THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
March 29, 2019

In the Matter of:	:	
	:	
SCOTT L. ADKINS,	:	
	:	Board Docket Nos. 14-BD-076 &
Respondent.	:	13-BD-117
	:	Disciplinary Docket Nos. 2009-D362
An Administratively Suspended	:	& 2013-D382
Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 980220)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Hearing Committee Number Six found that Disciplinary Counsel proved by clear and convincing evidence that Respondent Scott L. Adkins made misrepresentations on his 2006 D.C. Bar application and his 2008 "Supplemental Questionnaire," in that he did not disclose or failed to update information relating to civil actions in which he was involved, his criminal history, his termination from past employment, and his past due debts, and that he made misrepresentations to Disciplinary Counsel about his 2009 conviction arising from an alcohol-induced hit-and-run accident.[1]

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

[1] Originally, Disciplinary Counsel also asserted that Respondent's 2009 conviction involved moral turpitude. In its post-hearing brief, Disciplinary Counsel conceded that it did not have clear and convincing evidence to sustain a finding of moral turpitude, so it was no longer pursuing that charge. The Hearing Committee agreed with this conclusion, as do we. HC Rpt. at 2 n.2.

In connection with Respondent's application to the D.C. Bar, the Hearing Committee found that Respondent violated Rules 8.1(a) (knowing false statement of material facts on admission application); 8.1(b) (failure to disclose a fact necessary to correct a misapprehension known by the applicant to have arisen); and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation). HC Rpt. at 48-65. However, the Committee found that Disciplinary Counsel did not prove that all of Respondent's omissions of information were violations of the Rules or knowing violations. HC Rpt. at 49 n.11, 51, 51 nn.12-13, 58. It nonetheless found that Respondent violated Rule 8.4(d) (serious interference with the administration of justice) because his omissions and false statements rendered the Committee on Admissions unable fully to scrutinize Respondent's fitness for membership in the D.C. Bar, which constituted a serious interference with the administration of justice. HC Rpt. at 65.

In connection with Respondent's 2009 conviction for driving under the influence of alcohol and the hit-and-run accident that resulted, the Hearing Committee found that Disciplinary Counsel had proven by clear and convincing evidence that these facts constituted "a criminal act that reflects adversely on [his] honesty, trustworthiness, or fitness as a lawyer" in violation of Rule 8.4(b), and that the many false statements that Respondent made to Disciplinary Counsel about that incident violated Rule 8.4(c). HC Rpt. at 70-71. The Hearing Committee found that Respondent's testimony was false in several material ways. HC Rpt. at 68-71.

Before the Hearing Committee, Disciplinary Counsel argued for disbarment or for a three-year suspension with fitness. HC Rpt. at 81. Respondent argued for a

sanction that would not result in any suspension and opposed any fitness requirement. HC Rpt. at 86, 91. The Hearing Committee recommended that Respondent be suspended for three years and that he be required to prove his fitness to practice as a condition of reinstatement. HC Rpt. at 82. The Hearing Committee summarized its reason for imposing a fitness requirement: "[W]here, as here, Respondent was dishonest in the admission process, then compounds his dishonesty with false testimony to the Hearing Committee, there is clear and convincing evidence of a serious doubt as to his ability to practice ethically and competently in the future." HC Rpt. at 95.

Respondent did not file an exception to the Hearing Committee Report, the time for doing so having expired.[2] Disciplinary Counsel does not take exception to the Hearing Committee's findings of fact, the Rule violations found, or the recommended sanction. Disciplinary Counsel disagrees with the Hearing Committee's conclusion that Respondent's failure to report his termination from three employers did not violate Rules 8.1(a) or 8.1(b) because they were reckless rather than knowing violations; it also disagrees with certain aspects of the Hearing Committee's sanction analysis. However, Disciplinary Counsel states that "[i]f Respondent does not file an exception, Disciplinary Counsel waives its right to brief and argue these issues in this case as it would not change the result."[3]

[2] The Hearing Committee Report and Recommendation was sent to Respondent's mailing and email addresses on record with the D.C. Bar, as well as all other addresses that the Office of the Executive Attorney has known Respondent to use.

[3] Letter from Hamilton P. Fox, III, Disciplinary Counsel, to James T. Phalen, Executive Attorney (Feb. 11, 2019). Disciplinary Counsel also sought leave to brief these issues if the Board intended

Having reviewed the record, the Board concurs with the Hearing Committee's factual findings as supported by substantial evidence in the record, and with its conclusions of law, which have been proven by clear and convincing evidence.[4] Its recommended sanction is consistent with the sanction imposed in other cases involving comparable misconduct and is not otherwise unwarranted. *See* D.C. Bar R. XI, § 9(h). Finally, we agree with the Hearing Committee that there is clear and convincing evidence of a serious doubt as to Respondent's ability to practice without first demonstrating his fitness to do so. *In re Cater*, 887 A.2d 1, 24-25 (D.C. 2005). For the foregoing reasons, and for those set forth in the Hearing Committee Report (which we attach and incorporate by reference), the Board finds that Respondent violated Rules 8.1(a), 8.1(b), 8.4(b), 8.4(c), and 8.4(d).

to address the Hearing Committee's sanction analysis or finding of no violation. We decline to address these issues, because their resolution would impede the timely resolution of this matter with no material effect on Respondent's suspension from practice.

[4] Respondent filed several motions to dismiss. The Hearing Committee recommended that the Board deny these motions, and we agree. Accordingly, for the reasons set forth in the Hearing Committee's report, the motions are denied. *See* HC Rpt. at 75-80.

We recommend that Respondent be suspended for three years and be required to prove his fitness to practice prior to reinstatement. We further recommend that Respondent's attention be drawn to the requirements of D.C. Bar R. XI, §§ 14 and 16, relating to suspended attorneys.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Robert C. Bernius, Chair

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

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

In the Matter of:	:	
	:	
SCOTT L. ADKINS,	:	Board Docket Nos. 14-BD-076 & 13-BD-117
	:	
Respondent.	:	Bar Docket Nos. 2009-D362 & 2013-D382
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 980220)	:	

REPORT AND RECOMMENDATION OF HEARING COMMITTEE NUMBER SIX

This consolidated case arises out of two separate disciplinary matters involving Respondent Scott Adkins. The first matter (Bar Docket No. 2009-D362) arises out of Respondent's alleged misrepresentation on his 2006 D.C. Bar application and the 2008 Supplemental Questionnaire he completed prior to taking the oath of admission. Disciplinary Counsel[1] alleged that Respondent failed to fully disclose and/or failed to update information relating to his academic discipline, civil actions in which he was involved, his criminal history, disciplinary history, employment history and past due debts. The second matter (Bar Docket No. 2013-D117) is a three-count Specification arising out of Respondent's alleged hit-and-run while driving under the influence in Florida in 2009. Respondent was charged by the Florida authorities with multiple violations of Florida law and pleaded

[1] The Office of Bar Counsel was renamed The Office of Disciplinary Counsel effective December 19, 2015. Although these proceedings took place prior to the change, we refer to the current name here.

guilty to reckless driving (in violation of Fla. Stat. §316.1925(1)) and failing to stop and remain at the scene of an accident (in violation of Fla. Stat. §316.027(2)(a)). In particular, Disciplinary Counsel alleges that, during the disciplinary investigation, Respondent sent an email to Disciplinary Counsel that contained misrepresentations about the incident.

Disciplinary Counsel alleges that Respondent's conduct violated District of Columbia Rules of Professional Conduct (Rules) 8.1(a) (knowing false statement of material fact on admission application); 8.1(b) (failure to disclose a fact necessary to correct a misapprehension known by the applicant to have arisen); 8.4(b) (commit a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); 8.4(c) (dishonesty, fraud, deceit, or misrepresentation); 8.4(d) (serious interference with the administration of justice); and D.C. Code § 11-2503(a) (based on his 2009 Florida conviction involving moral turpitude on the facts).[2] Based on these violations, Disciplinary Counsel contends that Respondent should be disbarred, or, at a minimum, that Respondent be suspended for three years with a fitness requirement.

Respondent concedes that there were errors, not false statements, in his application, and he denies misconduct arising out of the traffic incident. Thus, he

[2] In its post-hearing brief, Disciplinary Counsel asserted that it was no longer pursuing the moral turpitude charge "for lack of clear and convincing evidence to sustain a finding of moral turpitude." But the Hearing Committee is required to make a recommendation on all charged Rule violations. *See In re Drew*, 693 A.2d 1127 (D.C. 1997) (per curiam). Thus, based on our review of the record, we agree that Disciplinary Counsel did not prove by clear and convincing evidence that Respondent's 2009 conviction involved moral turpitude.

argues he should receive a non-suspensory sanction and that, if the Court imposes a suspension, it should be stayed in favor of probation.

As set forth below, the Hearing Committee finds clear and convincing evidence of violations of Rules 8.1(a), 8.1(b), 8.4(b), 8.4(c), and 8.4(d) charged by Disciplinary Counsel. Upon examination of aggravating and mitigating factors, however, the Hearing Committee recommends that Respondent be suspended for three years with a fitness requirement.

I. PROCEDURAL HISTORY

Disciplinary Counsel filed two Specifications of Charges against Respondent (2009-D362 and 2013-D382), which were consolidated for all purposes by a March 3, 2015, Board order. Respondent filed Answers to the Specifications of Charges. Hearing Committee Six (Andrea L. Berlowe, Esquire, Chair; Sara K. Blumenthal, Public Member; and, Dwaune L. Dupree, Esquire, Attorney Member) held an evidentiary hearing on July 6-8, 2015. Assistant Disciplinary Counsel Becky Neal and Assistant Disciplinary Counsel William Ross represented Disciplinary Counsel. Respondent appeared pro se by video conference.[3]

[3] Respondent did not comply with Board Rule 11.4(b), which states that "[t]he testimony of respondent shall not be taken by contemporaneous transmission absent the most compelling of extenuating circumstances." Neither did he comply with Board Rule 11.4(a), which required him to file a motion, "at least twenty-one days prior to the first day of the hearing, unless otherwise approved or ordered by the Hearing Committee Chair." Respondent never filed any motion seeking authorization to appear or testify in this manner whatsoever, let alone one that was timely or demonstrated "the most compelling of extenuating circumstances." Rather, Respondent chose to wait until very early on the morning of the scheduled hearing to contact Assistant Disciplinary Counsel via email to inform her that he would not appear at the hearing, but was

Disciplinary Counsel presented the testimony of Cathy Berkowitz, Esquire, and Lee Cohen, Esquire, both of whom testified remotely by video, and David Pedreira. Tr. 36, 98, 136. Disciplinary Counsel offered and the Committee received in evidence Disciplinary Counsel's Exhibits: BX A1–A21 (except for BX A7 at 1-7; *see* Tr. 206-09), BX B1–B6; BX C1–C4; BX D1-D15; and BX E1-E37. Tr. at 214-20. Respondent testified remotely by video on his own behalf. Tr. 259 (Respondent).

At the conclusion of the hearing, the Hearing Committee made a preliminary, non-binding determination that Disciplinary Counsel had proved at least one of the Rule violations set forth in the Specifications of Charges. Tr. 448. Disciplinary Counsel did not present any additional evidence in aggravation. Tr. 445-46; 479-80. Respondent testified remotely by video as to mitigation. Tr. 480-547.

available to participate by telephone. Tr. 4-6. While the lead Disciplinary Counsel did not object to allowing Respondent to appear via video-conference, she did object to allowing him to appear via telephone, and the Committee agreed. Consequently, the Chair allowed Respondent time to work out the technical details with the Board's IT expert, then advised Respondent of the extraordinary nature of this accommodation and admonished him for his failure to notify anyone that he would not appear at the hearing in person. Tr. 6-10.

II. FINDINGS OF FACT

Disciplinary Counsel has proven the following facts by clear and convincing evidence. *See In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("clear and convincing" evidence is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.").

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals having been admitted by motion on April 14, 2008, and assigned Bar Number 980220. BX A1 at 1. Respondent was suspended from the D.C. Bar from October 1, 2008, to April 9, 2009, based on his failure to pay dues, and again from June 14, 2009, until August 18, 2009, based on his failure to take the mandatory continuing legal education course. BX A1 at 2-14; BX B4 at 34. From October 1, 2013, through the date of the disciplinary hearing, Respondent remained suspended based on his failure to pay dues. BX A1 at 18-19; Tr. 313 (Respondent).

2. Respondent was admitted to the California Bar (Bar Number 194809) on May 1, 1998, and, prior to the Hearing, had been an active member continuously since his admission date, except from July 2 through August 6, 2013, based on his failure to comply with mandatory continuing legal education requirements. At the Hearing, Respondent testified that he was on administrative suspension for failure to pay his Bar dues on July 1, 2015. BX B1 at 3, 9; Tr. 313. As of December 12, 2018, Respondent was not eligible to practice law in California. *See* http://members.calbar.ca.gov/fal/Member/Detail/194809.

3. Respondent was admitted to the Delaware Bar (Bar Number 3923) on December 14, 2000. BX B1 at 4, 9. At Respondent's request, from April 20, 2007, through August 25, 2008, he was placed on inactive status in Delaware. BX B4 at 35-36; BX B6 at 27-36; BX C1 at 115, lines 7-16; Tr. 313 (Respondent).

4. Respondent submitted an application for admission to the Florida Bar on June 15, 2009, but, at the time of the Hearing, he had not been admitted to practice law in Florida. BX B4 at 4; Tr. 314 (Respondent).

A. D.C. Bar Application

5. On April 13, 2006, Respondent signed and submitted his application to the District of Columbia Bar Court of Appeals Committee on Admissions ("COA") based on his status as a member in good standing of the California Bar and the Delaware Bar. BX B1 at 2-5, 28. When Respondent signed the D.C. Application, he certified that the information that he provided on it, and in related materials, was true and complete. BX B1 at 28.

B. Failure to Disclosure Terminations from Legal Employment (Questions 7 & 8)

6. Question 7 to the D.C. Application instructed Respondent to "list every job you have held since age 21," and required that "**all legal employment must be listed**." (Bold in the original). BX B1 at 10. Respondent listed numerous jobs in response to Question 7. BX B1 at 10-18.

7. Question 8 of the D.C. Application asked:

> Have you ever been terminated, suspended, disciplined, or permitted to resign in lieu of termination from any job? If the employment was not previously listed, please go back and add it to Item 7. If yes, provide the following information about each occurrence: Employer or Firm, Date of Employment, Explanation of Circumstances.

BX B1 at 19. Respondent correctly responded "yes" to Question 8, and stated that he had been terminated from his position at Lerach Coughlin in March 2005. BX B1 at 19. In doing so, Respondent stated that a "profound difference of philosophies led to [a] rift, and ultimately, [his] termination" from that position. *Id.* However, in his June 2009 application for admission to the Florida Bar (the "FLA Application," discussed in ¶ 70, below), Respondent stated that he was "terminated after missing the second day of the February 2005 Bar Exam . . .." BX B4 at 18; BX B4 at 38. Additionally, before being admitted to the D.C. Bar, Respondent did not timely update his D.C. Application to reflect that he had been terminated or suspended from three additional employers. *See* ¶¶ 23-35.

C. <u>Question Regarding Charges, Complaints, and Grievances (Question 10B)</u>

8. Question 10B of Respondent's D.C. Application asked:

> "Have you ever been the subject of any charges, complaints, or grievances (formal or informal) concerning your conduct as an attorney, including any now pending?"

BX B1 at 19. At the time he submitted his D.C. Application, Respondent correctly answered "No." *Id.* But, while his D.C. Application was pending, he failed to update the COA regarding an investigation by the DE ODC into his November

2006 arrest for the criminal misdemeanor traffic offenses of Driving While Under the Influence (DUI) and Reckless Driving (the "First DUI Incident"). *See* ¶¶ 36-61.

D. Failure to Disclose Civil Actions (Question 19)

9. Question 19 of Respondent's D.C. Application asked:

> Have you ever been a named party to any civil action?
>
> NOTE: Family law matters (including continuing orders for child support) should be included here.
> If yes, complete FORM 3

BX B1 at 22. Respondent correctly responded "Yes" to Question 19 and disclosed the following civil actions in which he was named a party: (1) *Adkins v. Puleo*, Case No. 96-7477-07 (fender bender); and (2) *Adkins v. Adkins*, Case No. 04-10897 (divorce). BX B1 at 22, 30-31; Tr. 372-73 (Respondent).

10. Contrary to the D.C. Application's instructions, Respondent failed to disclose the following civil actions in which he was named a party:

a. *Adkins v. Shaw*, Case No. 04-9119, filed June 4, 2004 in Broward County District Court (civil suit alleging fraud), BX D9; Tr. 373-74 (Respondent);

b. *Adkins v. Shaw*, Case No. 04-05461-M, filed June 15, 2004 in Dallas County District Court (civil suit alleging breach of contract and fraud), BX D10; Tr. 375 (Respondent);

c. *Scott L. Adkins v. Palm Beach County School Board*, Case No. 04-cv-80715-KLR, filed August 2, 2004, in the U.S. District Court, Southern District of Florida (civil suit alleging a teacher interfered with

Respondent's parental rights concerning the education of his son), BX D11; Tr. 379 (Respondent);

d. *Bristol Bank v. Scott L. Adkins, et. al.*, Case No. 05-12600, filed August 17, 2005, in Broward County Circuit Court, Florida (debt); BX D13; Tr. 376 (Respondent); and,

e. *Cafritz Company v. Adkins*, Scott, Case No. 2005-LTB-043582, filed December 15, 2005, in D.C. Superior Court (landlord/tenant matter). BX D14.

11. Respondent filed the lawsuits identified in paragraphs 10a, 10b, and 10c, above, and admitted he did not disclose them on his D.C. Application. BX D9 – D11; Tr. 373-75; Tr. 375-76 (Respondent). Respondent also admitted he did not disclose the lawsuit identified in paragraph 10e; Tr., Vol. II, p.396, ln. 16-22.[4]

E. Questions Regarding Criminal Arrest, Charges, and Convictions (Questions 22 & 23)

12. Question 22 of the Respondent's D.C. Application asked the following:

> Have you ever been cited, arrested, charged or convicted of any violation of any law? (Omit traffic violations.)

[4] Disciplinary Counsel alleged that Respondent also failed to disclose two other civil cases related to his financial difficulties, including the foreclosure on property that Respondent owed in Florida (BX D13), and Respondent's eviction from an apartment in the District of Columbia. BX D14; Tr. 378-80, 391-97 (Respondent). Respondent's initial application, however, did disclose the Bristol Bank foreclosure suit. (BX B1, at 127-32). Disciplinary Counsel did not prove by clear and convincing evidence that Respondent was aware of the eviction suit. *See infra* at n.12....

NOTE: This should include matters that have been expunged or been subject to a diversion program. If yes, complete FORM 5

BX B1 at 23. Question 23 of the Application asked the following:

> Have you been charged with any moving traffic violations during the past ten years?
>
> NOTE: Include all alcohol- or drug-related traffic violations regardless of when they occurred.

13. Respondent correctly answered, "Yes" to Questions 22 and 23, and provided information on attached forms regarding his July 5, 1991, arrest and criminal charges for disorderly conduct in the matter of *State v. Adkins*, Case No. 91-9223 MM104, and two moving traffic violations. BX B1 at 23, 33, 34.

14. Respondent, however, did not timely update his D.C. Application regarding the First DUI Incident, which resulted in his arrest and conviction of misdemeanor criminal charges. *See* ¶55-56; *see generally* ¶¶ 36-56.

F. <u>Failure to Disclose Past Due Debts (Question 24)</u>

15. Respondent's D.C. Application included Question 24, which asked:

> A. Have you had any debts of $500 or more (including credit cards, charge accounts, and student loans) which have been more than 90 days past due within the past three years?
> B. Have you ever had a credit card or charge account revoked?
> C. Have you ever defaulted on any student loans?
> D. Have you ever defaulted on any other debts?

BX B1 at 23.

16. Respondent falsely answered Question 24 by checking the "No" box because he failed to list the following debts:

a. January 2005 Legal Bills $14,000

b. March 2005 Coughlin Stoia (Former Employer) $9,200

BX B4 at 20-22; Tr. 297-300; 383-90 (Respondent).[5]

G. Respondent Failed to Supplement His D.C. Application

17. When Respondent signed his D.C. Application on April 13, 2006, he certified that he understood he had a "continuing obligation" to notify promptly the COA of "any change in any aspect of this application." BX B1 at 28. Above Respondent's signature, the form stated:

> I hereby certify that I have read the foregoing document, and that the information that I have provided on this form and in any related materials is true and complete. ***I will notify the Committee on Admissions promptly in writing if there is any change in any aspect of this application. I understand that this is a continuing obligation throughout the pendency of my application,*** and that any inaccurate, misleading or incomplete statements, or any failure to update promptly any aspect of this application, may result in denial of this application and other disciplinary sanctions.

BX B1 at 28 (emphasis added). Respondent read this paragraph before he signed the application. Tr. 324, 325, ln. 9-11, 12-19 (he was "sure" he had done so because he "wouldn't sign something without reading it"). Before he completed the D.C. Application, Respondent had completed two other Bar applications in which he also acknowledged a continuing duty to provide information about any changes in circumstances. BX B2 at 17; BX B3 at 39; Tr. 325-26 (Respondent).

