THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
JEHAN A. CARTER	:	
	:	
Respondent.	:	Board Docket No. 22-BD-052
	:	Disc. Docket No. 2022-D138
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 1018067)	:	

REPORT AND RECOMMENDATION OF
THE AD HOC HEARING COMMITTEE

Respondent, Jehan A. Carter, is charged with violating Rules 3.3(a)(1), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from a small claims action against a former client for attorney's fees. Disciplinary Counsel contends that Respondent committed all of the charged violations, and should be suspended from the practice of law for one year, with reinstatement conditioned on her showing proof of fitness to practice law, as a sanction for her misconduct. Respondent contends she did not violate any of the Rules. Respondent recommends that the charges be dismissed or, in the alternative, that the sanction should be an informal admonition.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven the violations of Rules 3.3(a)(1) and 8.4(c) by clear and convincing

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

evidence, but not the Rule 8.4(d) charge. The Committee recommends that Respondent be suspended for six months, with three months stayed in favor of one year of unsupervised probation.

I. PROCEDURAL HISTORY

On August 29, 2022, Disciplinary Counsel served Respondent, through counsel, with a Specification of Charges ("Specification"). The Specification alleges that Respondent, in connection with her small claims action for fees against Dominique Collier, a former client, violated the following rules:

- Rule 3.3(a)(1), by [knowingly[1]] making a false statement of fact or law to a tribunal;
- Rule 8.4(c), by engaging in conduct involving dishonesty and misrepresentation; and
- Rule 8.4(d), by engaging in conduct that seriously interfered with the administration of justice.

Specification, ¶ 11.

Respondent filed an Answer on September 19, 2022. A hearing was held via Zoom videoconference on May 3, 2023, before the Ad Hoc Hearing Committee (the "Hearing Committee"). Disciplinary Counsel was represented at the hearing

[1] The Specification of Charges erroneously omits the term "knowingly" for the Rule 3.3(a)(1) charge. *See* Specification, ¶ 11(a).

by Assistant Disciplinary Counsel Caroll Donayre. Respondent was present during the hearing and was represented at the hearing by John O. Iweanoge II, Esquire.

The following exhibits were admitted into evidence: DX 1-12 & RX 1-11.[2] During the hearing, Disciplinary Counsel called as witnesses Dominique Collier and Respondent. Respondent testified on her own behalf.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the ethical violations set forth in the specification of charges. Tr. 208; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel submitted DX 12, evidence of prior discipline (order approving petition for negotiated discipline). Respondent testified on her own behalf in mitigation of sanction. Tr. 209-219.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on May 30, 2023 ("ODC Br."), and Respondent filed her Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on June 9, 2023 ("Resp. Br."). Disciplinary Counsel filed its Reply on June 16, 2023 ("ODC Reply").

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of facts are established by

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[2] "DX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on May 3, 2023.

clear and convincing evidence. *See* Board Rule 11.6; *In re Cater,* 887 A.2d 1, 24 (D.C. 2005) ("clear and convincing evidence" is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the fact sought to be established").

A. Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on January 10, 2014, and assigned Bar number 1018067. DX 1. Respondent graduated from law school in 2009. Tr. 47 (Respondent).

B. **The California Litigation**

2. Beginning in 2016, Respondent represented Dominique Collier in a dispute with Steve Harvey and the Steve Harvey Show (collectively "Harvey"), a television program on which Ms. Collier had appeared. *See* DX 11 (Stipulated Facts, Amended Petition for Negotiated Disposition) at 2.

3. Respondent, whose practice was primarily transactional, attempted to negotiate a settlement with Harvey, but was unsuccessful in doing so prior to litigation. Tr. 48-50 (Respondent).

4. On April 12, 2018, Ms. Collier filed a *pro se* Complaint against Harvey in California. DX 11 at 2. The contract she signed with Harvey required that any lawsuit be filed in California. *Id*.

5. Respondent and Ms. Collier both looked for local counsel to represent Ms. Collier since Respondent was not licensed to practice law in California. Tr.

50. Ms. Collier initially engaged a lawyer licensed in California by the name of Michael Kernan. *Id*. She terminated him and hired Candice Bryner who was licensed in California and who entered her appearance for Ms. Collier. Tr. 102; DX 11 at 2. Simultaneously, Respondent filed a motion to appear in the case *pro hac vice*. DX 11 at 2. In the application, Respondent, under penalty of perjury, stated that "she was not a resident of California, nor had she regularly practiced in California." *Id*. (quoting Stipulated Facts in Amended Petition).

