for personal gain but for the benefit of his client." *Id*. at 429. Here, Respondent's conduct was much more self-serving. The Court in *Yelverton*, looking prospectively, agreed with the Board's recommendation of a fitness requirement based on the respondent's "pattern of abusive litigation" and his frivolous litigation

during the disciplinary proceedings. *Id.* at 431. As noted by the Court, the respondent was "using the same playbook that brought him into the disciplinary proceedings." *Id.*

In *Fastov*, the Board addressed violations of Rules 3.1 and 8.4(d) that it described as more serious than the misconduct in *Yelverton* and recommended a sanction of an eighteen-month suspension with a fitness requirement. Board Docket No. 10-BD-096, at 45 n.27. *Fastov* involved two separate litigations and additional Rule violations. *Id.* at 1-2. In one of the litigations, a U.S. District Court dismissed the respondent's claims as meritless because they were time-barred, and the court also imposed sanctions against the respondent for acting in bad faith and with an intent to harass. *Id.* at 16 & n.11. The Board's Rule 3.1 finding was based on collateral estoppel. *Id.* at 15. In the second matter, the Board found that the respondent violated Rule 3.1 over the course of the litigation, based on the respondent's (1) pursuing a time-barred breach of contract claim and frivolous intentional infliction of emotional distress claims, (2) alleging fraudulent misrepresentation and concealment of material facts, among other related claims, even though the respondent suffered no damages, and (3) including a CPPA claim when he had been acting as an art dealer and not a "consumer," and was thus not covered by the CPPA statute (respondent had argued that the statute was designed to be interpreted broadly and covered his claim). *Id.* at 23-30.

In *Fastov*, the respondent's violation of Rule 8.4(d) shared certain of the characteristics at issue here:

> His conduct directly burdened the federal courts in which he filed his actions and, while his pleadings may have been summarily denied, by requiring those courts to wade through his verbose and repetitive pleadings, Respondent abused the judicial process. . . . [He] engaged in "obstructionist litigation tactics" and his "prolixity in verbiage and meanness in actions have wasted the time and energy of at least three federal judicial officers . . . ." This abusive conduct was repeated in the Circuit Court of Appeals, with Respondent filing not only petitions for rehearing and for rehearing en banc with voluminous supporting documents not authorized under the rules, but also writing a 24-page letter to the Chief Judge of that court urging that the denial of his appeal be reconsidered.

Id. at 36 (internal citations omitted).

Although Respondent's conduct involved one case and fewer Rule violations, we believe that his misconduct before the Superior Court, the Court of Appeals, and these disciplinary proceedings shares more commonalities with the conduct by the *pro se* litigant in *Fastov* than with that of the respondents in *Spikes* and *Yelverton*. On the other hand, because this is a single litigation and because Respondent's Rule violations are limited to Rules 3.1 and 8.4(d), we believe a less severe sanction than that recommended in *Fastov* is warranted. In our view, a ninety-day suspension is sufficient to protect the public and to deter Respondent and other attorneys from similar conduct.

Unlike the Hearing Committee, we do not recommend a stay of any part of the suspension period.[20] Despite the Hearing Committee's report, before the Board Respondent has persisted in his litigation approach, making the same frivolous arguments he made in *Pearson v. Chung* and advancing additional spurious arguments in his motions. He has refused to acknowledge any misconduct despite the courts' repeated rulings and admonishments and the Hearing Committee's criticisms. His obstinacy seems to have deafened him to the messages conveyed by the Superior Court, the Court of Appeals, and the disciplinary system. We will not recommend a stay, because Respondent has not received the message. *See Long*, 902 A.2d at 1172 (describing circumstances where a stay is warranted).

In sum, the imposition of a suspension for ninety days is in our view necessary to protect the public, to promote confidence in the Bar, and to deter Respondent from similar misconduct. *See Reback*, 513 A.2d at 231 (deterrence as factor in sanction determinations).

V. CONCLUSION

For the foregoing reasons, we conclude that Respondent violated Rules 3.1 and 8.4(d). We recommend that Respondent be sanctioned with the imposition of a suspension for ninety days.

[20] Disciplinary Counsel originally recommended a ninety-day suspension, *without* a stay, *see* Bar Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction at 44-45, but did not take an exception to the Committee's recommendation to grant a stay of the suspension.

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

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Robert C. Bernius
Chair

All members of the Board concur in this Report and Recommendation, except Ms. Pittman and Ms. Preheim, who did not participate.