[5] In response to question 24 on the D.C. Application, Respondent also failed to disclose $3,100 in credit card debt. However, Respondent disclosed the $3,100 debt in response to a similar question on the D.C. Application. (Form 4/Record of Bankruptcy or Insolvency). Tr., Vol. II, pp. 297-98, ln. 15-22; BX B1 at 32.

18. By letter dated June 1, 2006, the COA acknowledged receipt of Respondent's Application. BX B1 at 36. In its acknowledgment letter, the COA reminded Respondent of his continuing obligation to update his application, stating:

> [I]t is your obligation to inform the Committee by letter of any change in address, employment, **or any other circumstance** (e.g. bar admissions, disciplinary matters, civil and criminal litigation, credit problems, etc.). You should also include any relevant documentation.

BX B1 at 36 (emphasis added).

19. Respondent received the June 1, 2006, letter from the COA and knew of his continuing obligation. Tr. 326-30. For example, in a letter dated July 17, 2006, Respondent notified the COA of changes in his employment and home address. BX B1 at 37; Tr. 300-01 ("I actually updated the Committee on Admissions that I was now at Sacher Zelman, my address, and all those things. And that was the last update I made to my D.C. Bar application."); Tr. 329-30.

20. Despite his continuing obligation to inform the COA of any changes in his D.C. Application, Respondent failed to supplement the responses in his D.C. Application with updates to various pieces of information requested therein.

H. <u>Failure to Disclose Additional Lawsuits (Questions 19 & 24)</u>

21. Three months after Respondent filed his D.C. Application with the COA, he was named as a defendant in a second civil suit filed by Cafritz on July 14, 2006, and seeking his eviction from the apartment he rented in Washington, D.C., captioned *Cafritz Company v. Adkins*, Case No. 2006-LTB-023689. BX D15; *see also* BX D14; BX B1 at 6. Respondent failed to update his application by

notifying the COA of this pending lawsuit, although the substance of the lawsuit would have reflected a change of circumstance responsive to Questions 19 (BX B1 at 22 – civil actions) and 24 (BX B1 at 23 – past due debts).

I. Failure to Disclose Additional Debts (Question 24)

22. Contrary to his continuing duty to notify COA promptly, in writing of "any change in any aspect of this application," in July 2006, Respondent failed to notify COA of his failure to pay the following debts within 90 days:

a. Credit Card Debt $28,000

b. Medical Bills $8,000

BX B4 at 20-21.

J. Failure to Disclose Termination from Three Employers

23. In July 2006, Respondent was hired as an associate at the law firm of Sacher Zelman, "a well-known securities litigation boutique," in Miami, Florida. BX B1 at 37, B4 at 39; Tr. 109.

24. In mid-August 2006, Respondent contacted MillerBlowers, a recruitment firm in Tampa, Florida, he had used unsuccessfully in the spring of 2006 while looking for a job in Florida. BX C3 at 24; Tr. 110-11 (Pedreira). Respondent spoke with David Pedreira, a partner at MillerBlowers, and falsely represented that he was a "hiring attorney" at Sacher Zelman. BX C3 at 1-2, 24-25; Tr. 111-12 (Pedreira).

25. Respondent told Mr. Pedreira that Sacher Zelman was looking for a senior level associate with experience in securities or commercial litigation, and he

provided details about the qualifications sought by the firm, including candidates who graduated with honors from a Tier 1 law school and currently were employed at a national law firm in New York or the District of Columbia. BX C3 at 24; Tr. 111-13.

26. Sacher Zelman did not authorize Respondent to act on its behalf, search for or interview potential candidates, or contact MillerBlowers. BX C3 at 1-2; Tr. 119-20, 122, 125, 129. (Pedreira)

27. Mr. Pedreira believed Respondent had the authority to hire on behalf of Sacher Zelman and proceeded to recruit potential candidates and send Respondent copies of resumes and law school transcripts for consideration. BX C3 at 27-28; Tr. 113, 116-18 (Pedreira). Respondent falsely told MillerBlowers that he had circulated one of the candidates' resumes for consideration by the Sacher Zelman management team and the team was not interested because the candidate's grades were not good enough. BX C3 at 1-2, 24; T. 116-17 (Pedreira).

28. Respondent interviewed at least one of the candidates and discussed dates for a visit by the candidate to Sacher Zelman's offices in Florida. BX C3 at 27-28; Tr. 114 (Pedreira).

29. At the hearing, Respondent testified falsely that he had the permission of Barton Sacher, Esquire, a partner at Sacher Zelman to "look around and try to find" another litigator, and that he circulated a resume to both of the firm's name partners – Mr. Sacher and "Rick Zelman." Tr. 274 (Respondent). Contrary to Respondent's testimony, however, he was not authorized to conduct a search. In

Respondent's September 27, 2006, termination letter, Mr. Sacher wrote: "From what we have been able to learn from Ms. Dixie Miller and Mr. David Pedriera, it appears that you have provided incredibly false information to them and, in turn, to various 'candidates' with whom you were interacting in a totally fraudulent manner…." BX C3 at 1-2. Mr. Sacher further stated that, "quoting false salaries to young lawyers, raising their expectations in us, and agreeing to pay placement fees to the Tampa placement firm…all without any authorization [] is, simply, incredible, dishonest, and outrageous!" BX C3 at 2. Mr. Pedreira's hearing testimony corroborated Sacher Zelman's statement that it did not authorize Respondent's conduct. For example, Mr. Pedreira testified that Mr. Sacher wanted to know who MillerBlowers was, what work they were performing, who authorized the company to do the work, and whether MillerBlowers had issued any bills – "[h]e basically wanted to know the entire structure of our relationship with them." Tr. 125 (Pedreira).

30. Respondent attempted to minimize the misconduct at Sacher Zelman which led to his termination and misleadingly testified at the hearing that Sacher Zelman fired him because he was "repeatedly late and absent." Tr. 277 ("Here's what happened:…[I] rolled in late one morning after [Sacher] had chatted with me and [he] said look, we can't be having any more than this, and he fired me."). Contrary to Respondent's testimony, however, Sacher Zelman said it terminated Respondent based on his "lack of production…as well as various prevarications about [himself], about [his] work, and in connection with [Respondent's] false and

fraudulent actions with persons outside this Firm. For these reasons [Respondent was] summarily terminated last Monday afternoon at approximately 3:30 p.m., when [he] wandered in, looking unusually disheveled, and bleeding, again, this time from [his] left cheek." BX C3 at 1-2; *see also* BX B4 at 19 ("My performance was admittedly lackluster").

31. In mid-September 2006, two months after Respondent started with the firm, Mr. Sacher terminated Respondent's employment. BX C3 at 1-2; BX B4 at 39.

32. On September 20, 2006, Mr. Pedreira attempted to contact Respondent at the firm and discovered that Respondent never had authority to act on behalf of Sacher Zelman. BX C3 at 24-25. Tr. 114-15 (Pedreira).

33. Respondent did not update his D.C. Application to reflect that he was terminated from Sacher Zelman in September 2006.

34. The law firm of Bickel Brewer hired Respondent as an associate in December 2006. Respondent did not disclose that he was suspended from Bickel & Brewer in January 2007 based on his unexplained absence. BX B4 at 18; BX B4 at 39; Tr. 338.

35. On July 30, 2007, Omni Financial Services hired Respondent in a non-lawyer position. BX C4 at 34-63. Respondent did not update his D.C. Application to reflect that, on July 31, 2007, Omni Financial Services terminated Respondent's employment. BX C4 at 64.

K. Failure to Disclose the First DUI Incident

36. While his D.C. Application was still pending with the COA, Respondent was arrested in Florida on November 16, 2006, for the criminal misdemeanor offenses of Driving While Under the Influence (DUI) and Reckless Driving. BX A4 at 13; BX C1 at 12, 17-34; Tr. 40-41. When Respondent was arrested, he was under the influence of alcohol and drugs. BX C1 at 21 (Probable Cause Affidavit: "[Respondent] said that he took some psych meds to 'stay stable' but did not remember the name.").

37. When Respondent was placed under arrest, he struggled with his handcuffs, fell, cut his face, vomited in his holding cell, and spent the night in jail. BX A10 at 1; BX B4 at 27-28; BX C1 at 20-24, 28-30, 33-34.

38. While under arrest, Respondent refused to take a Breathalyzer test, which resulted in an automatic one-year suspension of his driver's license. BX C1 at 31-32; Tr. 54.

39. On December 21, 2006, Respondent was charged with DUI and Reckless Driving in the matter of *State v. Adkins*, Case No. 06-23411MM10A, filed in Broward County Court, Florida. BX C1 at 16; Tr. 41.

40. In a letter dated December 28, 2006, a week after the criminal charges against him were filed, the COA notified Respondent that it had certified his Application for admission to the D.C. Bar. BX B1 at 148-49; Tr. at 331-44. The letter also notified Respondent that he was required to appear on January 8, 2007, to be administered the oath of admission or, alternatively, on February 9, 2007, and

that he was not admitted to practice in D.C. until he appeared before the Court. BX B1 at 148-49. Respondent did not appear as required on either date. *See* BX B1 at 150; Tr., Vol. II, p. 333, ln. 10-14; p. 341, ln. 2-4.

41. On February 8, 2007, the Florida Court scheduled a calendar call for March 15, 2007, in the criminal matter. BX C1 at 47.

42. Cathy Berkowitz, a supervising Assistant State's Attorney of the 17th Judicial Circuit in Broward County, Florida, was assigned to handle the DUI charge filed against Respondent. BX C1 at 54; Tr. 37-40. As a supervising Assistant State's Attorney, Ms. Berkowitz handled unusual or high-profile cases, including cases involving attorneys and police officers or other public officials. BX C1 at 54; Tr. 39-40 Tr. 139-41.

43. The Office of the State's Attorney had a policy of notifying state Bar associations when attorneys were arrested for DUI. BX C1 at 119, lines 16-19 (Transcript of May 18, 2007, hearing on Respondent's Motion to Set Aside a Guilty Plea); Tr. 47; Tr. 141-43. The State's Attorney considered any action by a state Bar to be collateral to the disposition of the criminal case and, therefore, generally would not inform the defendant when it reported the arrest to a state bar's disciplinary authorities. BX C1 at 99, 101-02; Tr. 48, 47-48; Tr. 143-45.

44. Ms. Berkowitz notified the District of Columbia Office of Disciplinary Counsel and the DE ODC on February 22, 2007, that Respondent had been arrested and charged with the misdemeanor offenses of DUI and Reckless Driving. BX A8 at 1; BX B6 at 2; Tr. 45-46.

45. In response, DE ODC requested public records relating to the Florida criminal matter on March 1, 2007. BX C2 at 52. Disciplinary Counsel advised Ms. Berkowitz on April 3, 2007, that Respondent was not a member of the District of Columbia Bar and, therefore, it had no jurisdiction to investigate the matter. BX A9 at 1.

46. On March 15, 2007, Respondent appeared *pro se* at a hearing in the Florida criminal matter where he notified the court that he was admitted to practice in California and Delaware, and expressed interest in entering a guilty plea. BX C1 at 52-54. Respondent was not aware at the time that Ms. Berkowitz had notified DE ODC or Disciplinary Counsel of his arrest and the charges against him. BX C1 at 77-78, 109; Tr. 47-48.

47. The Office of the State's Attorney offered to recommend the minimum required penalties if Respondent entered a plea of guilty to DUI and Reckless Driving, including six months of probation, driver's license suspension for six months, 50 hours of community service, and drug and alcohol counseling. BX C1 at 56-57; Tr. 43-44.

48. Respondent reviewed the plea form, signed it, and asked questions about the recommended sentence. BX C1 at 57-63, 74-75, 78; Tr. 60-61.

49. Respondent pleaded no contest and was adjudicated guilty of the criminal misdemeanor offenses of DUI and Reckless Driving. BX C1 at 52-58. The court engaged in a colloquy with Respondent to ensure the voluntariness of his guilty plea before accepting it. BX C1 at 63-66, 70-76. The court then sentenced

Respondent to the minimum penalties, including six months of probation, a $250 fine, court costs, Level 1 DUI School at Respondent's expense, 50 hours of community service, ten days immobilization of the vehicle, and a six month suspension of Respondent's driver's license. BX C1 at 66-67, 70-71.

50. After Respondent was convicted and sentenced, DE ODC notified Respondent on March 30, 2007, that it had opened an investigation based on Ms. Berkowitz's report that Respondent had been arrested, charged, and convicted of DUI and Reckless Driving.[6] BX B6 at 1-22; BX C1 at 78 ("[Respondent] learned of the State's actions . . . April 4, 2007, when he received notice from Delaware that Delaware has opened a disciplinary file on the matter."); BX B6 at 21. The letter notified Respondent that "this Office has opened the above-referenced disciplinary matter for the purpose of evaluating this information." BX B6 at 21.

51. On April 5, 2007, the day after Respondent received the March 30, 2007, letter from DE ODC, Respondent filed a motion, *pro se,* to set aside his plea agreement. BX C1 at 77, 113 – lines 12-14.

52. Shortly after Respondent learned that DE ODC had opened an investigation, he left a "disturbing" message on Ms. Berkowitz's voicemail. Tr. Vol. I, pp. 48-51 (Berkowitz). As a result of Respondent's voice message, including a threat to subpoena her deposition, Ms. Berkowtiz's supervisor, Lee G. Cohen, entered his appearance in the case on May 1, 2007, filed a responsive brief,

[6] While Respondent's arrest occurred in 2006 and his conviction in 2007, we will refer here to both events collectively as either the "2006 DUI" or the "First DUI Incident."

and appeared at the motions hearing. BX C1 at 91-103; BX C2 at 81; Tr. Vol. I, pp. 47, 51-52 (Berkowitz); Tr. Vol. I, pp. 138-39, 145-50, 153-54, 181-84 (Cohen).

53. On May 18, 2007, Mr. Cohen and Respondent appeared for the hearing on Respondent's motion to set aside the plea. BX C1 at 106; Tr. Vol. I, pp. 151, 185-86 (Cohen). Respondent argued, among other things, that the State committed "fraud by omission," and claimed that the prosecutor "affirmatively misled" him by her failure to disclose her communication to the DE ODC. BX C1 at 115-116. The court denied Respondent's motion to withdraw his plea. BX C1 at 122-23.

54. Respondent's court-ordered probation period expired on September 14, 2007. BX C1 at 125.

55. Contrary to Respondent's continuing duty to notify the COA promptly in writing of "any change in any aspect of this application," he failed to advise the COA that he had been arrested, charged, and convicted of the misdemeanor criminal offenses of DUI and Reckless Driving. BX A4 at 14 (Respondent: "I never amended my D.C. Bar application to tell the D.C. Bar about my DUI arrest and no-contest plea."); BX A17 at 4 (Respondent FLA Bar Application: "I realize now that I probably should have done so.").

56. Both Question 22 and Question 23 required disclosure of Respondent's arrest and convictions. BX B1 at 23. As described in further detail in subsection N, below, Respondent did not report his First DUI Incident to the COA until after he attended a mandatory Disciplinary Counsel lecture on legal ethics in

August 2009. (Tr., Vol. I, pp. 22-24) ("I came home. Some lawyers said you're foolish to self-report. I looked at the rules and said I don't think I have a choice here, I think I have to do this."); (BX A7, pp. 24-26, p.29, pp. 32-33).

L. Delaware Disciplinary Investigation

57. The DE ODC letter, dated March 30, 2007, informed Respondent that it had received records relating to Respondent's November 16, 2006, arrest and March 15, 2007, conviction and had opened a "disciplinary matter" to evaluate those records and determine whether Respondent suffered from a "chemical dependency which adversely affected [his] ability to practice law." BX B6 at 21.

58. In a letter dated April 4, 2007, Respondent acknowledged receipt of the DE ODC investigation and denied that he suffered from a substance abuse problem. BX B6 at 23. That same day, Respondent applied to change his status with the DE Bar from active to inactive because of the investigation. BX B6 at 23, 27-36, 40; BX C1 at 115.

59. On May 11, 2007, DE ODC notified Respondent that it had concluded its disciplinary investigation by issuing a warning with several conditions, including that Respondent provide written confirmation when he successfully completed probation in Florida. BX B6 at 39-43; Tr. 359-60, 362. In Delaware, a dismissal with a warning does not constitute a disciplinary sanction. BX B6 at 42.

60. DE ODC sent Respondent another letter on January 7, 2008, reminding him that he had not submitted written notice of successful completion of the criminal probation period. BX B6 at 44; BX C1 at 125; Tr. 362-63.

61. Respondent responded in writing to DE ODC one week later, on January 14, 2008, and confirmed he had completed his "Florida misdemeanor probation." BX B6 at 46. Respondent's letter said he "simply forgot to update you – no excuses," and confirmed that he completed probation by "speaking to Ms. Pauline Walter at the Broward County Sheriff's Office Probation Division." BX B6 at 46. In his testimony, Respondent admitted knew in January 2008 that he had been convicted of a misdemeanor crime in Florida. Tr. Vol. II, 363 (Respondent: "Of course I knew. I just finished up probation…").

M. False Responses to Supplemental Questionnaire and Admission to the D.C. Bar

62. Respondent contacted the COA in December 2007 to check on the status of his D.C. Application. BX B1 at 154.[7] The COA instructed him to submit an affidavit explaining why he did not take the oath of admission on the dates earlier assigned to him, along with his request for a date on which he was available to take the oath. BX B1 at 154.

63. In a letter dated February 14, 2008, Respondent contacted the COA again, this time asking to schedule another time to take the oath of admission. BX B1 at 150; Tr. Vol. II, 364. He explained that he had not taken the oath in 2007 because "for most of 2007" he was unemployed and could not afford to travel to D.C." BX B1 at 150. Respondent's letter does not contain any notification to the

[7] The date of the log note reads "12/13/08" and "12/14/08;" however, in the context of the proceedings – Respondent took the oath of admission in April 2008 – the correct date should reflect 2007 not 2008.

COA that, since submitting his application, he had been convicted of two misdemeanor offenses involving alcohol, was the subject of a "disciplinary matter" by DE ODC, and was terminated from three different positions of employment. *Id.*

64. On February 28, 2008, the COA sent Respondent a Supplemental Questionnaire with a cover letter containing information about the filing of the questionnaire and his swearing-in ceremony. BX B1 at 151-52. Respondent received this letter. BX B1 at 151-52. *See also* BX A17 at 4 ("[T]he D.C. Bar sent me a 'Supplemental Questionnaire,' attached hereto."); Tr. 279 ("I got the Supplemental Questionnaire, I want to say, sometime in March or February, probably February of 2008, and I read it.").

65. The Supplemental Questionnaire instructed that, if an applicant answered "Yes" to any of the questions, the applicant must submit the completed form "with all relevant documentation concerning the matter." BX B1 at 153. The form also instructed that, if an applicant so answered, the applicant would not be permitted to take the oath of admission and the certification of the application would be stayed while the COA investigated the matter. *Id.*

66. Question 1 on the Supplemental Questionnaire asked: "Have you been arrested for, plead [sic] guilty or no contest to, or convicted of a felony or misdemeanor charge, other than a minor traffic charge?" BX B1 at 153. Respondent falsely answered "No" to the question. When he answered Question 1 on the Supplemental Questionnaire, Respondent knew what the terms "arrest" and "misdemeanor" meant. Tr. 353-54.

67. On April 12, 2008, Respondent completed and signed the Supplemental Questionnaire while he was physically located in Florida. BX B1 at 153; *see also* A17 at 4; Tr. 345-46, 349.

68. Two days later, on April 14, 2008, Respondent took the oath of admission to become a member of the D.C. Bar and submitted his Supplemental Questionnaire to the COA without disclosing his criminal misdemeanor convictions of DUI and reckless driving. BX A1 at 1. *See also* BX B1 at 151-52 (February 28, 2008 letter from COA to Respondent: "Be sure to bring with you the Supplemental Questionnaire and Registration Statement; both will be collected from you AFTER the ceremony when you sign the roll of attorneys.").

N. Respondent's Actions After Admission to the D.C. Bar

1. Administrative Suspension, Florida Bar Application, the First Self Report, and Disciplinary Counsel's Investigation

69. Respondent was suspended from the D.C. Bar from June 14, 2009, until August 18, 2009, for failure to take the mandatory continuing legal education course. BX B4 at 34.

70. Respondent submitted his Florida Bar Application on June 15, 2009, the day after he was suspended from the D.C. Bar. BX B4 at 4; Tr. 314 (Respondent). Compared to his D.C. Application, Respondent's Florida Application was complete in all material respects. *See* Tr. 522 ("And the other reason that I'm pointing to my Florida Bar application repeatedly is, you know, when I wrote that thing, I was really, really committed to being as open and transparent and, in some instances, I think probably exceeding what was required

to be disclosed, simply because I felt like I turned a corner in my life, and I didn't want there to be any questions about it."). Respondent's Florida Application disclosed numerous facts that he should have disclosed, or for which he should have provided supplemental information, on his D.C. Application. These facts included additional information regarding Respondent's participation as a party in civil actions, employment history, criminal convictions, and outstanding debts. *Compare* BX B4 *with* BX B1. Respondent's Florida Application also disclosed that he was suspended from the D.C. Bar. BX B4 at 34.