6. Counsel for Harvey mailed a filing to the D.C. address Respondent listed on her *pro hac vice* application. DX 11 at 3. It was returned as "undeliverable." *Id*. When counsel for Harvey emailed Respondent to ask for her current address, Respondent told them to use her "California address." *Id*.; Tr. 191. Respondent testified that this was a friend's address, and that she did not live in California. Tr. 190 (Respondent).

7. After learning that Respondent had a California address, Counsel for Harvey then investigated Respondent and "discovered that [Respondent] held herself out as a Los Angeles or Hollywood attorney on her website and on social media . . . ." DX 11 at 3 (Stipulated Facts in Amended Petition). Respondent's website also included a "Michael Smith" as an attorney in her firm. Tr. 156 (Respondent); DX 11 at 3. No such Michael Smith existed, however. *See* DX 11 at 5. Counsel for Harvey filed an opposition to Respondent's pro hac vice application on the basis that she was ineligible because "she had held herself out as a Los Angeles attorney." *Id*. at 4. Ms. Bryner filed a response to the

opposition which included Respondent's declaration, which falsely claimed the facts for Michael Smith were from a Word Press template, when in fact, the information in the profile had been copied from Michael Kernan's background. *Id*. at 4-5. The California Court denied the *pro hac vice* application because of concerns about Respondent's credibility and honesty. *Id*. at 6.

8. Harvey did eventually settle with Ms. Collier. DX 11 at 6. Ms. Bryner advised Respondent that Ms. Collier would be paying her fees as opposed to Ms. Bryner forwarding her a portion of the settlement funds. Tr. 139 (Respondent).

C. **Trouble Between Lawyer and Client**

9. On March 13, 2019, after the Harvey matter had settled, Ms. Collier wrote to Ms. Bryner that she was very unhappy with Respondent, believing that she had "breached client confidentiality" and had otherwise failed to represent her properly. DX 9 at 30 (email message to Ms. Bryner from Ms. Collier). On April 25, 2019, Ms. Bryner notified Respondent and Ms. Collier that she had received a copy of the executed Settlement Agreement, and that Defendants would have 30 days to make payment. RX 1. Respondent asked Ms. Bryner if Respondent's portion of the settlement, or fees, would be sent by check or wire, and Ms. Bryner replied that Ms. Collier advised her that Respondent should send any invoice to Ms. Collier. *See* RX 1 at 1-2. The following week, on May 3, 2019, Ms. Collier filed a Bar complaint alleging that Respondent mishandled her matter in multiple respects. DX 9 (Ms. Collier's Bar complaint) at 3. Ms. Collier's complaint

included eight numbered paragraphs alleging misconduct. *See id.* Paragraph 5 of the Bar complaint, in part, alleged that Respondent engaged in dishonesty and made false claims on her *pro hac vice* application to the California court:

> She was dismissed from case for Pro Hac Vice due to stating false claims she was able to practice in Los Angeles in which she stated in the beginning she was in California (Documented on Linked In).

DX 9 at 3.

10. Ms. Collier did not pay Respondent the approximately $3,000 Respondent claimed that she was owed as her contingent fee. *See* RX 6 at 1. Respondent referred the matter to a collection agency, but the agency was unsuccessful in collecting the fee. *Id*. Respondent wanted to put the debt on Ms. Collier's credit report but was told that that could not be done unless there was a court order. Tr. 110 (Respondent). She therefore filed a lawsuit on November 21, 2021 in the Small Claims Branch of the Superior Court's Civil Division to collect her fee. Tr. 31-32 (Collier); Tr. 69-70, 112-13 (Respondent); DX 7 at 1-2.

11. In her November 26, 2021 Statement of Claim in support of her initial small claims case, Respondent alleged that in retaliation for her claim for fees, Ms. Collier had filed an "unsubstantiated bar complaint" against her. DX 7 at 3. This case was dismissed by the Court when Ms. Collier was not timely served. DX 7 at 1.