71. In early August 2009, Respondent attended a mandatory Disciplinary Counsel lecture on legal ethics in Washington, D.C. Tr., Vol. I, pp. 22-24. Respondent testified at the hearing that, during the lecture, he realized he had failed to report the First DUI Incident and the ensuing DE ODC investigation to the COA, as required. BX A10; Tr. Vol. I, pp. 22-23.

72. Thus, on August 14, 2009, Respondent wrote a letter to Disciplinary Counsel in which he reported his failure to disclose the First DUI Incident and the ensuing DE ODC investigation (the "First Self-Report"). BX A10; BX E7.[8] Respondent also informed the Delaware Bar of his First DUI Incident around that time. BX B6 at 56-57 (Delaware ODC Matter Report, dated 8/18/09).

[8] Respondent's Delaware discipline is not subject to reciprocal discipline in this jurisdiction because it did not involve disbarment, suspension, or probation. D.C. Bar R. XI, § 11(c).

73. Disciplinary Counsel replied on September 1, 2009, with a notice informing Respondent that it had opened an investigation into the First DUI Incident. BX A12.

74. One week later, Respondent supplemented his First Self-Report in a letter to Disciplinary Counsel. BX A13. The September 8, 2009, letter included information about his participation in the Florida Lawyers Assistance Program, a program designed to help lawyers with alcohol and substance abuse problems. *Id*.

75. Respondent wrote Disciplinary Counsel another letter one week later, attaching documentation of his conviction for the First DUI Incident. BX A13 at 6 (Sept. 15, 2009, letter).

76. On November 24, 2009, Disciplinary Counsel asked Respondent to explain why he falsely answered "No" on his Supplemental Questionnaire when asked whether he had ever been convicted of a misdemeanor charge. BX A14.

77. Respondent responded by letter, dated December 1, 2009, stating that he "did not interpret a misdemeanor DUI to be anything more than a 'minor traffic offense,'" and that he now knew that the First DUI Incident may not be a "minor traffic offense." BX A15. In the letter, Respondent asserted that he did not intentionally conceal any facts from the COA, and stated that he understood that Disciplinary Counsel may impose a sanction. Respondent requested, however, that, if Disciplinary Counsel chose to impose sanctions, Disciplinary Counsel impose a sanction that did not result in a suspension. *Id.*

78. The following day, in response to a request from Disciplinary Counsel, Respondent faxed to Disciplinary Counsel his FL Application. BX A17; BX A18 (December 2, 2009). Respondent's FL Application disclosed facts that Respondent had not disclosed in his D.C. Application, including facts that form the basis of the first Specification of Charges (Bar Docket No. 2009-D362). *See* BX B4; FOF ¶ 70.

79. On or about December 5, 2009, Respondent testified that Disciplinary Counsel asked him to agree to disbarment. Tr. 575 ("on December 5th or 6th, the day before the 2009 wreck, I hear the phrase 'consent to disbarment' or 'disbarment.'"). After that date, Respondent admitted that he refused to cooperate with Disciplinary Counsel regarding its investigation into the First DUI Incident. *Id.* ("And at that point, I was done. I said you know what, I've gone as far as I'm going with this people, if they want to continue, let's glove up and get it on.").

80. On December 15, 2009, Respondent engaged counsel to represent him before Disciplinary Counsel. *See* BX A7 at 31.

81. For unspecified reasons, Disciplinary Counsel's investigation into the First DUI Incident was not submitted for Contact Member review until October 2013, Tr. 531, and was not filed until October 2014. Tr. 532.

2. The Second DUI Incident

82. On the evening of December 5, 2009, Respondent "relapsed" and stopped at a bar named Jester's near Pompano Beach, Florida. Tr. 288; Tr. 404 ("self-medicated"). Respondent testified that he was drinking at Jester's for "at

least like two hours, maybe more." Tr. 405; Tr. 406 (describing Jester's as "the gin mill I was at").

83. In the early hours of December 6, 2009, Respondent left Jester's and began driving his car. At the hearing, Respondent admitted that he "shouldn't have been driving," and agreed that his ability to drive a motor vehicle was significantly impaired. Tr. 405; *see also* Tr. 413 ("Was I impaired? Yes."); Tr. 445 (Respondent testified that, at the time of his arrest, his answers to questions were not reliable because there was "not even a question in my mind that I was very inebriated").

84. While driving his car, a white 2006 Chrysler 300 sedan, Respondent rear-ended another vehicle, a black Mercedes. BX E16 at 4 (description of Respondent's vehicle); BX E21 at 1-3 (accident report). At the time of the collision, both vehicles were traveling northbound in the left lane on SR 811, also known as N. Dixie Highway. BX E21 at 3. Respondent was driving approximately 40 miles per hour, while the Mercedes in front of him was driving approximately 30 miles per hour. BX E 21 at 1. The front end of Respondent's vehicle collided with the rear bumper of the Mercedes. BX E21 at 1 (noting damaged portions of each vehicle); BX E21 at 3 (narrative of damage). The collision was loud enough that a witness was able to hear it while inside a nearby building. BX E21 at 3. The investigator for the Broward Sheriff's Office who completed the Traffic Crash Report estimated the damage to the Mercedes as $3,500 and the damage to Respondent's car as $1,000. BX E21 at 1.

85. Respondent left the scene of the collision without exchanging contact information with the driver of the other vehicle and without contacting the police. BX E21 at 3. After Respondent left the scene, Pompano Beach Fire Rescue responded to the accident scene and transported the driver and passenger of the Mercedes to North Broward Hospital for treatment and diagnosis of neck and general back pain. BX E21 at 3.

86. A witness who saw the collision followed Respondent as he left the scene and contacted police to report the collision and provide a description of Respondent's vehicle. BX E16 at 5; BX E21 at 3.

87. Soon thereafter, Officer Dedej of the Broward Sheriff's Office observed Respondent's car, which fit the description of the vehicle that had been reported as leaving the scene of an accident with injuries, traveling at a high rate of speed, and driving erratically. BX E20 at 1. Officer Dedej activated his lights to conduct a traffic stop, but Respondent failed to slow his vehicle or stop promptly. BX E20 at 2. Officer Dedej announced over his loudspeaker, "Driver of the white Chrysler, stop the vehicle," but Respondent still did not stop. BX E24 at 12. Rather, Respondent kept driving at a low speed for approximately 0.4 miles until Officer Dedej pulled up next to Respondent's vehicle, rolled down his window, and told Respondent to "pull over" and Respondent finally did so. BX E24 at 14.

88. Officer Dedej then noticed that the front hood of Respondent's vehicle was damaged and that there was minor damage to the upper-left corner of the front windshield. BX E24 at 9-10 (testimony of Officer Dedej). Officer Dedej also

noticed that Respondent's breath smelled of alcohol, his eyes were bloodshot, his speech was slurred, and he was unsteady on his feet. BX E17 at 1 (DUI Supplemental Report); BX E20 at 2 (arrest form). At no time did Respondent tell Officer Dedej a similar version of the collision or his subsequent actions to which he testified before the Hearing Committee. *See* FOF ¶¶ 115 through 119; Tr. 291 (Respondent admitted that he did not recount the "rock throwing" incident after he was pulled over by the police, claiming he thought he should talk with a lawyer before making any statement).

89. Thereafter, Officer Hager was called to the scene to administer field sobriety tests, including Horizontal Gaze Nystagmus, Walk and Turn, and One Leg Stand. BX E20 at 2-3. Respondent failed these tests and was placed under arrest. BX E20 at 3; BX E23A (video of sobriety tests and arrest).

90. After one of the officers read him the Florida Implied Consent Warning, Respondent refused to submit to a Breathalyzer test to determine his blood alcohol concentration. BX E2 at 5, ¶7 (admission in Answer); BX E18 (implied consent form); BX E20 at 3-4. *See generally* BX E23A (video of arrest).

91. At the time of his arrest, Respondent showed no signs of injury as a result of the automobile collision on December 6, 2009. BX E16 at 2 (Broward Sheriff's Office Event Report stating "Extent of injury: None"); BX E19 at 1 (DUI ALCOHOL INFLUENCE REPORT stating "Signs/Complaints of Illness/Injury: None"); BX E20 at 1 (Probable Cause Affidavit of Officer Hager, noting "No injuries / illnesses / medications"); BX E23A (video of arrest shows no sign of

injury and, at minute 4:45, Respondent agreed he had no injuries that would prevent him from walking or balancing and did not mention any other injuries).

92. At all relevant times, Respondent's driver's license was restricted with the requirement to wear corrective lenses while operating a motor vehicle. BX E20 at 4 (Arrest form). At the time of his arrest, however, Respondent was not wearing contact lenses nor did he have glasses in his possession or in his vehicle. BX E20 at 4; BX E23A (video of arrest, discussion about corrective lenses begins at approximately minute 3:15).

93. Respondent was not covered by an automobile insurance policy on December 6, 2009, when he drove his car into the black Mercedes. BX E22 at 1 (transcript of Respondent's Florida driver record noting that Respondent's license was "SUSP" on 4-12-10 because he had been in an "ACCID W/O AUTO LIAB"); BX E25 at 9 (Respondent's counsel explained to the judge in the criminal matter that Respondent was being asked to post a $4,100 bond against claimed damages to other car because at the time of the accident, Respondent "didn't have insurance"). Despite his lack of insurance, Respondent incorrectly reported "Progressive American Insurance Co." as his automobile insurer. BX E21 at 1. Furthermore, between 2007 and 2009, Respondent's license was suspended on at least three prior occasions for failure to maintain automobile insurance. BX E22 at 1.

94. Respondent was charged with the following criminal counts:

a. Driving under the influence of alcohol, 2nd offense, in violation of Florida Statutes § 316.193(2)(a)(2)(b);
b. Driving under the influence of alcohol with damage to property or person of another in violation of Florida Statutes § 316.193(3)(c)(1) (three counts);
c. Refusal to submit to a DUI test in violation of Florida Statutes § 316.1939(1)(e);
d. Failure to stop and remain at the scene of an accident involving injury in violation of Florida Statutes § 316.027(1)(a);
e. Careless Driving in violation of Florida Statutes § 316.1925(1);
f. Following too closely in violation of Florida Statutes § 316.0895; and
g. Improper change of lanes in violation of Florida Statutes § 316.085(2).

BX E15 (Booking report); BX E2 at 5, ¶ 8 (admission in Respondent's Answer). Respondent was also charged with violation of restrictions placed on his driver's license – *i.e.*, operating a motor vehicle without corrective lenses. BX E12 at 2 (Count IV); BX E25 at 5 (plea transcript discussing Count IV).

95. On June 17, 2011, Respondent pleaded no contest to, and was adjudicated guilty of, reckless driving and failing to stop and remain at the scene of an accident. BX E2 at 5, par.9 (Respondent's Answer); BX E14 (court order demonstrating adjudication of Respondent's plea); BX E25 at 7 (transcript of Judge accepting Respondent's plea to both reckless driving and leaving the scene of an accident).

96. Before the court accepted his plea of no contest, Respondent confirmed that he was knowingly waiving his right to put on any defenses to the charges against him and "waiving any right to come back at a later time and attack [the charges] by either claiming there was [sic] not sufficient facts or it was not

correct under the law or any grounds whatsoever." BX E25 at 5-6 (sentencing transcript).

97. The judge sentenced Respondent to pay adjudication costs, perform 50 hours of community service, and pay restitution to the victim. BX E25 at 4 (sentencing transcript). In lieu of community service, however, Respondent paid an additional $500 (the events described in ¶¶ 82 through 97 are hereafter referred to as the "Second DUI Incident"). BX E14 (sentencing order); BX E25 at 7-8 (sentencing transcript discussing terms); BX E33 at 92 (Delaware testimony).

98. Despite the adjudication of guilt on both counts, the Judgment and Sentence only reflected a conviction for reckless driving. BX E10. Respondent took various steps to correct the judgment so it also would reflect his conviction for leaving the scene of an accident. BX E26 (Motion to Correct Judgment & Sentence); BX E27 (transcript of December 17, 2013 hearing before sentencing judge).

99. In response to an apparent inquiry from the DE ODC, on September 13, 2011, Respondent sent a letter to DE ODC and provided DE ODC with the certified judgment from the Second DUI Incident. BX E28.

100. On June 5, 2013, after conducting an investigation into the Second DUI Incident, DE ODC determined that there was probable cause that Respondent violated certain Delaware Lawyers' Rules of Professional Conduct. BX E34. Instead of filing a petition with the Delaware Board of Professional Responsibility, however, DE ODC recommended that Respondent accept the sanction of a private

admonition and probation with conditions, including random urinalysis tests (the "2013 Delaware Sanction"). *Id.*; BX A7 at 7.

101. On June 26, 2013, Respondent consented to the DE ODC imposing the 2013 Delaware Sanction. BX E35.

3. Respondent's Second Self-Report & False Statements to Disciplinary Counsel

102. Nearly two months after consenting to a sanction in Delaware, and while the 2009 action against him by ODC was pending, Respondent sent a fax to Disciplinary Counsel on or about August 15, 2013, self-reporting the Delaware sanction he received as a result of the Second DUI Incident (the "Second Self-Report").[9] BX E7.

103. Respondent's Second Self-Report explained that he had not yet submitted a copy of the Florida criminal judgment to the D.C. Court of Appeals, as required by D.C. Bar R. XI, §10, because "the county court here in Florida has yet to enter a correct and accurate judgment of conviction." BX E7 at 1. *See also* BX E8 (email, October 28, 2013).

104. On November 6, 2013, Respondent requested that Disciplinary Counsel consolidate its investigation in Bar Docket No. 2013-D382 with the existing investigation in Bar Docket No. 2009-D362. BX E9.

105. Disciplinary Counsel filed a certified copy of the criminal judgment with the D.C. Court of Appeals on December 18, 2013, explaining that, although

[9] Respondent's Delaware discipline is not subject to reciprocal discipline in this jurisdiction because it did not involve disbarment, suspension, or probation. D.C. Bar R. XI, § 11(c).

the certified document only reflected a conviction for reckless driving, Respondent also had pleaded no contest to leaving the scene of an accident. BX E3.

106. Approximately one month later, the District of Columbia Court of Appeals directed Disciplinary Counsel to initiate an investigation into Respondent's criminal conviction. BX E4 (January 17, 2014).

107. Consequently, on January 24, 2014, Disciplinary Counsel directed Respondent to provide a substantive, written response regarding the circumstances surrounding the criminal conviction on or before February 7, 2014. BX E5.

108. On February 13, 2014, Respondent e-mailed Assistant Disciplinary Counsel William R. Ross in response to Disciplinary Counsel's letter of January 24, 2014. BX E6. Respondent's e-mail falsely stated that, prior to the collision, there "were no cars to my front," but then "all of a sudden, in my travel lane, a black Mercedes that was stopped in the travel lane with no lights on hit her brakes." BX E6. Respondent's representations were inconsistent with the accident report, and ignored the significant impairment he experienced at the time from his consumption of alcohol and his failure to wear eyeglasses or corrective lenses when the collision occurred. BX E21.

109. Respondent also falsely represented to Disciplinary Counsel that, after the collision, he was assaulted by a young man who threw an object at his car, causing significant injury to Respondent and putting him in fear for his safety. BX E6 ("unbelievably, a young man exited the passenger side of the vehicle and threw something at my windshield, which shattered the windshield, spraying the inside of

my car with glass"). In his Answer to the Specification of Charges, Respondent again asserted that "Respondent was injured when, after the collision, someone hurled a large rock at Respondent's windshield, shattering Respondent's windshield, and spraying glass into the passenger compartment of Respondent's car." BX E2 at 2 (Answer). Respondent had previously provided this version of events in the Delaware disciplinary proceeding, testifying that "a teenage kid" exited the other car and threw a rock at Respondent's car, the result being that "[g]lass explodes inside the car, cuts the heck out of me, blood all over the inside of my car." BX E33 at 94 (transcript of April 10, 2013 proceeding).

110. Respondent also falsely represented to Disciplinary Counsel that he "chose" to leave the scene of the collision in order to "go to the nearest police station," to report the assault purportedly committed by the passenger of the black Mercedes, but he was pulled over by the police on his "way to the nearest police station." BX E6. Respondent repeated these statements in the Delaware proceeding, BX E 33 at 94 ("That's why I left the scene"), and in his testimony before the Hearing Committee. Tr. 292 ("So I left the scene . . . and my destination was the BFS substation . . . because one, I was scared, and I was injured"). Respondent's assertions were false because, as he acknowledged, he never mentioned the supposed assault (or even his professed intention to drive to the nearest substation) following the collision, despite his interactions with police officers during the events leading to his arrest, after his arrest, or during the subsequent criminal proceeding. Tr. 290.

111. In fact, Respondent never asserted that he was assaulted by the passenger of the other vehicle until over three years later during the Delaware disciplinary proceeding in April 2013. Tr. 421 (Respondent). Respondent admitted he left the scene of the collision because he was intoxicated, Tr. 290 ("I had had too much to drink"). He also knew he had a criminal history – this would not have been Respondent's first DUI arrest, BX E18 (Implied Consent form indicating higher penalties for subsequent offenses), and that he did not have automobile insurance.

O. Respondent's False Testimony at the Hearing

Several aspects of Respondent's testimony before the Hearing Committee were not credible, as described in detail below.

1. False Statements Regarding the Supplemental Questionnaire

112. Despite the First DUI Incident, Respondent answered "No" on his Supplemental Questionnaire when asked whether he had "been arrested for, plead [sic] guilty or no contest to, or convicted of a felony or misdemeanor charge, other than a minor traffic charge." *See* FOF ¶¶ 66 and 76. Respondent testified that his false answer on the Supplemental Questionnaire resulted from his misunderstanding of the phrase "minor traffic charge." Tr. 279-80 (Respondent: "[I]t really wasn't clear to me exactly what 'minor traffic offense' meant."); Tr. 280 (Respondent); Tr. 280-81 (Respondent: "I did have a little bit of confusion, frankly."); Tr. 281-82; Tr. 283 (Respondent: "I forgot to tell these guys, *i.e.,* D.C., I forgot to tell D.C. about that DUI. Frankly, my blood ran cold, how could I have

forgotten to do that? How could I have omitted to do that?"); *Id.* (Respondent: "I made a judgment call, and I made a mistake."); Tr. 296-97 (Respondent); Tr. 344-45 (Respondent); Tr. 355 (Respondent: "what I viewed as a vague and ambiguous term, 'minor traffic charge.'"); BX A15 at 1 (Respondent's December 1, 2009 letter to Bar Counsel: "I did not interpret a misdemeanor DUI to be anything more than a 'minor traffic offense.'").

113. Had Respondent been confused about the meaning of the term "minor traffic charge" at the time he submitted his Supplemental Questionnaire, however, he could have sought advice regarding its meaning from the COA, but there is no evidence that he did so.

114. Respondent's testimony was not credible and, based on the circumstances surrounding his arrest and conviction, including the not insignificant criminal penalties imposed on him, he knew that the First DUI Incident did not fit the definition of a "minor traffic charge." *See* Conclusions of Law, at pgs. 51-56.

2. <u>False Statements Regarding the Second DUI Incident</u>

115. Despite multiple sources of contemporaneous evidence regarding the Second DUI Incident, Respondent testified falsely regarding the cause of the collision. He testified that a car he later learned to be a black Mercedes was sitting in the travel lane "completely blacked out." Respondent further testified that, although he had his headlights on, he did not see the black Mercedes until he was within one-and-a-half to two-and-a-half car lengths of it, and the Mercedes driver activated that vehicle's brake lights. Respondent also testified that, after he hit the

Mercedes' rear bumper, an occupant of the vehicle threw a rock at his car, breaking his windshield. Finally, Respondent testified that, fearing for his safety, he left the scene of the collision to contact the police. Tr. 288-92; 409-13. *See also* BX E6 at 1 ("So, I had two choices, exit my vehicle and use justifiable force to defend myself, or leave and go to the nearest police station. I chose the latter.").

116. Respondent also falsely testified that the rock thrown by the occupant of the Mercedes was "probably half the size of a basketball," Tr. 413, after which the "windshield shatters, blows glass inside the car, cuts me, bleeding all over the place," and "[m]y own glasses had come off." Tr. 289.

117. When pressed by the Hearing Committee, however, Respondent acknowledged that the impact "did not penetrate the windshield," although he still insisted that it "sprayed the shrapnel of glass inside the car." Tr. 442-443. Respondent's representations also were not consistent with the accident report (BX E21) or any other evidence, aside from Offer Dedej's nonspecific testimony that there was some "damage to the front windshield on the left side, left upper corner," which was the corner furthest away from the driver's side of the vehicle. BX E24 at 9; Tr. 441 (Respondent: clarifying that damage was on passenger side). There also was no evidence that Respondent was badly cut in the aftermath of the collision, that the inside of the car was sprayed with glass or blood, or that Respondent's glasses were anywhere inside the car.

118. Moreover, Respondent never credibly explained why he failed to tell either officer about the concern for his safety that he claimed justified his leaving

the scene of the collision. Tr. 418-20 (When asked to explain why he purportedly was looking for the police if he did not want to talk to the police about the collision, Respondent said he would have told the police what happened if he had made it to the police station, but he decided not to say anything when the police stopped him and ordered him from the car at gunpoint); Tr. 419-20 (Respondent further testified that he did not mention the alleged rock throwing incident during the criminal proceeding on advice of counsel). Indeed, each time Respondent re-told the story to the Hearing Committee, the details became increasingly dramatic, which further undermined his credibility. *See, e.g.*, Tr. 34 ("a brick shatters my windshield"); Tr. 413 (Respondent used terms "rock" and "brick" interchangeably and even said his car was hit with a "half the size of a basketball chunk of concrete"); Tr. 414 ("enormous chunk of concrete"); Tr. 536 (describing a "huge rock" being "hurled at my car").

119. In sum, Respondent's testimony surrounding the Second DUI Incident was not credible and, ultimately, whether he truthfully recounted the facts or not is irrelevant to the question of whether he failed to disclose the incident to the COA prior to taking the oath of admission, as required by the Supplemental Questionnaire and his continuing duty to supplement his D.C. Application. His testimony about the incident also never revealed, and is not relevant to, whether, following admission, he violated his duty to disclose the Second DUI Incident to the D.C. Court of Appeals, as required by D.C. Bar R. XI, §10.

P. Post-Hearing

120. At the close of the hearing, the Hearing Committee made a preliminary, non-binding determination that Respondent had violated at least one of the charged Rules. Tr. 448; *see* Board Rule 11.11.[10]

121. After the close of the hearing, Disciplinary Counsel filed Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanction. Respondent also filed Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanction, and Disciplinary Counsel filed a Reply.

III. LEGAL FRAMEWORK

At the time Respondent submitted his application for admission in April 2006, Rule 8.1(a) provided that, "[a]n applicant for admission to the Bar, or a lawyer in connection with a Bar admission application or in connection with a disciplinary matter, shall not . . . [k]nowingly make a false statement of material fact . . . ." After Respondent submitted his application for admission, but before Respondent was admitted, Rule 8.1(a) was amended to delete the reference to

[10] Disciplinary Counsel did not offer any additional evidence in aggravation of sanction. Respondent testified in mitigation that he "self-reported" the following: (1) his misstatement on his D.C. Bar application, which he characterized as an "exceedingly rare" occurrence (Tr., Vol. III, pp. 483-85); (2) his status as a lawyer to the Florida State's Attorney prosecuting the DUI (Tr. Vol. II, pp. 490-91); and, (3) the Delaware discipline to D.C. Disciplinary Counsel (Tr., Vol. III, pp. 496-97). He also noted that he moved to correct the record in the Florida proceeding to reflect his conviction on charges of leaving the scene of an accident, as well as reckless driving. Tr. 498-99. Respondent also argues that he has been prejudiced by the delay in Disciplinary Counsel's prosecution of this matter because his lawyer passed away while the case was pending and he has been unable to recover allegedly exculpatory documents in her possession. Tr., Vol. III, pp. 540-42. He further argues that he was prejudiced by delay because he would have called his mother as his witness to establish a *Kersey* defense, which he contends he did not assert because his mother died before the hearing. Tr., Vol. III, pp. 542-46.

"material," such that knowingly making any false statement of fact would violate the Rule. The amended Rule 8.1(a) applies to conduct occurring after February 1, 2007, and Comments to amended Rule specifically provide that, "[l]ack of materiality does not excuse a knowingly false statement of fact." Rule 8.1, Comment [1]. The Court has recognized that omissions may be grounds for disciplinary action under Rule 8.1(a). *See In re Regent*, 741 A.2d 40 (D.C. 1999).

Rule 8.1(b) provides, in relevant part, that an applicant for admission to the bar, or lawyer in connection with a Bar application, shall not "[f]ail to disclose a fact necessary to correct a misapprehension known by the lawyer or applicant to have arisen in the matter…." The Comments to the rule explain that it "requires correction of any prior factual misstatement in the matter that the lawyer or applicant may have made, including affirmative clarification of any factual misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware." Rule 8.1, Comment [1]. Moreover, the Court has found a Rule 8.1(b) violation where, like here, the respondent failed to update his admission questionnaire with the fact that he had been arrested after causing a serious automobile crash when he was driving while impaired by alcohol. *See In re Small*, 760 A.2d 612, 613-14 (D.C. 2000) (respondent must have known he had to disclose conviction to COA because reasonable lawyer would know).

We are permitted to find knowledge sufficient to support a violation of Rule 8.1(a) or 8.1(b) based on circumstantial evidence. As Disciplinary Counsel correctly points out, "[f]ew [r]espondents admit to intentional dishonesty." DC

Reply at 3. Thus, while Rule 1.0(f) defines "knowingly," "known," or "knows" as "denot[ing] actual knowledge of the fact in question," it also recognizes that, "[a] person's knowledge may be inferred from circumstances." *See also In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) ("[i]ntent must ordinarily be established by circumstantial evidence…"); *see also In re Starnes*, 829 A.2d 488, 500 (D.C. 2003) (circumstantial evidence was sufficient to prove respondent's state of mind as "more direct proof of state of mind, such as an outright assertion of an individual's intent, is rarely available").

Rule 8.4(c) prohibits a lawyer from "[e]ngag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation…." The Court has held that "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *In re Ukwu*, 926 A.2d 1106, 1113 (D.C. 2007); *see also In re Hager*, 812 A.2d 904, 916 (D.C. 2002) (citing *In re Arneja*, 790 A.2d 552, 557 (D.C. 2002)) (noting that the Court has "given a broad interpretation to Rule 8.4(c)…. "). Nonetheless, each of the four terms encompassed within Rule 8.4(c) "should be understood as separate categories, denoting differences in meaning or degree." *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam).

Each category of Rule 8.4(c) also requires proof of different elements. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). For example, dishonesty is the most general category in Rule 8.4(c) and involves "fraudulent, deceitful or misrepresentative behavior [and] conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness…. Thus, what

may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty." *Shorter*, 570 A.2d at 767-68 (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007); *In re Carlson*, 745 A.2d 257, 258 (D.C. 2000) (per curiam) (dishonesty may consist of failure to provide information where there is a duty to do so). Dishonesty in violation of Rule 8.4(c), however, does not require proof of deceptive or fraudulent intent. *Romansky*, 825 A.2d at 315; *see also In re Jones-Terrell*, 712 A.2d 257, 258 (D.C. 2000) (per curiam) (violation found despite "lack of evil or corrupt intent"). Thus, when the dishonest conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *Romansky*, 825 A.2d at 315.

Conversely, "when the act itself is not of a kind that is clearly wrongful, or not intentional, [Disciplinary] Counsel has the additional burden of showing the requisite dishonest intent." *Id.* A violation of Rule 8.4(c) may also be established by sufficient proof of recklessness. *See id*. at 317. To prove recklessness, Disciplinary Counsel must prove by clear and convincing evidence that the respondent "consciously disregarded the risk" created by his actions. *Id.*

Fraud also may underlie a violation of Rule 8.4(c). Fraud "embraces all the multifarious means…resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth." *Shorter*, 570 A.2d at 767 n.12 (citation omitted). Unlike dishonesty, however, fraud requires a showing of intent to deceive or to defraud. *See Romansky*, 825 A.2d at 315; *In re*

Hutchinson, 534 A.2d 919, 923 (D.C. 1987) (en banc) (finding no violation of Rule 8.4(c) where respondent committed misdemeanor violation of Securities Exchange Act of 1934 and crime did not require proof of specific intent to defraud or deceive).

Another category of conduct triggering a Rule 8.4(c) violation is deceit, which is the "suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact." *Shorter*, 570 A.2d at 767 n.12 (citation omitted). While an individual must have knowledge of the falsity, it is not necessary that the individual have an intent to deceive or defraud. *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989) (finding deceit where attorney submitted false travel expense forms but did not intend to deceive the client or law firm and there was no personal gain); *see also Shorter*, 570 A.2d at 767 n.12.

Finally, a misrepresentation may support a violation of Rule 8.4(c). A misrepresentation is a "statement . . . that a thing is in fact a particular way, when it is not so." *Shorter*, 570 A.2d at 767 n.12 (citation omitted); *see also Schneider*, 553 A.2d at 209 n.8 (misrepresentation is element of deceit). Misrepresentation requires active deception or a positive falsehood, *see Shorter* at 767, but the failure to disclose a material fact also constitutes a misrepresentation. *See In re Outlaw*, 917 A.2d 684, 688 (D.C. 2007) (per curiam) ("Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation.") (citations omitted); *In re Scanio*, 919 A.2d 1137, 1139-41, 1142-44 (D.C. 2007) (respondent

failed to disclose that he was salaried employee when he made a claim for lost income to insurance company measured by lost hours multiplied by billing rate); *In re Reback*, 513 A.2d 226, 228-29 (D.C. 1986) (en banc) (Court found deceit and misrepresentation where respondents neglected claim, failed to inform client of dismissal of case, forged client's signature on second complaint, and had complaint falsely notarized).

Rule 8.4(d) prohibits lawyers from "[e]ngaging in conduct that seriously interferes with the administration of justice…." The Comments to Rule 8.4 describe Rule 8.4(d) as including, among other things, "acts by a lawyer such as: failure to cooperate with Disciplinary Counsel . . . [and] failure to appear in court for a scheduled hearing. . . ." Rule 8.4, Comment [2]. Rule 8.4(d) "is to be interpreted flexibly and includes any improper behavior of an analogous nature to [the above] examples." *Id.* The Court has recognized that a lawyer's "failure to make material disclosures to the COA after filing her initial application, as well as her false response to the COA's Supplemental Questionnaire, interfered with the administration of justice by 'preventing a complete review of her character and fitness' to practice law in the District." *In re Scott*, 19 A.3d 774, 781 (D.C. 2011) (citing *In re Starnes*, 829 A.2d 488, 500 (D.C. 2003)).

IV. CONCLUSIONS OF LAW

Disciplinary Counsel contends that Respondent's conduct with respect to his Application for Admission to the District of Columbia Bar ("D.C. Bar Application") and Supplemental Questionnaire violated Rules 8.1(a), 8.1(b), 8.4(c), and 8.4(d). Disciplinary Counsel also contends that Respondent's conduct with respect to his arrest following the Second DUI Incident and misrepresentations regarding that incident in an email to Disciplinary Counsel violated Rules 8.4(b) and 8.4(c).

Respondent admits that, with respect to certain aspects of his Bar application and Supplemental Questionnaire, he violated certain Rules by omitting facts from and/or failing to update his Bar application and Supplemental Questionnaire. Respondent further admits that, for these Rule violations, "some sanction is warranted…." Respondent's Post-Hearing Brief ("Resp. Post-hrg Br.") at 15. Respondent, however, denies that his conduct was knowingly false (in violation of Rule 8.1(a)), denies that he failed to disclose a fact necessary to correct a known misapprehension (in violation of Rule 8.1(b)), denies that his conduct was dishonest, fraudulent, deceitful, or misrepresentative of the facts (in violation of Rule 8.4(c)), and denies that his conduct was a serious interference with the administration of justice (in violation of Rule 8.4(d)). Respondent also claims that his defense against the charges with respect to his Bar application and Supplemental Questionnaire was unfairly prejudiced because Disciplinary Counsel's delaying bringing charges against him. *E.g.,* Resp. Post-hrg Br. at 11.

With respect to his arrest following the Second DUI Incident, Respondent denies that his conduct reflected adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects (in violation of Rule 8.4(b)), and denies that his conduct was dishonest, fraudulent, deceitful, or misrepresentative of the facts (in violation of Rule 8.4(c)). Respondent also claims that Disciplinary Counsel's delay unfairly prejudiced his defense regarding the Second DUI Incident.

The Hearing Committee's conclusions of law[11] are as follows:

A. Failure to Disclose Civil Actions

In response to Question 19 of his Application to the Bar of the District of Colombia ("Have you ever been a named party to any civil action?"), Respondent correctly responded "Yes," and disclosed that he was a named party in two civil actions. FOF ¶ 9. Disciplinary Counsel contends that Respondent failed to disclose at least twelve additional civil matters in which he was a named party.

At the hearing, Respondent credibly testified that his now-deceased mother filed eight of the undisclosed actions in his name and he was not aware of those actions when he completed his 2006 application. According to Respondent, those actions involved certain residential property that he owned and his mother managed for him. Tr. 264: 12-21 ("The simple truth is that I knew nothing about [the lawsuits]. . . . [T]hose actions were filed on my behalf without my knowing by

[11] Disciplinary Counsel alleged that Respondent failed to disclose information in response to Question 5 regarding academic discipline, but did not address this allegation in its brief, much less argue that it has proven by clear and convincing evidence that Respondent's answer to Question 5 violated any Rule. We do not find clear and convincing evidence that Respondent's response to Question 5 violated any Rule.

my now-deceased mother. How that came to be was she essentially functioned as an agent for a number of rental properties that I owned in Pompano Beach, Florida."). Respondent further testified that he "really had nothing to do with the properties. . . ." and that he only became aware lawsuits when his mother helped him complete his 2011 Florida Bar Application. Tr. 265: 5-10; 370: 10-22; 371: 1-4.

But Respondent further testified that he failed to disclose numerous other lawsuits in which he was a named party. Tr. 373: 17-20 ("Q: But you didn't include or list a lawsuit that you filed against John Shaw? . . . A: No, I didn't"); 376: 9-12 ("Q: You also didn't disclose that you were a named defendant in a lawsuit filed by Bristol Bank against you in August 2005; is that right? A: That's right."). In some of those suits, Respondent was the plaintiff, and therefore was aware of his obligation to report those lawsuits in response to Question 19 of his Application to the District of Columbia Bar. FOF ¶¶ 10a-c. For example, in *Adkins v. Palm Beach County School Bd.* (2004), Respondent filed a civil suit alleging that a teacher interfered with his parental rights. In response to Disciplinary Counsel's question of whether he disclosed *Adkins v. Palm Beach County School Bd.* in his Application to the District of Columbia Bar, Respondent stated "[n]o. As I said earlier…my completing my D.C. Bar application was hit-and-miss and for a lack of a better word or characterization from my standpoint now, I was sloppy and inattentive, but no, I didn't disclose it."

Based on Respondent's admissions, and for the reasons set forth above, the

Hearing Committee finds by clear and convincing evidence that Respondent knowingly failed to disclose several civil actions in his D.C. Bar Application in violation of Rule 8.1(a).[12] In particular, Respondent failed to report at least three civil actions that he initiated.[13]

Despite his admittedly "sloppy" process, at the time Respondent completed his D.C. Application, he was already a member of two state Bar associations, and, thus, knew his obligations to accurately complete his application. In his "totally transparent" Florida Bar Application, Respondent reported numerous actions that were not disclosed on his D.C. Bar Application. The Hearing Committee finds that the combined number of civil actions Respondent failed to report was material because such information potentially reflects on his character and fitness to practice law. Given that Respondent certified and swore his application was true and complete, Respondent's failure to report the omitted civil actions also violated

[12] Disciplinary Counsel also argues that Respondent violated Rule 8.1(b) by failing to update his D.C. Application to disclose a lawsuit (*Cafritz v. Adkins*) filed after he submitted the application. Respondent argues that he was not served and was unaware of this suit. Tr. 391-95. Disciplinary Counsel did not present any evidence that Respondent was personally served with this suit or was otherwise aware of it and, therefore, we find that Disciplinary Counsel did not prove a Rule 8.1(b) violation by clear and convincing evidence.

[13] We note that Respondent should have known his mother filed civil suits in his name in connection with her property management activities undertaken on his behalf. Respondent testified that his mother was his "agent," and, at the time he completed his application, he should have gathered necessary information from his mother and any other legal agents, or at least searched online for such information. He also should have known about two matters in which he was a named defendant. FOF ¶10(d)-(e). While Respondent could have and should have known about each of these, we do not find clear and convincing evidence that Respondent knew about the property-related civil actions allegedly filed by his mother and, therefore, those actions do not form the basis of our conclusion that Respondent violated Rule 8.1(b). *See In re Verra*, 932 A.2d 503, 505 (D.C. 2007) (Rule 8.1 violations typically require knowing conduct).

Rule 8.4(c).

B. Failure to Update his D.C. Application to Disclose Criminal Arrest, Charge, and Conviction

In response to Question 22 of his application to the Bar of the District of Columbia ("Have you ever been cited, arrested, charged or convicted of any violation of any law? (omit traffic violations)"), Respondent correctly responded "Yes," and disclosed his July 5, 1991, arrest for disorderly intoxication. BX B1 at 23, 33. Respondent similarly answered Question 23 ("Have you been charged with any moving traffic violations during the past ten years? NOTE: Include all alcohol- or drug-related traffic violations regardless of when they occurred.") correctly when he first submitted his application. *Id.* at 23. When Respondent signed his Application to the District of Columbia Bar, he further certified that he would "notify the Committee on Admissions promptly in writing if there [was] *any change in any aspect* of [his] application." *Id.* at 28. Respondent also certified that he understood his duty to update his application was "a continuing obligation throughout the pendency of [his] application." *Id.*

On November 16, 2006, while Respondent's application was still pending with the COA, Respondent was arrested in Florida for DUI and reckless driving. FOF ¶ 36. As a result of his arrest, Respondent spent the night in jail, and had his driver's license automatically suspended for one year for refusing to take a Breathalyzer test. FOF ¶ 37-38. While the criminal matter was pending, the COA notified Respondent in a letter dated December 28, 2006, that it had certified his application for admission into the D.C. Bar. The COA also notified Respondent

that he was required to appear on January 8, 2007, or February 9, 2007, to be administered the oath of admission and would not be considered admitted until he did so. Respondent failed to appear on either of those dates, or to notify the COA that he would not do so. FOF ¶ 40.

On March 15, 2007, Respondent pleaded no contest and was adjudicated guilty of the criminal misdemeanor offenses of DUI and Reckless Driving in the matter of *State of Florida v. Adkins*, Case No. 06-23411 MM10A, filed in Broward County Court. The court sentenced Respondent to six months of probation and 50 hours of community service, imposed a $250 fine, assessed court costs, required Level 1 DUI School at Respondent's expense, ordered immobilization of Respondent's vehicle for ten days, and suspended Respondent's driver's license for six months. The Broward County prosecutor reported Respondent's criminal conviction to both the District of Columbia and Delaware Offices of Disciplinary Counsel, and the Delaware Office of Disciplinary Counsel opened an investigation into Respondent's conduct in response to that report. Because Respondent was not yet admitted to the District of Columbia Bar, however, Disciplinary Counsel here did not open a similar investigation. FOF ¶¶ 44-49.

Respondent admitted on numerous occasions that he failed to update his application to the District of Columbia Bar because he "did not think" to do so. Tr. 272:1-5 ("during the almost two-plus-year period while my application was pending, frankly given the other things going on in my life at the time, I just did not focus on or think about my D.C. Bar application."); 308:10-20 ("I didn't make

a conscious decision to forget about my D.C. Bar application . . . I had so much chaos going on in my life at the time that I just didn't even think about my D.C. Bar application. I mean, quite frankly, I had so much chaos going on in my life."); 309: 3-8 ("even when I got the letter from Delaware ODC . . . about the first DUI arrest, even when I got that, that didn't trigger my brain to say you've got your D.C. Application floating out around there."); 309: 21- 310: 2 ("I simply, for lack of a better term, I guess, negligently or unconsciously disregarded my pending D.C. Bar application, and for that, I'm real sorry.").

But Respondent's testimony that he "did not think" about, or "negligently or unconsciously disregarded" his pending D.C. Bar application during this time is unavailing. To the contrary, the circumstances surrounding his 2006 arrest and conviction, investigation by the Delaware Bar, and communications with the D.C. COA about the status of his application and admission indicate he knowingly failed to correct his responses to Questions 22 and 23. First, the D.C. COA sent Respondent a letter dated just one week after he was criminally charged for the First DUI Incident. FOF ¶ 40. In addition, there was substantial overlap between Respondent's interactions with the Delaware Bar regarding his 2006 arrest and conviction and his communications with the D.C. COA regarding the status of his application and his availability to appear in person for his oath of admission. He contacted the COA regarding his D.C. Bar application at least twice, FOF ¶¶ 62-63, while he was voluntarily on inactive status in Delaware because of the DE ODC investigation surrounding his First DUI Incident, FOF ¶ 58. And, within a

span of just a few weeks, he corresponded with both the DE ODC about the end of the probation imposed after his First DUI Incident, FOF ¶ 61, and the D.C. COA about the timing of his oath of admission, FOF ¶ 63.