12. Respondent refiled her small claims case in Superior Court on April 14, 2022. DX 8 at 1-4; Tr. 34 (Collier); Tr. 74-75 (Respondent). This time she asserted in her Statement of Claim that Ms. Collier had "filed a Bar complaint that

was later dismissed because it was unsubstantiated." DX 8 at 5. Respondent was again unable to serve Ms. Collier, and Respondent ultimately moved to dismiss her claim because she was focused on complying with the conditions of her negotiated matter. DX 8 at 1-4; Tr. 75-76, 188, 195 (Respondent). Respondent did not file anything after the second small claims case was closed. According to Ms. Collier, no court appearance resulted from the first small claims case, but she believes she may have made two or three court virtual appearances (on video) for the second small claims case. Tr. 45 (Collier).

D. The Prior Negotiated Disciplinary Matter

13. Ms. Collier's May 3, 2019 Bar complaint caused Disciplinary Counsel to initiate an investigation into Respondent's conduct in the California litigation. DX 9 at 3. Following the investigation, Disciplinary Counsel instituted formal disciplinary proceedings, filing a Specification of Charges alleging that Respondent's conduct in the California litigation violated the California and D.C. Rules of Professional Conduct. DX 10 at 1-12 (*In re Carter*, DDN 2018-D215, 2019-D112). The Specification was filed on August 23, 2021. *Id*. at 1.

14. Respondent was served with a copy of the Specification of Charges on September 9, 2021. Tr. 53-54 (Respondent). The Specification of Charges referenced her representation of Ms. Collier and her false statements related to her *pro hac vice* application in California, which was mentioned in paragraph 5 of Ms. Collier's Bar complaint. *See* DX 10 at 6-10.

15. During this investigation of the California representation, Respondent admittedly made false statements to Disciplinary Counsel when explaining how the "Michael Smith" profile came to appear on her website. DX 11 at 6-7.

16. Respondent and Disciplinary Counsel entered into a Petition for Negotiated Discipline, which was filed on February 25, 2022, and then an Amended Petition for Negotiated Discipline, which was filed on May 22, 2022. RX 5; DX 11.

17. In the Amended Petition for Negotiated Discipline, Respondent and Disciplinary Counsel agreed that her stipulated misconduct violated (1) California Rules and Professions Code § 1606, in that she committed an act involving moral turpitude and dishonesty; (2) D.C. Rule 8.1(a), in that she knowingly made a false statement of fact in connection with a disciplinary matter; and (3) D.C. Rule 8.4(c), in that she engaged in conduct involving dishonesty. DX 11 at 7-8; Tr. 59-60 (Respondent). Respondent and Disciplinary Counsel also agreed that a six-month suspension (with ninety days stayed if she complied with certain conditions) was an appropriate sanction. DX 11 at 8-9.

18. After a limited hearing on June 13, 2022, an Ad Hoc Hearing Committee recommended approval of the Amended Petition for Negotiated Discipline on July 21, 2022. Tr. 30 (Collier), Tr. 62 (Respondent).

19. The Court of Appeals approved the Amended Petition for Negotiated Discipline on August 18, 2022. DX 12.

20. During the negotiated proceedings, Disciplinary Counsel was aware of Respondent's two cases seeking her fees in small claims court, but did not raise questions with Respondent about any allegedly false statements related to those cases. Tr. 39-41, 123, 178-185. The Amended Petition for Negotiated Discipline, however, was limited to the Stipulated Facts and *did not include* a promise not to pursue or investigate misconduct outside of the matter described in those facts. *See* DX 11 at 8 ("In connection with this Petition for Negotiated Discipline, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II [Stipulated Facts] . . . other than those set forth above . . . ").

E. The Current Disciplinary Matter

21. On August 29, 2022, Respondent was served with a second Specification of Charges (*In re Carter*, DDN 2022-D138), alleging that her characterization of Ms. Collier's Bar complaint as "unsubstantiated" in the first Statement of Claim and her assertion in the Second Statement of Claim that the complaint was "dismissed because it was unsubstantiated" were untrue statements to the Superior Court made under oath. *See* DX 2 at 1-2; *see supra* FF 11-12.

22. The essence of Respondent's defense is that because she perceives that none of the specific allegations in Ms. Collier's Bar complaint were included in the original Specifications of Charges, they were "unsubstantiated." She argues that her *pro hac vice* application was denied due to the admitted misinformation in her website and the Court's concern about her credibility related to the website –

issues not raised in any of the allegations in Ms. Collier's Bar complaint. She claims that saying a matter is "dismissed" means "that someone is no longer moving forward with it." Tr. 84 (Respondent). She further argues that the failure to include Ms. Collier's specific allegations in the Amended Petition for Negotiated Discipline must mean that they were dismissed. During the hearing, Respondent acknowledged that she had never received a dismissal letter from the Office of Disciplinary Counsel regarding Ms. Collier's complaint, and that the Amended Petition for Negotiated Disposition she had agreed to did not state that Ms. Collier's complaint was dismissed. Tr. 78-79 (Respondent).