Even if Respondent were correct that the First DUI Incident did not fall within the scope of the Supplemental Questionnaire because it was a "minor traffic charge[s]," his failure to disclose it violated his continuing obligation to supplement his responses to Questions 22 and 23 of his original application with the information. Question 22 expressly includes arrests and convictions "for any violation of any law" and excludes "traffic violations." BX B1 at 23.[14] Although we question whether a criminal DUI and reckless driving conviction may be properly characterized as a "traffic violation," we need not decide the matter because Question 23 required Respondent to disclose "moving traffic violations," including those involving alcohol. *Id.*

The Hearing Committee finds that Respondent unreasonably ignored numerous clear signals indicating he must update his D.C. Bar application to report his 2006 arrest and conviction. For example, Respondent's conduct was serious enough to result in his arrest and require him to appear in court. He also hired a defense attorney and entered a plea in the case, after which the court sentenced him to six months of probation and a host of other fines and penalties. The seriousness

[14] The wording of Question 22 and the Supplemental Questionnaire differ slightly, with the latter excepting a narrower category of infractions from disclosure – i.e., "minor traffic violations." Regardless of this distinction, Question 23 expressly required Respondent to disclose the First DUI Incident because it occurred prior to his admission and he had a continuing obligation to update his application. His failure to do so violated Rule 8.1(b).

of these events was a clear indicator that Respondent was obligated to report them to any Bar to which he was admitted or seeking admission, such as the D.C. Bar.

The Hearing Committee also finds sufficient circumstantial evidence here to support our conclusion that Respondent failed to correct prior factual statements in his D.C. Bar application that he knew to be incorrect in light of subsequent events. We further find this circumstantial evidence sufficient to support our conclusion that Respondent knowingly failed to disclose the First DUI Incident in response to the information requested on his Supplemental Questionnaire. Thus, we find by clear and convincing evidence that Respondent's failure to update his application and complete his Supplemental Questionnaire with the First DUI Incident represented a knowing disregard of his obligations to do so. Because Respondent knowingly failed to both update his application and accurately respond to the Supplemental Questionnaire, which made both documents materially false, Respondent's conduct violated Rule 8.1(a). In addition, Respondent's conduct at least was dishonest within the meaning of Rule 8.4(c) because he knowingly failed to inform the COA of the First DUI Incident to update his original application or as part of his Supplemental Questionnaire.

C. Failure to Update Application Regarding the Delaware Disciplinary Investigation

Question 10B of Respondent's Application reads as follows: "Have you ever been the subject of any charges, complaints, or grievances (formal or informal) concerning your conduct as an attorney, including any now pending?" While Respondent's D.C. Application was pending, the Delaware Office of Disciplinary

Counsel opened an investigation into Respondent's arrest and conviction following his First DUI Incident. That investigation resulted in a "dismissal with a warning" and certain conditions, which is not considered a disciplinary sanction in Delaware. As a result of that investigation, Respondent placed himself on "inactive" status in that jurisdiction. FOF ¶ 3 (BX B6 at 35-36).

Disciplinary Counsel contends that Respondent violated the Rules by not updating his response to Question 10B with information regarding the Delaware disciplinary investigation. Respondent claims that Question 10B did not require him to disclose an investigation, and that Question 10B, by its terms, only applies to his conduct in his capacity "*as an attorney*."

Question 10B requested information regarding "charges, complaints, or grievances . . . concerning [Respondent's] conduct *as an attorney*" (emphasis added). Respondent's First DUI Incident, which resulted in the Delaware investigation, was not an action involving his conduct as an attorney, and there is no indication that this question should be interpreted as applying accusations outside of Respondent's conduct as an attorney. Other Hearing Committees have considered the phrase "charges, complaints, or grievances" only in the context of alleged conduct as an attorney. *See In re Scott*, Bar Docket No. 135-07 *et al*., at 15, 18 (BPR Mar. 17, 2010), (determining that a fee dispute, which was subsequently referred to the North Carolina Bar Grievance Committee, was a "grievance" within the meaning of Question 10B), *adopted in relevant part*, 19 A.3d 774 (D.C. 2011); *In re MBA-Jonas*, Board Docket No. 11-BD-019, at 19 (HC

Rpt. May 29, 2014) (reinstatement proceeding) (considering whether a lien filed in excess of the attorney's fee agreement was a "complaint"), *recommendation adopted*, 118 A.3d 785 (D.C. 2015) (per curiam). While the disciplinary rules make clear that an attorney's non-professional conduct may be relevant to the attorney's fitness to practice, the Hearing Committee finds that this particular question is limited in scope to Respondent's professional conduct.

An applicant violates Rule 8.1(b) when he or she fails "to disclose a fact necessary to correct a misapprehension known by the lawyer or applicant to have arisen" in the Bar admission process. While Respondent had a duty to read and understand the questions on his application, Respondent cannot be charged with making a knowingly false statement if a question does not reasonably put him on notice that disclosure is required. Question 10B asked whether Respondent ever had any "charges, complaints, or grievances" against him. The Delaware investigation, however, arguably does not qualify as a "charge, complaint, or grievance…concerning [his] conduct as an attorney." Here, the Hearing Committee finds that Disciplinary Counsel has not proven by clear and convincing evidence that Respondent's failure to update his Application in response to Question 10B violated Rule 8.1(b).

D. Failure to Report Terminations from Employment

Question 7 of Respondent's application asked him to "list every job [he had] held since age 21," while Question 8 asked, in relevant part, whether Respondent had "ever been terminated, suspended, disciplined, or permitted to resign in lieu of termination from any job?" In response to the latter question, Respondent noted that he had been terminated from the firm of Lerach and Coughlin in March 2005. Respondent, however, failed to state that he also had been terminated or suspended from several other jobs, including Sacher Zelman (terminated in September 2006), Bickel & Brewer (suspended in January 2007), and Omni Financial (terminated in July 2007). Respondent reported those jobs on his Florida Bar Application and, during the hearing, admitted he had been "sloppy" with respect to his obligation to report his terminations from employment on his D.C. Application. *See* Tr. 304:17-305:1 ("the best word I can think of negligence and sloppy stewardship of my obligations to keep the Committee on Admissions informed. I didn't tell them I left Sacher Zelman. I didn't tell them I left Bickel Brewer. I didn't tell them I worked for all of two days [at Omni Financial].").

Based on Respondent's admissions, and his Florida Bar Application (in which Respondent was, in his own words, "totally transparent and detail-oriented"), the Hearing Committee finds by clear and convincing evidence that Respondent's failure to disclose his terminations from employment violated Rule 8.4(c) because he was at least reckless in failing to disclose such terminations, which was dishonest. But we further find that Disciplinary Counsel has not proven

by clear and convincing evidence that Respondent's failures were knowing in violation of Rules 8.1(a) and 8.1(b).

E. <u>Failure to Disclose Past Due Debts</u>

Respondent answered "No" to Question 24 of his D.C. Bar Application, which asked:

> A. Have you had any debts of $500 or more (including credit cards, charge accounts, and student loans) which have been more than 90 days past due within the past three years?
>
> B. Have you ever had a credit card or charge account revoked?
>
> C. Have you ever defaulted on any student loans?
>
> D. Have you ever defaulted on any other debts?

On his Florida Bar Application, however, Respondent disclosed pre-existing past due debts of $14,000 (legal bills) and $9,200 (owed to a former employer).[15] Respondent also disclosed in his Florida Bar Application several debts that arose after he submitted his D.C. Bar Application, but before he was admitted to the D.C. Bar (i.e., credit card debt of $28,000 and medical bills of $8,000).

Respondent admitted that, while he was "totally transparent and detail-oriented with [his] Florida application," he was "not as careful or attentive or focused as [he] should have been with [his] D.C. Bar Application." Tr. Vol. II, p.

[15] Respondent credibly testified that, although he did not disclose $3,100 in credit card debt in response to Question 24, he did disclose that debt elsewhere in his D.C. Bar Application. Tr. 297:13-22.

389; *id.* p. 299. Based on his admissions, the Hearing Committee finds by clear and convincing evidence that Respondent violated Rule 8.4(c) because he was at least reckless in not disclosing his past due debts and his conduct was dishonest. We further find that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Rule 8.1(a) by knowingly omitting this material[16] information from his application and that he violated Rule 8.1(b) by knowingly failing to correct these misstatements.

F. Failure to Report the First DUI Incident on his Supplemental Questionnaire

Respondent completed and returned the Supplemental Questionnaire to his D.C. Bar Application on or about April 12, 2008. Question 1 of the Supplemental Questionnaire asked if, among other things, Respondent had "been arrested for, plead [sic] guilty or no contest to, or convicted of a felony or misdemeanor charge, other than a minor traffic charge?" to which Respondent answered "No." FOF ¶¶66-67. As discussed above, however, Respondent was arrested, spent the night in jail, and suffered numerous other criminal punishments related to his First DUI Incident (*e.g.*, Respondent ultimately spent six months on probation, was charged with a $250 fine and court costs, attended Level 1 DUI School at Respondent's expense, performed 50 hours of community service, had his vehicle immobilized for 10 days, and had his license suspended for six months). FOF ¶ 49.

Respondent was unconvincing in explaining his failure to disclose his 2006

[16] The Hearing Committee finds that information related to an applicant's past due debts is material because it may reflect on the applicant's ability to properly manage client funds.

arrest and conviction in response to Question 1 of the Supplemental Questionnaire prior to taking the oath of admission. He argued it was reasonable for him to interpret these events as a "minor traffic charge," but he can point to no support for this argument and it is utterly unreasonable to accept his testimony that, as a licensed and experienced attorney, he evaluated whether he had to report his 2006 arrest and conviction on his Supplemental Questionnaire and, without consulting the D.C. COA or any other source of authority, reasonably concluded that his arrest and criminal misdemeanor conviction constituted a "minor traffic charge" which he could exclude from the information requested. His arguments on this point are based almost exclusively on his own testimony, which is not credible.

Respondent asserts that he was justified in excluding his 2006 arrest and conviction from his Supplemental Questionnaire because the term "minor traffic charge" is "vague and ambiguous" and neither D.C. nor Florida[17] law defines it. Resp. Br. at 8-10; *See* Tr. Vol. II, p. 344:16-21; 354:22-355:4. Again he cites no support for his contention that, absent a clear definition of the term in D.C. law, he was unable to use anything other than his own judgment in deciding whether to report his 2006 arrest and conviction in response to Question 1. In addition, Respondent conceded at the hearing that, "in hindsight someone might have answered that question differently." Tr. Vol. II, p. 345:4-8.

Regardless of whether the phrase "minor traffic charge" is specifically

[17] Whether another jurisdiction's law defines a term used as part of the D.C. Bar application is irrelevant.

defined by law, or whether it is potentially vague and ambiguous with respect to some types of conduct, there is no reasonable interpretation of the phrase that would exclude Respondent's arrest and conviction for his First DUI Incident. Indeed, if Respondent actually had any question about the meaning of the phrase at the time he completed his Supplemental Questionnaire, or a credible interest in completing it accurately, he could have clarified his understanding quickly with just a phone call to the D.C. COA.

Moreover, as discussed above, Respondent suffered criminal penalties from his DUI arrest and conviction, including six months probation, 50 hours of community service, a fine, immobilization of his vehicle, and suspension of his driver's license. Respondent's assertion that he interpreted an arrest and conviction resulting in these types of penalties as "minor" is patently incredible. The argument is particularly unbelievable given that, at the time he answered the Supplemental Questionnaire, Respondent had been a practicing attorney for nearly ten years, including two federal judicial clerkships. In other words, Respondent was not confused by the meaning of "minor traffic charge" and, instead, was fully capable of understanding that, whatever the precise boundaries of the phrase, it did not encompass a criminal DUI arrest and conviction resulting in the penalties imposed on him.

Even if we believed that Respondent did not understand the phrase "minor traffic charge" – which we do not – Respondent admitted he did not undertake any actions to determine the meaning of the phrase. Tr. Vol. II, p. 431:17-22 (Hearing

Committee Member Dupree: "Did you do anything to look at any sources to define what a minor traffic charge is, like go to the dictionary or look at any case law or do anything of that nature?" Mr. Adkins: "No, sir, I did not."). It is impossible to truthfully answer a question if one does not understand the question; that Respondent took no steps to rectify his alleged confusion is further evidence that he knew his arrest and conviction in connection with his First DUI Incident was not a "minor traffic charge."

For the reasons discussed above, the Hearing Committee finds by clear and convincing evidence that Respondent falsely answered Question 1 of the Supplemental Questionnaire. Respondent had no basis to exclude his 2006 arrest and conviction from his answer to Question 1 and the circumstances described above persuade us that Respondent knowingly failed to disclose these events on his Supplemental Questionnaire. Consequently, the Hearing Committee finds by clear and convincing evidence that Respondent's false answer with respect to Question 1 of his Supplemental Questionnaire violated Rules 8.1(a), 8.1(b), and 8.4(c). Respondent violated Rule 8.1(a) because he knowingly answered Question 1 falsely.[18] He violated Rule 8.1(b) because the Supplemental Questionnaire was Respondent's final formal opportunity to disclose his First DUI Incident before being sworn in to the D.C. Bar and he knowingly failed to do so. Finally, Respondent violated Rule 8.4(c) because his response to Question 1 was deceitful

[18] Respondent's conduct in this instance occurred after the Rules were amended to remove the "material" requirement.

in that it obscured his previously undisclosed 2006 arrest and conviction.

G. Respondent's Actions Violated Rule 8.4(d)

The Hearing Committee finds by clear and convincing evidence that Respondent's numerous failures to disclose material information on his D.C. Bar Application and Supplemental Questionnaire, taken as a whole, violated Rule 8.4(d) because those failures seriously interfered with the administration of justice by "preventing a complete review of [his] character and fitness to practice law in the District." *In re Scott*, 19 A.3d 774 at 781. As discussed above, the Hearing Committee has found that Respondent either recklessly or knowingly omitted significant information from his Application related to his professional work history, the nature and amount of his personal litigation history, his past-due debts, his criminal arrests, which may have revealed information related to Respondent's alcohol and drug use, and an open professional conduct inquiry in a sister jurisdiction. All of these facts are relevant to the COA's review of a D.C. Bar Application and Respondent was obligated to disclose them. Indeed, if Respondent had truthfully answered his Supplemental Questionnaire, the COA likely would have stayed his D.C. Bar Application while the COA reviewed, at least, the circumstances surrounding his 2006 arrest and conviction.

The Hearing Committee finds that Respondent's actions deprived the COA of the opportunity to fully scrutinize Respondent's fitness for membership in the D.C. Bar. As a consequence, the Hearing Committee finds by clear and convincing evidence that Respondent's omissions and false statements seriously interfered

with the administration of justice in violation of Rule 8.4(d).

H. Respondent's Conduct Surrounding His Arrest in Connection with his Second DUI Incident Violated Rules 8.4(b) and (c).

1. Legal standards.

Rule 8.4(b) provides that it is professional misconduct to "[c]ommit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects..." The comments to Rule 8.4 explain that:

> Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

Rule 8.4, Comment [1].

In the District of Columbia, courts have premised Rule 8.4(b) violations on actions unrelated to the practice of law, including, among other things, alcohol-related arrests, knowingly failing to notify the authorities of a car accident, and driving while intoxicated. *E.g.*, *In re Ditton*, 954 A.2d 986, 995 (D.C. 2008) *citing In re Murtaugh*, BDN 45-03 (Inf.Adm. Dec. 1, 2003) (alcohol-related arrests); *In re Tidwell* 831 A.2d 953 (D.C. 2003) (failure to report a serious accident); *In re Reynolds*, 763 A.2d 713 (D.C. 2000) (driving while intoxicated). A violation of Rule 8.4(b) may occur even if an attorney is not convicted or charged with a crime. *In re Slattery*, 767 A.2d 203 (D.C. 2001) ("an attorney is not immune from bar discipline under Rule 8.4 merely because a complainant or prosecuting authority

has chosen not to bring criminal charges. Rather, an attorney may be disciplined for having engaged in conduct that constitutes a criminal act that reflects adversely on his or her fitness as a lawyer under Rule 8.4(b)…").

Rules 8.4(c) and 8.4(d), respectively, require Disciplinary Counsel to prove that Respondent engaged in at least dishonest conduct and that his conduct seriously interfered with the administration of justice. *See* Section III., *supra*, at 44-47.

2. Respondent's arrest and conviction for his Second DUI Incident.

On December 9, 2009, Respondent, who admits he was "very inebriated" at the time, rear-ended another vehicle on a local highway, causing $3,500 of damage to that vehicle. Tr. Vol. II, p. 445; BX E21 at 1. According to Respondent, the driver of the other vehicle caused the accident because she purportedly was stopped in the travel lane with the vehicle's lights off. Respondent testified that, after the collision, a passenger in the other vehicle got out and threw what Respondent alternatively described as a "brick," a "rock," a "large rock," a "huge rock," a "chunk of concrete," or a "half the size of a basketball chuck of concrete" into Respondent's windshield. Tr. Vol. II, pp. 289:10-21; 413:18-415:1; 443:2-4; Tr. Vol. III, p. 536-7-13; BX E2 at 2. Respondent alleges that the "projectile" shattered his windshield, spraying "the shrapnel of glass" inside his car. Tr. Vol. II, p. 443:2-4. Respondent further described the damage as follows: "[I]f you would have stood there with a large bat or a large pipe. It wasn't just a crack. It was a high-velocity impact." Tr. Vol. II, p. 442:17-21. Respondent claimed that,

as a result of the glass that "explode[d] inside the car," he bled profusely "all over the inside of [his] car." BX E33 at 94.

Respondent testifies that, after the collision, he feared for his life and fled the scene rather than calling the police for help; he was arrested for DUI shortly thereafter. Tr. Vol. II, pp. 414:7-415:5. Following his arrest for the Second DUI Incident, Respondent pleaded no contest to, and was adjudicated guilty of, reckless driving and failing to stop and remain at the scene of an accident. BX E14; BX E25 at 7. His 2009 arrest and conviction resulted in a private admonition and a year of probation from the Delaware Office of Disciplinary Counsel.

3. Findings

The Hearing Committee finds that Respondent's account of his arrest and conviction for his Second DUI Incident is false in several material respects. Contemporaneously prepared police reports, eyewitness accounts, and video of the arrest provide a stark and compelling contrast to Respondent's version of the facts. Even viewed in a light most favorable to Respondent, there is scant evidence of his bombastic, inconsistent, and unbelievable account that an occupant of the car he hit, or anyone else, threw a rock or piece of concrete "half the size of a basketball" through his windshield. Although Officer Medjon Dedej testified that he noticed damage to the upper left corner of Respondent's vehicle, there is no evidence in any contemporaneous police report of the presence of glass "all over" the inside of Respondent's car. BX E24 at 9:16-23.

There also is minimal evidence regarding Respondent's alleged injuries. In fact, what evidence there is contradicts Respondent's exaggerated allegations. For example, the contemporaneous police report from Officer Robert Hager, the arresting officer, noted that Respondent had dried blood on his hand – *not* all over his car. Additionally, video footage from December 9, 2009, clearly shows up-close footage of Respondent's face and arms, and other more limited footage of Respondent's legs. There is no visible sign of any injury, let alone the type of injury that would cause Respondent to bleed "all over the inside of [his] car." *See* BX E23A.

Furthermore, although Respondent claims to have "feared for his life" after the collision because of an alleged attack by a brick-wielding assailant, the beginning of his arrest video shows that Respondent was calm and composed. That is hardly the demeanor one would expect of someone who experienced the events Respondent described and "feared for his life."

Contemporaneous police reports, witness testimony, and video show an entirely different set of facts from those to which Respondent testified. Officer Hager's report described Respondent's car as driving erratically, and contains the statement of an eyewitness who saw Respondent rear-end the Mercedes and flee the scene. BX E16 at 5. The witness "never lost sight of [Respondent's vehicle]," yet the report provides no indication of the post-collision attack Respondent described. In addition, after Officer Hager stopped him, Respondent did not report that he was fleeing the scene of what he described as an attempted battery. The fact

that Respondent also never mentioned anything at all about this alleged attack during the court proceedings arising from his Second DUI Incident and, instead, only made the allegations in response to inquiries by the Delaware and D.C. Offices of Disciplinary Counsel, further indicates to the Hearing Committee that Respondent's *post-hoc* account of the events is false. Respondent's version of the events, if true, likely would have been relevant to his defense in the criminal case because fleeing an assailant might have provided a defense to the reckless driving charge.

Respondent's behavior during his arrest also undermines his testimony. In particular, Officer Hager's report and the video recorded from his police car make clear that Respondent was verbally abusive toward the officer and uncooperative during his brief imprisonment. BX E16 at 5-6 (*e.g.*, Respondent replied "go fuck yourself" when Officer Hager asked if he needed medical attention, banged his head against the cage while in the police vehicle, and twice urinated in his holding cell); BX E23A (video footage shows Respondent referring to Officer Hager as a "dick-head" among other profanities; banging his head against the cage in the back seat; threating that Office Hager "better hope you're right . . . because if not, I'm going to have your ass;" and, warning that "this one, buddy, is going to cost you.").

In sum, the Hearing Committee finds by clear and convincing evidence that Respondent's arrest and conviction for his Second DUI Incident constitutes "a criminal act that reflects adversely on [his] honesty, trustworthiness, or fitness as a

lawyer" in violation of Rule 8.4(b).[19] The Hearing Committee further finds by clear and convincing evidence that Respondent's multiple false statements to Disciplinary Counsel regarding his arrest for his Second DUI Incident violated Rule 8.4(c). Also, as discussed further in Section VI.G., below, Respondent testified falsely to the Hearing Committee about the Second DUI Incident.

4. Prejudicial delay.

Respondent argues he was unable to submit favorable evidence and testimony regarding his arrest and conviction for the Second DUI Incident that he might have submitted had Disciplinary Counsel moved with greater alacrity to bring charges against him stemming from that incident. Specifically, Respondent claims that his now-deceased lawyer had evidence supporting his version of events, but, due to Disciplinary Counsel's multi-year[20] delay in bringing charges, that evidence "disappeared when [his attorney] passed away." Tr. Vol. II, pp. 410:18-411:7. Respondent also asserts that his now-deceased mother could have supported his version of events because, though she was not present during the collision, she saw, among other things, the damage to his car afterwards. Considering all the evidence presented and the applicable law, the Hearing Committee rejects Respondent's allegations.

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[19] Indeed, Respondent admitted that leaving the scene of an accident and reckless driving violated Rule 8.4(b). Respondent's Answer at ¶ 10. *See also In re Tidwell* 831 A.2d at 963 (attorney's "knowing failure to stop and notify the authorities after being involved in an accident" violated Rule 8.4(b)).

[20] Disciplinary Counsel stipulates that it did not submit for Contact Member review the charges for the Second DUI Incident until October 2013. Tr. Vol. III, p. 531:14-19.

To demonstrate misconduct due to delay, Respondent must show *actual* prejudice. *In re Williams*, 513 A.2d 793, 797 (D.C. 1986). Respondent has made no such showing here because he has not shown that any evidence he might have presented would have provided a sufficient defense to any of the Rule violations charged.

Respondent claims that his now-deceased attorney had records showing his contact with Disciplinary Counsel, as well as a "crash expert report" that would show he was "traveling at a lawful speed" and he "did all [he] could to avoid the wreck." Tr. Vol. III, pp. 535-536. Respondent further alleges that his lawyer retained photographs of his car after the collision, including the windshield and the "gear shift covered in my blood." Tr. Vol. III, p. 536. But he also admitted that the expert report was prepared for his criminal trial, not in conjunction with his representation by Ms. Baurley, his now-deceased attorney. Tr. Vol. III, pp. 569-70 (testifying that the report was created "within a couple of days of the accident" in December 2009, but he did not hire Ms. Baurley until approximately "April 2010"). Finally, Respondent avers that his now-deceased mother could have testified about the damage to his car, including the blood in the inside of the car. Tr. Vol. III, pp. 543-545.

While Respondent's attorney and mother may have been able to provide additional general evidence, the Hearing Committee finds that such evidence would not have exculpated Respondent from the charged Rule violations. First, neither Respondent's attorney nor his mother could provide any evidence that

would contradict either the fact that Respondent pled guilty to a criminal charge – leaving the scene of an accident – or his admission that he operated a vehicle while intoxicated on the night of December 9, 2009.[21] Thus, the only question regarding the Rule 8.4(b) violation charged is whether Respondent's criminal act reflected poorly on his "honesty, trustworthiness, or fitness…in other respects…." Rule 8.4(b).

Second, the proper inquiry in determining whether Respondent's statements to Disciplinary Counsel regarding the Second DUI Incident gave rise to a Rule 8.4(c) violation is whether he engaged in varying degrees of dishonest conduct. The Hearing Committee finds that neither Respondent's attorney nor his mother could present probative evidence to rebut Disciplinary Counsel's evidence regarding the charged Rule 8.4(c) violation. As an initial matter, neither Respondent's attorney nor his mother was at the scene of the collision. Thus, even if either could testify about the alleged windshield damage, or about the existence of blood inside his car, neither could testify as to how the damage occurred or how the blood got into the car. In addition, Respondent has not shown that the evidence or testimony his attorney or his mother purportedly would have provided is unavailable from another source. Indeed, several contemporaneous descriptions of Respondent's car exist, including police reports, eyewitness statements, and a crash

[21] Respondent admitted in these proceedings that he was "very inebriated" while driving immediately before his arrest for the Second DUI Incident. Although he ultimately pled guilty to lesser charges, DUI is a crime in both Florida and the District of Columbia. As mentioned above, a criminal conviction is not necessary to find a violation under Rule 8.4(b).

report specifically detailing the windshield damage. *See, e.g.*, BX E21. Respondent also admitted during his testimony that Ms. Baurley did not request preparation of the expert report, but rather Respondent obtained it as part of his criminal trial. Tr. Vol. II, p. 410-11. Thus, Respondent has not shown that he has suffered any prejudice from the absence of evidence or testimony from either source.

Finally, Respondent claims his attorney kept the only copy of an expert report about the collision. Tr. Vol. III, p. 534. According to Respondent, the alleged report would have shown that he was "traveling at a lawful speed," and that "from all [of] the physical evidence she could see [he] did all [he] could do to avoid the wreck." *Id.* at 536. In addition to being irrelevant to our determination under Rules 8.4(b) and 8.4(c), there is nothing beyond Respondent's own testimony to show that such a report ever existed and we do not find Respondent's self-serving representations credible. Since at least 2013, only four years after his arrest and conviction for the Second DUI Incident, Respondent has been unable to even recall the name or contact information of the expert witness he claims drafted a report in his defense. Tr. Vol. III, pp. 535:11-536:1. Given the importance to his defense against any criminal or civil actions arising out of the collision, as well as the value he now places on the alleged the expert report, we find it incredible that Respondent would simply forget the name, or any contact information whatsoever, of such an important witness. The Hearing Committee further doubts that Respondent, an experienced attorney himself, would trust the only copy of such an important report to his attorney, and that no other electronic or physical copies are

available. Simply put, Respondent's arguments are not credible and, ultimately, he has not demonstrated prejudice to himself by Disciplinary Counsel's delay in bringing the charges presently before us. Thus, his assertions of prejudicial delay do not overcome our findings that his actions surrounding his arrest and conviction for his Second DUI Incident violated Rules 8.4(b) and (c).

V. RECOMMENDATION AS TO MOTIONS

A. Respondent's Motions to Dismiss

The Hearing Committee is required to defer ruling on a motion to dismiss until its report and recommendation to the Board. *See* Board Rule 7.16(a) (a hearing committee considering a motion to dismiss "shall include in its report to the Board a proposed disposition and the reasons therefor. The Board will rule on all such motions in its disposition in the case.") *See also In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991) (noting that the predecessor to Board Rule 7.16 "*requires* Hearing Committees to defer rulings on substantive motions" (emphasis added)); *In re Stanton*, 470 A.2d 281, 285 (D.C. 1983) (per curiam) (appended Board Report).

Prior to the hearing, Respondent filed the following motions to dismiss:

- Motion to Dismiss in Paragraph 9 in Bar Docket No. 2009-D362 on the ground that "[Disciplinary] Counsel's 'inexcusable delay' has perpetrated a due process violation and prejudice upon Respondent because Respondent's only witness that could have confirmed Respondent's lack of knowledge about the filing of the civil actions identified in paragraphs (a) through (h) died in April 2011 during [Disciplinary] Counsel's delay." (Answer at 10-11, ¶ 9).

- Motion to Dismiss Paragraphs 11, 13, and 17 in Bar Docket No. 2009-D362 on the ground that Disciplinary Counsel failed to identify a violation of the D.C. Rules of Professional Conduct. (Answer at 12, ¶ 11; 13, ¶ 13, 14, ¶ 17).

- Motion to Dismiss Count II in Bar Docket No. 2013-D382 on the grounds that Disciplinary Counsel failed to "allege that the Florida judgment of conviction for reckless driving and leaving scene qualify as crimes of moral turpitude under the applicable law governing the judgment of conviction, which is Florida law." (Answer at 5-6, ¶ 11);[22]

- Motion to Dismiss Specification of Charges in Bar Docket No. 2013-D382, or in the Alternate [sic], to Dismiss Count Two in said Specification for Failure to State a Claim that was filed with the Board and referred by the Board Chair to the Hearing Committee for recommendation. *In re Adkins*, Board Docket Nos. 14-BD-076 & 13-BD-117 (Board Order May 22, 2015).

Board Rule 7.16(a) provides that when a respondent files a motion to dismiss, a hearing committee "shall include in its report to the Board a proposed disposition and the reasons therefor." The Board will rule on all such motions in its disposition in the case. *See also In re Ontell*, 593 A.2d at 1040 (noting that the predecessor to Board Rule 7.16 "*requires* Hearing Committees to defer rulings on substantive motions") (emphasis added); *In re Stanton*, 470 A.2d at 285 (appended Board Report).

Prior to the hearing, Respondent moved to dismiss the Specification of Charges in Docket No. 2013-D382 or, alternatively, to dismiss one of the counts for failure to state a claim. Respondent argues that Disciplinary Counsel could not

[22] Because we have concluded that Disciplinary Counsel did not prove that charge (*see* note 2), we recommend that Respondent's motion be denied as moot.

prosecute him in an original action for the misconduct related to the traffic stop because he had already been privately admonished in Delaware, and that identical, reciprocal discipline is mandatory following such foreign discipline. Thus, he seeks the dismissal of the entire Specification of Charges in Bar Docket No. 2013-D382.

Disciplinary Counsel argues this case was not appropriate for reciprocal discipline for two reasons. First, the reciprocal discipline rule applies only when an attorney has been "disbarred, suspended, or placed on probation by another disciplining court," but Respondent received a private admonition in Delaware, not of the enumerated sanctions. Second, the Court ordered Disciplinary Counsel to investigate this matter because it arose out of Respondent's criminal conviction.

The Hearing Committee recommends denial of Respondent's motion to dismiss. In *In re Johnson*, 158 A.3d 913, 917 (D.C. 2017), the Court of Appeals rejected a similar argument to the "reciprocal discipline" argument Respondent asserts here. Maryland reprimanded the respondent in *Johnson* for misconduct and he argued that "the only permissible course of action" under the District of Columbia rules was for Disciplinary Counsel to publish the fact of the Maryland reprimand. *Id.* The Court rejected this argument, holding that procedures regarding the imposition of reciprocal discipline "do[] not affect the broad power of

Disciplinary Counsel to institute fresh proceedings against an attorney based on the same conduct." *Id.*[23]

Respondent also argues he has been denied due process because Disciplinary Counsel did not file the Specification of Charges until 62 months after Respondent's voluntary self-report of his 2009 collision and DUI. Respondent contends that his mother was his "chief witness" about these events and, because she died during the 62-month period, he was deprived of important corroborating testimony. Respondent also alleges he suffered prejudice because his lawyer, Marion Baurley, died during the same period and, consequently, he lost key files, including an expert report about the collision that would have been favorable to him. Finally, Respondent says his memory has faded over time, making it difficult for him to mount a defense. Resp. Br. at 3, 7, 26, 28, 32; Tr. Vol. III, pp. 535-36, 541-44.

In response, Disciplinary Counsel points to the video of Respondent's arrest, and multiple police records relating to the incident, which show that Respondent did not suffer any injuries as a result of the collision and include a description of the damage to his car. Disciplinary Counsel argues that Respondent did not attempt

[23] Because Disciplinary Counsel was permitted to prosecute Respondent's alleged misconduct as an original matter, we also recommend the Board reject Respondent's assertion that Disciplinary Counsel committed prosecutorial misconduct by failing to inform the Court of the Delaware discipline. The thesis of Respondent's argument is that Disciplinary Counsel would not have been able to bring an original action against Respondent if Disciplinary Counsel had already informed the Court of the Delaware matter. *See* Respondent's Post-Hearing Brief at 15. But Respondent's thesis is incorrect because Disciplinary Counsel was permitted to prosecute the pending charges as an original action. *See In re Johnson,* 153 A.3d at 917. Thus, we recommend denial of the motion to dismiss.

to introduce evidence about damage to his car from other potential witnesses, such as from the towing and insurance companies involved. Disciplinary Counsel rebuts Respondent's argument about purportedly losing access to key documents, such as an expert report regarding the collision, when his counsel died by noting that Respondent produced such documents as part of the subsequent criminal case for which he was represented by other counsel. Disciplinary Counsel notes that Respondent did not demonstrate any reason he could not obtain the expert report from such other counsel. DC Reply at 24.

Rule XI, § 1(c) makes clear that there is no statute of limitations for disciplinary proceedings, and the Court of Appeals has held that "undue delay in prosecution is not in itself a proper ground for dismissal of charges of attorney misconduct." *In re Williams*, 513 A.2d at 796. Rather, the Court has recognized that "[a] delay coupled with actual prejudice could result in a due process violation" which could compel the Court to conclude a failure to demonstrate misconduct. *Id.* at 797. Thus, to demonstrate a due process violation, Respondent also must show he suffered actual prejudice from the delay between learning of Respondent's criminal conviction and bringing the charges stemming from it. *See* Section IV. H. 4., *supra.*

For the reasons described above (*see* Section IV. I. 4., *supra*), however, Respondent has not shown that he suffered actual prejudice because of the delay. Consequently, we recommend denial of his motion to dismiss premised on

"inexcusable delay" by Disciplinary Counsel in bringing charges stemming from his arrest and conviction for his Second DUI Incident.

B. Disciplinary Counsel's Motion to Strike Respondent's Post-Hearing Exhibits

Almost three months after the hearing, on October 1, 2015, Respondent filed exhibits purporting to show that he had attended Alcoholics Anonymous meetings and written letters of apology to several former employers as "part of AA's rehabilitation process." *See* Respondent's Post-Hearing Exhibits. Disciplinary Counsel moved to strike, objecting to the admission of these exhibits and arguing that the record had long-since closed. Disciplinary Counsel also objected because it did not have the opportunity to investigate the circumstances described in the documents or cross-examine Respondent about them, and because the exhibits were not relevant to the factual determinations, rule violations, or the appropriate sanction. *See* DC's Obj. to Resp. 10/1/15 exhibits. Respondent contends that they are relevant because they bear on whether he is likely to repeat the alcohol-related conduct that gave rise to these charges. Respondent's Opp. to DC's Obj. at 3-4.

Board Rule 11.3 provides that "[e]vidence that is relevant, not privileged, and not merely cumulative shall be received and the Hearing Committee shall determine the weight and significance to be accorded all items of evidence." Board Rule 12.1(c) provides that no evidence may be submitted after the record is closed, unless otherwise ordered by the Hearing Committee. Given that Respondent's efforts at rehabilitation are relevant to these proceedings, Respondent's post-hearing exhibits shall be received into evidence. Because these late documents are

devoid of context and Respondent was not subject to any questioning about them, however, the Hearing Committee accords them very little weight in its consideration of the facts in dispute.

VI. RECOMMENDATION AS TO SANCTION

A. Standard for Determining Sanction

The appropriate sanction is what is necessary to protect the public and the courts, maintain the integrity of the profession, and "deter other attorneys from engaging in similar misconduct." *In re Evans*, 902 A.2d 56, 74 (D.C. 2006) (*quoting In re Uchendu*, 812 A.2d. 933, 941 (D.C. 2002)). The determination of an appropriate disciplinary sanction is based on consideration of the following factors: the nature and seriousness of the misconduct, prior discipline, prejudice to the client, the respondent's attitude, and circumstances in aggravation and mitigation. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (*citing In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)); *In re Hutchinson*, 534 A.2d at 924. Under D.C. Bar Rule XI, § 9(h), the sanction imposed also must be consistent with cases involving comparable misconduct.

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend Respondent's disbarment or, at a minimum, that Respondent be suspended for three years with a fitness requirement. *E.g.*, DC Br. at 41; DC Reply at 15, 25. Respondent suggests the following: "a formal or public censure; probation with conditions; and any suspension imposed be deferred for probation's sake, and in no event should any fitness requirement be imposed."

Resp. Br. at 16. For the reasons explained below, we recommend a three-year suspension with a fitness requirement.

B. Seriousness of the Misconduct

Respondent violated several Rules of Professional Conduct relating to dishonesty, deceit, or misrepresentation. He violated Rule 8.1(a) by knowingly making a false statement of material fact in connection with his application to the D.C. Bar; Rule 8.1(b) by failing to disclose a fact in his Bar application necessary to correct a misapprehension known by Respondent to have arisen in the matter; Rule 8.4(b) by committing a criminal act that negatively reflects on Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects; Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and Rule 8.4(d) by engaging in conduct that seriously interferes with the administration of justice.

Honesty is a vital quality in a lawyer. *In re Sandground*, 542 A.2d 1242, 1248 (D.C. 1988) ("The practice of law demands rigid honesty from attorneys if justice is to prevail."). Accordingly, ethical violations involving acts of dishonesty are particularly serious. *Id.* ("[T]he level of disciplinary sanctions must preserve the system's interest in unflinching honesty.").

When deciding whether disbarment is appropriate, the Court looks to whether an attorney's dishonesty is "of the flagrant kind." *In re Pelkey*, 962 A.2d 268, 281 (D.C. 2008) (*quoting In re Pennington*, 921 A.2d 135, 142 (D.C. 2007)). Flagrant dishonesty "reflect[s] a continuing and pervasive indifference to the

obligations of honesty in the judicial system . . . .” *Pennington*, 921 A.2d at 141 (*quoting In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)). Whether dishonesty is “flagrant” is a “fact-specific” determination, requiring consideration of more than “simply the rules that [a respondent] violated.” *In re Guberman*, 978 A.2d 200, 206 n.5 (D.C. 2009).

C. Sanctions for Comparable Misconduct

In other cases involving dishonesty in Bar applications, sanctions imposed range from a six-month suspension with a fitness requirement to disbarment. *E.g.*, *In re Starnes*, 829 A.2d 488 (D.C. 2003) (six-month suspension with fitness requirement); *In re Rosen*, 570 A.2d 728 (D.C. 1989) (nine-month suspension with fitness requirement); *In re Powell*, 898 A.2d 365 (D.C. 2006) (one-year suspension with fitness requirement); *In re Scott*, 19 A.3d at 779-81 (three-year suspension with fitness requirement where attorney failed to disclose multiple disciplinary proceedings against her, gave false testimony about her failure, and refused to show remorse or “acknowledge that her conduct was wrongful at any stage of the proceedings”); *In re Regent*, 741 A.2d 40 (D.C. 1999) (disbarment for violations of Rules 8.1(a), 8.1(b), and 8.4(c) based on, *inter alia*, “false or misleading statements” in Bar applications and failure to disclose criminal charge for disturbing the peace, involvement in multiple civil suits, and multiple ethics complaints against her).

Several categories of misconduct can involve flagrant dishonesty. For example, dishonest conduct involving criminal activity or fraud is considered

flagrant. *See In re Baber*, 1106 A.3d 1072, 1077-78 (D.C. 2015) (dishonesty was "repeated and protracted," came "at the expense of his client's interests," was "driven by a desire for personal gain," and continued into the disciplinary proceedings); *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) ("*Cleaver-Bascombe II*") (respondent submitted "patently fraudulent" CJA voucher, lied about it under oath, and testified falsely before the Hearing Committee); *Pelkey*, 962 A.2d at 280-82; *In re Goffe*, 641 A.2d 458, 465 (D.C. 1994) (dishonesty "was part of a plan to commit fraud intended to benefit himself").

Dishonesty also may be flagrant where the conduct was "morally reprehensible" and/or quasi-criminal in nature, particularly where the dishonesty was intended to cover up prior misconduct. *See Pennington*, 921 A.2d at 141-42 (conduct involved "patterns of morally reprehensible behavior"); *In re White*, 11 A.3d 1226, 1278 (D.C. 2011) (terminated employee filed whistleblower complaint and falsely accused employers, presented false and altered documents to D.C. Council and Hearing Committee, and testified falsely before D.C. Council, "creating an unbroken chain of deceit and misrepresentation that ran all the way through [the Hearing] Committee's proceedings"); *In re Kanu*, 5 A.3d 1, 3-6, 15 (D.C. 2010) (attorney promised to refund money to clients if visa applications were denied, but did not notify them of denial, evaded their inquiries, lied to clients and Bar Counsel about refunding money, and encouraged clients to falsify applications); *In re Corizzi*, 803 A.2d 438, 439 (D.C. 2002) (counseled clients to

commit perjury).[24] But not all serious misconduct involving dishonesty is deemed flagrant and, therefore, warrants disbarment. *See In re Daniel*, 11 A.3d 291, 301 (D.C. 2011) (respondent's "misconduct, though serious, d[id] not reach the level of misconduct of attorneys whom [the Court] ha[s] disbarred.") (*citing Cleaver-Bascombe II*, 986 A.2d at 1199); *In re Moore*, 691 A.2d 1151 (D.C. 1997) (respondent suspended for three years, with fitness requirement, after pleading guilty to one misdemeanor count of willful failure to file federal income tax returns, directing an attorney in his office to lie on his behalf, and testifying falsely in divorce proceedings concerning his income).

Here, Respondent's misconduct entails far more than omitting minor facts from his D.C. Application. Respondent's omissions include failing to disclose: civil actions to which he was a party, including those in which he was the plaintiff; a disciplinary investigation by the Delaware Bar; several unpaid debts; professional employment from which he was terminated, at least one of which was for false and misleading conduct; and a criminal arrest and conviction. Consequently, his conduct warrants a more serious sanction than merely a brief suspension with a fitness requirement. Respondent's misconduct is similar in quantity and seriousness to that in *Scott*, *Cleaver-Bascombe II*, *Pennington*, *White*, and *Moore* because we have found violations of Rules 8.1(a), 8.1(b), and 8.4(c) (as well as

[24] *Cf. Guberman*, 978 A.2d at 209-10 (*distinguishing Corizzi*, 803 A.2d 438, and *Goffe*, 641 A.2d 458, because respondent had filed false notices of appeal within his office, but had not used the document in an official proceeding, presented false testimony, or suborned perjury, and noting that respondent did not commit fraud); *Pennington*, 921 A.2d at 141-42 (distinguishing same and refusing to impose disbarment because respondent's dishonesty, while pervasive, did not involve criminal or quasi-criminal conduct).

violations of Rules 8.4(b) and 8.4(d)) based on multiple false and misleading statements on his Bar application, failure to report two different criminal convictions and a Bar investigation in another jurisdiction, and false and misleading sworn testimony during the hearing.

Respondent's assertion that his conduct warrants a lesser sanction because he "self-reported" portions of his misconduct is unavailing for several reasons. First, he had a continuing and paramount obligation, particularly as a licensed and experienced attorney, to complete his D.C. Bar application in a thorough and truthful manner. To the extent that he later discovered incomplete or inaccurate information on his application, he had a duty to correct and/or supplement it. Second, Respondent has continually failed to take responsibility for his misconduct, instead blaming it on others and attempting to minimize the seriousness of it by characterizing it as merely neglectful or lacking attention to detail. His repeated protestations and attempted explanations are not credible, absent the limited exceptions discussed in this report. Finally, Respondent continued his pattern of dishonesty throughout these proceedings, including during his hearing testimony under oath. Although it is not necessary to decide the matter here, we question whether any amount of "self-reporting" could overcome this level of deception.

D. Prior Discipline

Respondent was involved in a Delaware disciplinary investigation in connection with the Second DUI Incident. Delaware imposed a private admonition

and a one-year probation, which included mandatory drug testing. FOF ¶¶ 100-101. Respondent was admitted to the District of Columbia Bar for a very limited time and has not been subject to prior discipline here. FOF ¶ 1.

E. Prejudice to Client

Courts typically impose heavier sanctions in cases involving harm to clients. *In re Addams*, 579 A.2d 190 (D.C. 1990); *In re Washington*, 541 A.2d 1276, 1276 (D.C. 1988) ("The record shows a persistent pattern of violation of the most basic requirements of the attorney-client relationship. No responsibility of our attorney disciplinary system is more fundamental than protecting the public against such actions."). *See also Rosen*, 570 A.2d at 730 (court considered fact that attorney's actions did not involve harm to clients when issuing a lighter sanction). Here, the misconduct underlying the charges does not involve prejudice to any client.

F. Respondent's Conduct during the Hearing

Respondent often was argumentative toward Disciplinary Counsel and appeared to have difficulty controlling his temper during the hearing. The Hearing Committee had to intervene when he frequently veered from relevant discussion topics. *See e.g.* Tr. Vol. III, 510, 531-34, 540, 542-43, 545, 551, 554, 562 (July 8, 2015). In addition, although Respondent stated a desire to take responsibility for his misconduct and be forthright, *see* Tr. Vol. III, 521-23, he repeatedly failed to

accept full responsibility for much of his conduct. *See* Resp. Post-Hrg Br. at 8-9. *See also* Tr. Vol. III, pp. 587-94.[25]

G. Circumstances in Aggravation and Mitigation

Respondent attributes much of his misconduct to an alcohol addiction. Despite claiming a disability as an affirmative defense in response to the Specification of Charges, however, Respondent withdrew this defense at the hearing. *See In re Kersey*, 520 A.2d 321 (D.C. 1987) (ordering Kersey disbarred but staying his disbarment in place of a five-year probation after finding but-for his alcoholism, his misconduct would not have occurred). Respondent testified that he withdrew his *Kersey* defense because he viewed it as a "crutch." Tr. Vol. III, p. 546. He also asserted that he withdrew the defense, in part, because he believed he would be unable to provide evidence to support it. *Id.* 546-47.

Disciplinary Counsel and Respondent agree that Respondent is an alcoholic and was an alcoholic at the times of the misconduct underlying the Specification of Charges. *See* DC Reply at 16. In *In re Thompson*, the court held that raising alcoholism as a mitigating factor warranted remand for consideration, even though Thompson raised it at the last minute "when disbarment virtually stare[d] him in the face." 579 A.2d 218, 225 (D.C. 1990). Thus, even in the absence of a *Kersey*

[25] Certain the Hearing Committee Members questioned whether Respondent was under the influence of alcohol or mind-altering substances during his testimony. Because we received no evidence in that regard, however, we cannot conclude that alcohol or drugs caused Respondent to behave erratically or testify falsely during the hearing.

defense, we assume for purposes of mitigation that Respondent is an alcoholic and we consider whether his alcoholism mitigates his misconduct.

While Respondent presented no evidence that he was under the influence of drugs or alcohol at the time he drafted his D.C. Application, Respondent admitted in his Florida Bar Application that he suffered from an addiction to narcotics at or around the time he submitted his D.C. Application. BX B4, at 18-19, 30.[26] Specifically, Respondent admitted that he abused drugs from about September 2004 until May of 2009 – a period that included the submission of his D.C. Application, the completion of the Supplemental Questionnaire, and his swearing into the D.C. Bar. *See* BX B4 at 30. Respondent stated in his Florida Bar Application that he became sober around May of 2009, and information he submitted to Disciplinary Counsel reflects that he participated in the Florida Lawyers Assistance Program from June 11, 2009 until at least November 2009. *See* BX A16. The terms of the Florida Lawyers Assistance Program required Respondent to "refrain from the use of all mood altering substances." *Id.*at 3. Therefore, based on Respondent's admission, at the time that he submitted his Florida Bar application in June of 2009, he was sober.

[26] We recognize that *Kersey* mitigation is available in cases of addiction to legally obtained prescription drugs (*In re Temple*, 596 A.2d 585, 589, 589 n.4 (D.C. 1991), but is not available in cases of addiction to illegal drugs. *In re Soininen*, 783 A.2d 619, 622 (D.C. 2001) (citing *In re Marshall*, 762 A.2d 530, 534-35 (D.C. 2000)). The record here is silent as to whether Respondent was addicted to legally prescribed narcotics or illegally obtained narcotics. Thus, for the sake of our analysis, we will consider Respondent's evidence as if he was addicted to legally prescribed narcotics.

Given the fulsome and detailed nature of Respondent's Florida Bar Application as compared to his D.C. Application, we find Respondent's admission regarding the timing of his addiction to be credible. For example, Respondent's Florida Bar Application disclosed numerous facts that he did not disclose in his D.C. Application, including some that appeared to be detrimental to his chances for admission (*e.g.*, his terminations from employment, various debts, narcotics addiction, and extensive litigation history). Respondent's Florida Bar Application was so detailed, in fact, that it essentially provided a roadmap to the information that he omitted from his D.C. Application and the Supplemental Questionnaire.

Although we do not have direct evidence as to the effect of his addiction on his ability to fully and truthfully complete his D.C. Application, considering the lengths to which Respondent went to submit a "totally transparent" Florida Bar Application during his sobriety, we consider Respondent's narcotics addition to be a mitigating factor to the extent that it contributed to his admittedly "negligent," "sloppy," and "inattentive" supplementation of his D.C. Application (*i.e.,* omissions regarding his debts, and the suits to which he was a party). Likewise, we consider his addiction to be a mitigating factor when assessing his failure to supplement his D.C. Application with information about his terminations from employment.

While we believe circumstantial evidence supports a finding that his addiction may have contributed to his negligent behavior, we do not find his addiction to be a mitigating factor for Respondent's intentional behavior, including

the various false and misleading statements he provided to the COA, Disciplinary Counsel, and the Hearing Committee. For example, even if Respondent's addiction contributed to his failure to report his First DUI Incident, we have no indication that it contributed to his false statement on his Supplemental Questionnaire regarding whether he had "been arrested for, plead [sic] guilty or no contest to, or convicted of a felony or misdemeanor charge, other than a minor traffic charge." We likewise have no evidence regarding the status of Respondent's addiction or recovery at the time of the hearing. Thus, we have no evidence regarding whether his false testimony before the Hearing Committee was related to an addiction (*i.e.*, that dishonesty is part of his disease, or that his disease caused him to be dishonest). Instead, we find his dishonest testimony during the hearing to be a significant aggravating factor. *See In re Cleaver-Bascombe*, 892 A.2d 396, 411-13 (D.C. 2006).

Respondent also contends that we should view his self-report to Disciplinary Counsel in 2009 of his arrest and conviction for his First DUI Incident as mitigation when considering any sanction. While we have found that Respondent engaged in serious misconduct, we credit his First Self-Report as partial mitigation of his various omissions from, and failures to update, his D.C. Application. Respondent self-reported shortly after attending a mandatory ethics course, and during a time when he allegedly was sober. Although Disciplinary Counsel has asserted that Respondent self-reported only out of fear that the D.C. Bar would

discover he omitted his First DUI Incident from his D.C. Bar application,[27] Disciplinary Counsel has not provided any evidence that either a threat of independent discovery by Disciplinary Counsel existed or that Respondent acted out of fear that Disciplinary Counsel would discover the incident. In addition to providing a description of his First DUI Incident, Respondent provided Disciplinary Counsel with a significant amount of information related to it, including evidence of his participation in the Florida Lawyers' Assistance Program and copies of his certified conviction.

While we agree with encouraging self-reports of misconduct, we do not agree with Respondent that the partial self-report he eventually made regarding his First DUI Incident, and the Delaware Bar's investigation of it, sufficiently balances the substantial aggravating factors present here. We agree with Disciplinary Counsel that "a significant sanction is necessary to deter applicants from lying in the first place." DC Reply at 14. The fact that Delaware ODC found Respondent's First DUI Incident sufficiently material to his license to open an investigation of the incident, was a clear signal to Respondent, an experienced attorney, that other jurisdictions in which he was licensed or seeking a license would view these events similarly. Yet, Respondent chose not to disclose that information to this

[27] The Florida State's Attorney's Office notified Disciplinary Counsel of Respondent's 2006 arrest and conviction on February 22, 2007, but Disciplinary Counsel determined at the time that it did not have jurisdiction to investigate the matter because Respondent was not yet a member of the D.C. Bar. *See* DC's Br., 12-13. *See also* Tr. Vol. III, 485-93. We note that Disciplinary Counsel did not prove Respondent was aware of what occurred in this jurisdiction in early 2007 and, thus, we do not find these events would have had affected his behavior.

jurisdiction until nearly two and a half years after his conviction and he learned of Delaware ODC's investigation in early April 2007. Furthermore, Respondent disregarded his obligation to update his application, up to and including the moment he was sworn in as a D.C. Bar member, as well as his duty, once admitted, to report his Second DUI Incident. Under these circumstances, we do not regard Respondent's selective self-reporting of information he remained obligated to supply as sufficient to completely mitigate his many rule violations.

Other aspects of Respondent's self-reporting also are concerning. First, during the course of self-reporting, Respondent falsely alleged that his First DUI Incident was not reportable because it qualified as a "minor traffic charge." As discussed above, however, Respondent knew or should have known that, whatever the meaning of the phrase "minor traffic charge," his First DUI Incident did not qualify as such. Second, we note that, at some point, Respondent admittedly ceased to cooperate with Disciplinary Counsel because he disagreed with the sanction Disciplinary Counsel considered seeking.

The Hearing Committee has been unable to locate a single case regarding standards for self-reporting, or the credit in mitigation one should receive for doing so. Any person who self-reports, however, also must be truthful and fully cooperate with Disciplinary Counsel so that Disciplinary Counsel can fully investigate the reported matter. Respondent did not do that here.

Respondent next argues his cooperation with Disciplinary Counsel's investigation warrants mitigation of any sanction, though he acknowledges he

ceased cooperating once Disciplinary Counsel mentioned the possibility of disbarment in late 2009. *See* Tr. Vol. III, 575. Disciplinary Counsel disputes the extent to which Respondent fully cooperated in its investigation. DC Reply at 13. We find Respondent's admission that he stopped cooperating with Disciplinary Counsel once he understood disbarment was a possible sanction seriously undermines the value of any mitigation he might otherwise obtain from his initial cooperation with the investigation of the charges at issue here.

H. Recommended Sanction

Having considered the foregoing, we recommend that Respondent be suspended for a period of three years for his pervasive dishonesty in the admissions process and his false testimony before this Hearing Committee. Although it is a close question, we do not find by clear and convincing evidence that Respondent engaged in "flagrant dishonesty" warranting disbarment.

We next consider whether Respondent should be required to prove his fitness to practice prior to resuming the practice of law following his suspension. "[T]o justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *In re Cater*, 887 A.2d at 6. Proof of a "serious doubt" involves "more than 'no confidence that [a] Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009) (alteration

in original) (citation omitted). It connotes "'real skepticism, not just a lack of certainty.'" *Id.* (quoting *Cater*, 887 A.2d at 24).

In articulating this standard, the Court observed that the reason for conditioning reinstatement on proof of fitness was "conceptually different" from the basis for imposing a suspension. As the Court explained:

> The fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct. In contrast, the open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run….[P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement…

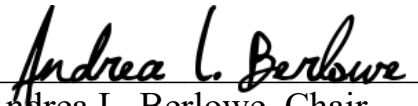
Cater, 887 A.2d at 22.

We find that where, as here, Respondent was dishonest in the admission process, then compounds his dishonesty with false testimony to this Hearing Committee, there is clear and convincing evidence of a serious doubt as to his ability to practice ethically and competently in the future. *See, e.g.*, *In re Starnes*, 829 A.2d 488 (D.C. 2003) (fitness requirement imposed in case involving false statement in Bar admission application); *In re Rosen*, 570 A.2d 728 (D.C. 1989) (same); *In re Powell*, 898 A.2d 365 (D.C. 2006) (same); *In re Scott*, 19 A.3d 774, 779-81 (D.C. 2011) (same). *See also In re Small*, 760 A.2d 612, 614 (D.C. 2000) (identifying respondent's "lack of candor with respect to his application for admission" as one factor justifying the imposition of a fitness requirement).

VII. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 8.1(a), 8.1(b), 8.4(b), 8.4(c), and 8.4(d), and should be suspended for three years, with a fitness requirement.

HEARING COMMITTEE NUMBER SIX



Andrea L. Berlowe, Chair

Sara K. Blumenthal, Public Member

Dwaune L. Dupree, Attorney Member, concurring only in the recommended sanction.

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

In the Matter of:	:	
	:	
SCOTT L. ADKINS,	:	Board Docket Nos. 14-BD-076 &
	:	13-BD-117
Respondent.	:	Bar Docket Nos. 2009-D362 &
	:	2013-D117
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 980220)	:	

SEPARATE STATEMENT OF
DWAUNE L. DUPREE

I concur in the recommended sanction included in the Recommendation of Hearing Committee Number Six (the "Report"), and write separately for two major reasons. First, I believe that the Report fails to contextualize certain facts relating to Respondent's behavior, and does not appropriately weigh either Respondent's addiction or his self-reporting as mitigating evidence. Without providing the appropriate context, I am concerned that the Hearing Committee's recommended sanction appears unduly lenient. Considering the facts in light of the clarifying discussion below, I find that the recommended sanction is not unduly lenient. Second, I write to highlight the important policy implications of this case. While the Board on Professional Responsibility and District of Columbia Court of Appeals ultimately are responsible for making policy decisions, I believe that the District of Columbia should adopt a policy that *encourages* lawyers to voluntarily report their misconduct.

A. Circumstances Relating to Respondent's Rule Violations

I believe that Respondent engaged in various acts of serious misconduct, for which significant sanctions should apply. However, I believe that the Hearing Committee's Report does not fully convey or consider the extent to which Respondent's misconduct was influenced by other circumstances that occurred in his life during the relevant time, including his addiction.[28] I believe that the Hearing Committee should have considered all of the circumstances surrounding Respondent's Rule violations, including whether Respondent's addiction substantially affected the behaviors alleged in both Specifications of Charges.

Further, I believe that the Hearing Committee applied the incorrect standard when determining that Respondent's addiction did not mitigate his misconduct. In my opinion, in addition to the circumstances that existed in Respondent's life at the time, there is a reasonable basis to conclude that Respondent's addiction "substantially affected" his ability to comply with Rules. *See In re Temple*, 596 A.2d 585 (D.C. 1991) (noting that *Kersey* requires an attorney to prove that his or her conduct was "substantially affected" by an addiction, not that the addiction was the "sole cause" of the misconduct).

The record provides ample evidence that Respondent's life was in a state of "chaos" when he submitted his D.C. Bar Application in April 2006 and for several

[28] While Respondent withdrew his *Kersey* defense, the Hearing Committee assumed for purposes of mitigation that Respondent is an alcoholic and addicted to legal narcotics. Report, § VI G. Despite recognizing that the Hearing Committee has assumed two addictions, I refer to Respondent's "addiction" because that is the way in which he most often refers to it in his testimony and in his Florida Bar Application.

years afterward. Tr. 308:8-20 ("…when I did my D.C. Bar application and after I left Sacher Zelman, I didn't make a conscious decision to forget about my D.C. Bar application…I had so much chaos going on in my life at the time that I just didn't even think about my D.C. Bar application."). Disciplinary Counsel and the Hearing Committee agree that Respondent was an alcoholic at the times of the Rules Violations. *See* DC Reply Br. at 16; Report, § VI. G. Respondent also admitted on his Florida Bar Application that he was addicted to narcotics from September 2004 to May 2009. BX B4, at 18-19, 30. In February 2006, Respondent had an eviction proceeding filed against him. BX B4, at 24. From March 2005 to June 2006, Respondent was seeking to discharge his debts through Chapter 7 bankruptcy. BX B4, at 25-26. At the same time, Respondent testified that he was seeking employment in Florida, which required him to travel there frequently. Tr. 327:9-12 ("I'm pretty sure this would have been in the June [2006] time frame. I was in Florida a lot. And the reason for that is I was looking for a job down here."); Tr. 328:13-17 ("I was still working at O'Melveny on June 1st [2006]. That said, I may well have not been in the office for weeks at a time at that point because I was down here looking for a job.").

By July 2006, Respondent had obtained a position as a litigation associate at Sacher Zelman, and updated the DC COA regarding this development by letter dated July 17, 2006. BX B1 at 37; Tr. 300-01. Although Respondent testified that he was not aware of the suit, on July 14, 2006, his landlord, Cafritz, filed a claim seeking to evict Respondent from his Washington, D.C. apartment. Report, ¶ 21;

Tr. 391:1-5. During that same month, Respondent became more than 90 days past due on $28,000 of credit card debt and $8,000 of medical bills. Report, ¶ 22; BX B4, at 21 (stating, with respect to the $28,000 debt, that he "[r]an up [his] credit card in the throes of addiction."). Respondent also was "seriously injured in a truck crash in July 2006." BX B4, at 21.

After fewer than three months of employment, Sacher Zelman terminated Respondent in September 2006. Report, ¶ 31. In his Florida Bar Application, Respondent admitted that his termination was "due in large measure to a then-undisclosed substance abuse problem that [he] suffered." BX B4, at 19. I find this statement to be consistent with Bart Sacher's letter regarding Respondent's termination, and not inconsistent with Respondent's testimony regarding the same. *Compare* BX C3, at 1 (Bart Sacher's letter to Respondent) ("…you were summarily terminated last Monday afternoon at approximately 3:30 p.m., when you wandered in, looking unusually disheveled, and bleeding, again, this time from your left cheek.") *with* Tr. 277:9-13 (Respondent: "During my short time [at Sacher Zelman], I was repeatedly late and absent, and Bart got tired of it, and I don't blame him. And I rolled in late one morning after he had chatted with me and said look, we can't be having any more of this, and he fired me.").

Respondent was unemployed from November 2006 until December 2006. BX A4, at 13 (Respondent's First Self-Report) ("By November 2006, I was not practicing law or working anywhere. My personal life had descended into chaos."). On November 16, 2006, Respondent was arrested for the criminal misdemeanor

offenses of DUI and reckless driving. Report, ¶ 36. In December 2006, Respondent obtained a position as a litigation associate at Bickel & Brewer. BX B4, at 39. On December 21, 2006, Respondent was charged with DUI and Reckless Driving in the matter of *State v. Adkins*, Case No. 06-23411MM10A. Report, ¶ 39. In January 2007, after less than two months of employment, Respondent was terminated from Bickel & Brewer for an unexcused absence, which was due, in part, to his substance abuse problem. BX B4, at 18 ("I am not sure how much the firm knew or knows about the reason for my unexcused absence, but it was due to a substance abuse problem…").

The self-described "chaos" in Respondent's life continued throughout 2007 and 2008, and until about May of 2009. For example, from January 2007 until May 2009, Respondent was periodically unemployed, and held eight legal jobs, none of which lasted longer than five months. Of those eight jobs, Respondent "abandoned" one due to his addiction, and was fired from another for the same reason. BX B4, at 19 (Regarding his employment at Vincent Vaccarella, P.A.: "I worked for Vincent Vaccarella for only about two weeks. 'Vinnie' had no choice but to let me go when, after drawing my first paycheck, I disappeared for two days, without explanation…this was due to a substance abuse problem."); *id.* at 40 (Regarding his employment at Sonn & Erez: "Reason for Termination: Abandoned my job because of my addiction."). Reflecting on his addiction in 2007, Respondent testified: "quite frankly, you know, at that point in time I didn't think I had a problem with alcohol. Again, that's a classic symptom of an addict, to

neither believe nor accept that they might have a problem. I came to recognize I had one much later down the road." Tr. 362:2-7; *see also* Tr. 357:13-16 (Respondent's testimony regarding a letter from April 2007) ("…I was in denial, which is – if you know much about substance abuse, you know that's classic.").

At some point in early 2009, Respondent sought help for his addiction, and, beginning in June 2009, voluntarily entered the Florida Lawyers' Assistance Program. BX A16, at 3-5; Tr. 402:15-19. Respondent submitted his Florida Bar Application on June 15, 2009, and attended the D.C. Bar's mandatory lecture on legal ethics in August 2009. Respondent self-reported the First DUI Incident shortly thereafter, and his participation in the Florida Lawyers' Assistance Program lasted until at least November 2009. BX A16, at 6.

I believe that the Hearing Committee erred by not considering the totality of the circumstances surrounding Respondent's Rules violations. Based on the additional facts above, it is clear to me that Respondent was facing numerous legal, financial, housing, and employment-related challenges at or around the time that he submitted his D.C. Bar Application, and for a significant time thereafter. While I find that these significant challenges were exacerbated, if not precipitated, by Respondent's addiction,[29] I do not believe that a successful defense under *Kersey* is

[29] Respondent withdrew his *Kersey* defense, and, by engaging in this analysis, I am not attempting to construct a *Kersey* defense for Respondent. In any event, a *Kersey* defense would have required Respondent to prove by clear and convincing evidence that he had been substantially rehabilitated. *In re Kersey,* 520 A.2d 321 (D.C. 1987). Respondent did not present evidence regarding the current state of his rehabilitation at the hearing, which is why I believe that a fitness requirement is warranted. *See, e.g.*, Tr. 584:8-20 (Q: Hi Mr. Adkins. Just a very quick question. I wanted to know if you currently are in any sort of treatment program similar to

necessary to grant mitigating relief. The Board and the D.C. Court of Appeals have recognized that other personal circumstances may also be a basis for mitigation. *See, e.g.*, *In re Anderson*, 184 A.3d 846 (D.C. 2018) (per curiam) (recognizing, among other things, that "family problems" and "health problems" may be a basis for mitigation).

The record shows that Respondent's addiction was so serious that, for several years, he could barely hold a job, had severe financial problems, and it resulted in him being arrested for a misdemeanor crime. Based on this, I find it completely credible that Respondent would not be particularly focused on updating various changes to his Bar application, including his failures to disclose additional lawsuits (Report, ¶¶ 10a-10e), additional past due debts (Report, ¶¶ 15-16), and his terminations from three employers (Report, ¶¶ 6-7).[30] While Respondent clearly had a duty to update his application, I believe that the serious challenges that he faced during that time provide some mitigation of his failure to do so.

I believe that Respondent's D.C. Bar Application also was impacted by the "chaos" that occurred in his life around the time that he submitted the application. Tr. 396:16-397:2 ("when I did my D.C. Bar app. you know, I was heavily engaged in the defense of the Fannie Mae case. Mom and dad were still having issues. I was

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Alcoholics Anonymous or the Florida Bar program or something similar to that…. A: No, sir, I'm not….").

[30] By granting mitigation for personal circumstances regarding respondent's various failures with respect to his bar application, I am not suggesting that Respondent did not violate Rule 8.1(a) and (b). Given the volume of information missing from his D.C. Bar Application, at a minimum, I find that Respondent acted with a reckless disregard for whether his application was accurate, which I believe is tantamount to "knowing" violations.

having issues with my wife. I was not as attentive as I should have been…. As I said, I was sloppy and inattentive, and I haven't made any bones about that from the very beginning."). Respondent's Florida Bar Application, which he submitted when he was receiving treatment through the Florida Lawyers' Assistance Program, was complete in all material respects. *See* Report, ¶ 70. I believe this fact illustrates the impact that both his addiction and the then-existing "chaos" had on his D.C. Bar Application. *See* Tr. 522 ("And the other reason that I'm pointing to my Florida Bar application repeatedly is, you know, when I wrote the thing, I was really, really committed to being as open and transparent and, in some instances, I think probably exceeding what was required to be disclosed, simply because I felt like I turned a corner in my life, and I didn't want there to be any questions about it.").

Despite the mitigation I would grant with respect to Respondent's D.C. Bar Application and his numerous failures to update that application, I would not grant mitigation for personal circumstances regarding his failure to report the First DUI Incident, and his false response to the Supplemental Questionnaire. Despite Respondent's challenges at the time and his addiction, I believe that the gravity of the First DUI Incident should have put Respondent on notice that he had a duty to report the incident to the DC COA. Further, I agree with the Hearing Committee's findings regarding Respondent's completion of his Supplemental Questionnaire. Report, ¶¶ 112-114.

B. Respondent's Self-Reporting & Policy Implications

a. Mitigation Credit for Respondent's Florida Bar Application

I believe that the Hearing Committee erred by not considering whether Respondent should be provided with mitigating credit for willingly and promptly providing his Florida Bar Application. I believe that he should.

During the course of self-reporting the First DUI Incident in August of 2009, Respondent provided Disciplinary Counsel with various documents. These documents included certified copies of the judgment, conviction, and no contest plea related to the First DUI Incident (BX A13, at 6), documents related to his participation in the Florida Lawyers' Assistance Program (*id.* at 1-5), and written responses to inquiries from Disciplinary Counsel (BX A15, at 1). On December 2, 2009, Respondent informed Disciplinary Counsel that he had submitted certain amendments to Respondent's Florida Bar Application to the Florida Board of Bar Examiners, and he faxed those amendments for Disciplinary Counsel's review (BX A17, at 1). On that same day, Disciplinary Counsel sent Respondent an e-mail requesting his full Florida Bar Application, noting that there was "no … rush." BX A18, at 4. The next day, Respondent forwarded his Florida Bar Application to Disciplinary Counsel.[31] BX A4, at 21. For reasons that are not clear in the record,

[31] I note here that the Respondent and Disciplinary Counsel exchanged several e-mails between Disciplinary Counsel's initial request for Respondent's Florida Bar Application, and Respondent ultimately providing the document. In several of those exchanges, Respondent requested Disciplinary Counsel to provide his original D.C. Bar Application, ostensibly so that he could provide such application to the Florida Bar Examiners. *See* BX A18, at 4. It has been suggested that Respondent sought his D.C. Bar Application so that he could compare it to his Florida Bar Application before providing the Florida Bar Application to Disciplinary Counsel. I have found

on or about December 5, 2009, Respondent testified that Disciplinary Counsel requested that he agree to disbarment. Report, ¶ 79. After that date, Respondent admitted that he refused to cooperate with Disciplinary Counsel. *Id*.

As discussed above, the Hearing Committee has found that the Respondent's Florida Bar Application was complete in all material respects. Report, ¶ 70. Moreover, I have found the Florida Bar Application to be one of the most reliable documents in this case. As I mentioned above, Respondent produced the document in a period during which he was seeking help for his addiction. More importantly, however, is the fact that the document contains ***numerous and significant*** red flags that almost certainly would have required Disciplinary Counsel to perform extensive investigation and follow-up. *See generally* BX B4 (Florida Bar Application). In the Florida Bar Application, respondent disclosed, among other things: (1) a substance abuse problem, (2) being involuntarily terminated from six jobs, (3) being delinquent on over $200,000 in debt despite a recent bankruptcy, (4) having been a party in twelve lawsuits, and (5) being convicted of a criminal DUI. *Id.* The nature of Respondent's Florida Bar Application is so unfavorable, that when Respondent provided this document to Disciplinary Counsel, he had to be aware that it likely would provide a roadmap to any past or current deficiencies

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no evidence of this in the record, and, in any event, find that Respondent provided his Florida Bar Application in less than 48 hours after the request, which I consider to be prompt under the circumstances.

in his conduct with respect to the D.C. Bar.[32] *See also* Tr. 591:17-592:10 ("I knew going into this that at some point this day would come, because – at least as far as my failure to update and talk about the 2006 traffic arrest and DUI conviction….when I sent the Florida Bar application to Bar Counsel…I indeed corrected any misapprehensions. In other words, I counted that as a supplemental self-report."

Respondent produced his Florida Bar Application during the course of his self-report of the First DUI Incident. At that time, there is no indication in the record that Disciplinary Counsel was investigating the veracity or completeness of Respondent's D.C. Bar Application.[33] As such, Respondent provided Disciplinary Counsel with new information. Additionally, Respondent was aware that his Florida Bar Application contained very unfavorable facts, including facts that occurred *after* he submitted (and failed to update) his D.C. Bar Application. Coupled with the thoroughness of Respondent's Florida Bar application, I believe that the statements contained therein were so negative and significant that

[32] In this regard, I view Respondent's production of this document to both the D.C. Bar and the Florida Bar as being similar to a "statement against interest," which Federal Rules of Evidence Rule 804(b)(3) defines as "a statement that: (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability…."

[33] On this point, I recognize that Florida prosecutors sent Disciplinary Counsel a letter detailing the First DUI Incident in February 2007. BX A8. Disciplinary Counsel did not pursue charges against Respondent at that time because Respondent was not yet a member of the D.C. Bar, and apparently neglected to investigate into the matter any further. *See* BX A9. Since Respondent was admitted to the D.C. Bar *after* Disciplinary Counsel received this letter, and since several years had passed between the letter and Respondent's self-report, I do not believe that Disciplinary Counsel was investigating the First DUI Incident when he self-reported.

Respondent knew that those statements would serve to (1) provide Disciplinary Counsel with new information that was omitted from his D.C. Bar Application, (2) *correct* inaccurate information contained in his D.C. Bar Application, and (3) update the D.C. Bar with information that he failed to disclose after he was admitted to the D.C. Bar. For these reasons, I agree with Respondent that the act of providing Disciplinary Counsel with his Florida Bar Application should be viewed as a *separate* self-report that arose during the course of self-reporting the First DUI Incident. As such, I consider it to be the third self-report in this case.

I note that I would provide a moderate amount of mitigation for Respondent's self-report of his Florida Bar Application. While Respondent willingly and promptly provided the document to Disciplinary Counsel, he ceased to fully cooperate with them after doing so. Ordinarily, I would substantially reduce mitigating credit for failing to cooperate in a continuing investigation. However, since Respondent's Florida Bar Application provided nearly every fact related to his previous Rule violations, his failure to cooperate likely did not significantly hinder Disciplinary Counsel's investigation.

The Hearing Committee refused to provide mitigating credit to Respondent on the bases that (1) he had a continuing duty to disclose the information in the Florida Bar Application to the D.C. Bar, and (2) he provided his Florida Bar Application in response to a request from Disciplinary Counsel. I disagree with Hearing Committee's interpretation of Rule 8.1(b), and with its interpretation of the facts.

Rule 8.1(b) provides that:

> [a]n applicant for admission to the Bar, or a lawyer in connection with a Bar admission application or in connection with a disciplinary matter, shall not:
>
> (a) Knowingly make a false statement of fact; or
>
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the lawyer or applicant to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

My reading of Rule 8.1(b) is that Respondent *did not* have a duty to report the information contained in his Florida Bar Application to Disciplinary Counsel at the time that he produced that information. The introductory clause of Rule 8.1 provides that the Rule applies only in connection with either an application for admission to the Bar, or "a disciplinary matter." At the time that Respondent disclosed his Florida Bar Application, he was a member of the D.C. Bar. Respondent had already violated Rule 8.1(b) by failing to disclose to the D.C. COA certain relevant information when his D.C. Bar Application was pending. Respondent, however, did not have a continuing duty under Rule 8.1(b) to disclose information to the D.C. COA *after* he was admitted to the Bar because his actions were no longer "in connection with a Bar admission application."

Further, under Rule 8.1(b), Respondent was obligated to make disclosures to Disciplinary Counsel only "in connection with a disciplinary matter." The "disciplinary matter" that Disciplinary Counsel was investigating at the time was

Respondent's First DUI Incident. Therefore, I would find that Respondent's only affirmative duties to disclose information to Disciplinary Counsel under Rule 8.1(b) was to (1) "correct a misapprehension known by [Respondent] to have arisen" with respect to the First DUI Incident,[34] or (2) to "respond reasonably to a lawful demand for information" from Disciplinary Counsel.

The Hearing Committee refused to provide mitigating credit to Respondent for producing his Florida Bar Application because it found that Respondent did so at the request of Disciplinary Counsel. Therefore, according to the Hearing Committee, an attorney may not receive self-reporting mitigating credit if the attorney has a duty to report such information under Rule 8.1(b) in response to a request from Disciplinary Counsel. I disagree with both the Hearing Committee's characterization of the facts and its interpretation of the Rule.

As I described above, it was Respondent's act of providing Disciplinary Counsel with the amendments to his Florida Bar Application that prompted Disciplinary Counsel to request Respondent's entire application. In other words, Respondent already had provided portions of his amended application *before* Disciplinary Counsel requested that information. Therefore, I would consider that disclosure and the subsequent disclosure of his Florida Bar Application to be outside of the disclosures required under Rule 8.1(b).

[34] Disciplinary Counsel has not alleged that there was a misapprehension with respect to the First DUI Incident.

Further, I do not believe that compliance with a duty to disclose under Rule 8.1(b) should foreclose mitigation for self-reporting. As an initial matter, it seems somewhat strange to deny mitigation in a circumstance where Respondent's actions are in compliance with the Rules. Instead of refusing to provide the application, which he presumably could have done,[35] Respondent unconditionally provided Disciplinary Counsel with his Florida Bar Application in less than 48 hours.[36] Disciplinary Counsel has provided no clear and convincing evidence that characterizes Respondent's behavior as anything other than helpful at this point.[37] Therefore, I do not believe that compliance with Rule 8.1(b) should be a reason for denying mitigation. This is particularly so in this case, where Disciplinary

[35] I believe there is a question regarding whether there is a logical limit on the information that Disciplinary Counsel can request under Rule 8.1(b) (*i.e.*, that that the "lawful demand" for information has some nexus or relationship to the "disciplinary matter" being investigate). If Rule 8.1(b) includes a nexus requirement, there is an argument that Respondent could have refused to provide his Florida Bar Application to Disciplinary Counsel without violating Rule 8.1(b). Specifically, if there is a nexus requirement, it could be argued that Respondent's failure to report a DUI had no bearing on or relationship to the other information Respondent disclosed in his Florida Bar Application. Respondent already had provided Disciplinary Counsel with information about the incident, and also had provided the certified amendment to his Florida Bar Application. Disciplinary Counsel's request for Respondent's entire application, therefore, could be viewed as not being in connection with the First DUI Incident.

[36] It appears that Respondent could have prevented Disciplinary Counsel from receiving his Florida Bar Application, or at least significantly hindered the process, if he sought to do so. In June 2014, on the advice of counsel, Respondent refused to sign an authorization that would allow the Florida Bar to release his Florida Board of Examiners Records. *See* BX A20, at 9.

[37] I note that Disciplinary Counsel has suggested that Respondent self-reported out of a fear that the Florida Bar would discover the deficiencies in his D.C. Bar Application. BX A7, at 42. I do not find that Disciplinary Counsel has proven this theory based on the facts. In any event, as discussed below, I believe that motive should be a factor in how much mitigating credit is granted for self-reporting, and *not* a reason for totally denying mitigating credit.

Counsel's request for Respondent's Florida Bar Application (1) was made during the course of Respondent self-reporting the First DUI Incident, and (2) was essentially unrelated to facts underlying the matter that Disciplinary Counsel was investigating at the time (*i.e.*, First DUI Incident). As I discuss further below, I do not believe that the Board should apply a rule that does not encourage self-reporting in the District of Columbia.

b. Policy Implications

Supreme Court Justice Oliver Wendell Holmes recognized that "hard cases make bad law."[38] This certainly is a hard case. On one hand, Respondent engaged in numerous and serious violations of the Rules. Respondent aggravated these violations by being combative, uncooperative in some cases, and untruthful in testimony before the Hearing Committee. On the other hand, however, Respondent was facing serious personal challenges at the times of many of his Rules violations, and Respondent self-reported on several different occasions. Since this could be the first reported case applying mitigation for self-reporting a Rule violation in *any* jurisdiction, I believe that it is critically important to consider not only the facts of this case, but the way that a workable self-reporting rule would (or, perhaps should) apply in other cases.

1. Standard for Self-Reporting Mitigation

There are few reported cases in the District of Columbia in which attorneys self-report their unethical behavior, which suggests that self-reporting rarely

[38] *Northern Securities Co. v. United States*, 193 U.S. 197, 400-01 (1903) (Holmes, J. dissenting).

occurs. *See In re Hutchinson*, 534 A.2d 919 (D.C. 1987) (en banc); *In re Appler*, 669 A.2d 731 (D.C. 1995); *In re Weiss*, 839 A.2d 670 (D.C. 2003). In the few cases where self-reporting occurred, there is little guidance regarding the standard to apply for granting mitigation for self-reporting. In and absence of clear guidance, I believe that the Board should apply a standard that encourages attorneys to self-report regardless of the nature of the underlying Rule violation. While I do not propose delineating a full standard here, I generally would grant mitigation if a self-report occurs any time before Disciplinary Counsel undertakes an investigation, whether formal or information, into the specific Rule violation being self-reported. Further, I believe that the amount of mitigating credit should be adjusted upward or downward based on additional factors, including, among other things: (1) the extent of the attorney's cooperation in any ensuing investigation, (2) the circumstances prompting the self-report, and (3) the severity of the underlying Rule violations. In other words, the act of coming forward itself should be cause for mitigation, and other factors should determine the extent of mitigation.[39] This standard is consistent with encouraging voluntary reporting, and

[39] I note here that Respondent has claimed that he ceased cooperating with Disciplinary Counsel because, after self-reporting, Disciplinary Counsel recommended disbarment as an appropriate sanction. Report, ¶ 79. I do not impugn the motives or conduct of Disciplinary Counsel in this case because there is conflicting evidence in the record suggesting that Disciplinary Counsel originally sought that Respondent agree to a sanction involving suspension and not disbarment. *See* BX A7. Additionally, my understanding is that Disciplinary Counsel recommended disbarment only after Respondent's cooperation deteriorated, which is well within Disciplinary Counsel's right. I note, however, that I generally would be concerned if an attorney self-reported and Disciplinary Counsel initially suggested the *maximum* sanction of disbarment. *See In re Weiss*, 839 A.2d at 667 (Ruiz, dissenting) ("An individual who self-reports…should always be punished less severely than one who does not, assuming comparable violations."). While I

the theory that "[a]n individual who self-reports [] should always be punished less severely than one who does not, assuming comparable violations." *In re Weiss*, 839 A.2d at 677 (Ruiz, dissenting).

While I understand that numerous other standards could apply, I believe that this standard encourages self-reporting and ensures that attorneys receive some credit for self-reporting. The standard has reasonable limits because it would prohibit attorneys from self-reporting matters where Disciplinary Counsel is already aware that there is a possible Rule Violation. This would encourage self-reporting *before* Disciplinary Counsel expends resources to independently discover wrongdoing. I note that this standard would encourage self-reporting even during an ongoing investigation, because an attorney would receive mitigating credit for disclosing additional violations of the Rules of which Disciplinary Counsel is not aware. In the present case, this standard would allow Respondent to receive mitigating credit for self-reporting his Florida Bar Application, even though Disciplinary Counsel was investigating the First DUI Incident at the time. This is because he provided the Florida Bar Application at a time before Disciplinary Counsel was investigating any potential charges related to Respondent's D.C. Bar Application.

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recognize that some cases may be so egregious that they require disbarment regardless of the mitigating evidence, in most cases, I believe that self-reporting should provide strong mitigating evidence against disbarment. *See, e.g.*, *In re Appler*, 669 A.2d 731.

C. Summary of Mitigation

Because of the voluminous facts in this case, below is a summary of how I would apply mitigation based on the specification of charges.

		Mitigation	
Bar Docket No. 2009-D362		***Personal Circumstances***	***Self-Reporting***
1.	Failure to disclose academic warning	Yes	Yes
2.	Failure to disclose civil actions	Yes	Yes
3.	Failure to disclose criminal arrest, charge, or conviction (the First DUI Incident)	No	Yes
4.	Delaware disciplinary investigation	I agree with the Hearing Committee that this is not a Rule violation. Report, IV, C.	
5.	Termination from Sacher Zelman	Yes	Yes
6.	(Interaction with MillerBlowers)	No	No
7.	Termination from Bickel & Brewer	Yes	Yes
8.	Termination from Omni Financial	Yes	Yes
9.	Past due debts	Yes	Yes
10	Supplemental questionnaire and admission to DC bar	No	Yes
Bar Docket No. 2013-D382			
11	Count 1	No	Yes
12	Count 2	I agree with the Hearing Committee that Disciplinary Counsel did not prove this Rule violation by clear and convincing evidence. Report, pg. 2 n.2.	
13	Count 3	No	No
	Other		
14	False testimony before the Hearing Committee	No	N/A

Dwaune L. Dupree, Attorney Member