23. Moreover, it was Ms. Collier's Bar complaint that led to an investigation by Disciplinary Counsel that resulted in the charges involving her false statement in her *pro hac vice* application, an allegation in paragraph 5 of Ms. Collier's Bar complaint. *See* DX 9 at 3 (Ms. Collier: "[Respondent] was dismissed from case for Pro Hac Vice due to stating false claims [sic] she was able to practice in Los Angeles in which she stated in the beginning she was in California (Documented on Linked In)."). In addition, the Rule violations in the original Specification were still pending when Respondent made the assertion on April 14, 2022, that the Ms. Collier's complaint was "dismissed because it was unsubstantiated." Finally, in the Amended Petition, Respondent stipulated that she violated multiple Rules of Professional Conduct, including the violation of Rule 8.4(c) related to the *pro hac vice* application.

One could argue that stating that the charges were "unsubstantiated" was a matter of opinion. However, stating that the complaint has been "dismissed as unsubstantiated" is a statement of fact, for Respondent which had no basis. First, the charges were not "dismissed." More important, Respondent had no way of knowing why Disciplinary Counsel chose to pursue certain charges and not others. While we treat her statement that the Bar complaint was "dismissed" as a knowing false statement to the Court, we do not, however, treat her testimony explaining her position to the Hearing Committee as intentionally false. She credibly testified that her *pro hac vice* application may have been denied more due to the misinformation in her website than because of her unauthorized practice of law (as described in Ms. Collier's complaint in paragraph 5), but her post-hoc rationalizations do not persuade us that she did not realize her statement was false when she made it to the Superior Court.

III. CONCLUSIONS OF LAW

Disciplinary Counsel contends that Respondent knowingly made false statements of fact to the Superior Court in her two small claims actions and engaged in intentional or reckless dishonesty or misrepresentation for the same conduct. *See* ODC Br. at 9-10, 12. Disciplinary Counsel also argues that the same misconduct seriously interfered with the administration of justice. *Id*. at 13-14. Respondent contends that her statements that Ms. Collier's Bar complaint was "unsubstantiated" and "dismissed" were not knowingly false. Resp. Br. at 3-4. She explains that her statements in her small claims cases "were based on diligent

inquiry and review of the actual documents from Disciplinary Counsel and [the] Specification of Charges that does not contain any of the allegations in Collier's complaint." *Id*. at 19. Finally, Respondent argues that even if her statements in the small claims cases were improper, they did not taint the judicial process is a more than a *de minimis* way. *Id*. at 25.

For the reasons below, we find that Respondent violated Rules 3.3(a)(1) and 8.4(c) when she stated that Ms. Collier's complaint had "been dismissed as unsubstantiated." We find that Respondent did not violate Rule 8.4(d) because even though her conduct was improper, it did not seriously interfere with the administration of justice because its effect was *de minimis*.

A. Disciplinary Counsel Proved that Respondent Violated Rule 3.3(a)(1) by Misrepresenting the Status of the Ms. Collier's Complaint.

Rule 3.3(a)(1) provides that a lawyer shall not knowingly "[m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6." The obligation under Rule 3.3 to speak truthfully to a tribunal is one of a lawyer's "fundamental obligations." *In re Ukwu*, 926 A.2d 1106, 1140 (D.C. 2007) (appended Board Report). Unlike Rule 8.4(c), which can be violated based on reckless conduct, Rule 3.3 requires the Respondent to "knowingly" make a false statement. As the Board noted in *Ukwu*, it is important for the Hearing Committee to determine (1) whether Respondent's statements or evidence were false, and (2) whether Respondent knew that they were false. *Id.* at 1140. The term "knowingly"

"denotes actual knowledge of the fact in question" and this knowledge may be inferred from the circumstances. *See* DC Rule 1.0(f).

In her second filed small claims case, Respondent filed a sworn statement of claim that stated that Ms. Collier's Bar complaint was "dismissed as unsubstantiated." The Hearing Committee does not regard Respondent's statement in the first filed case that the complaint was "unsubstantiated" as knowingly false, since it was arguably opinion. However, her statement in the second case that the complaint was "dismissed as unsubstantiated" is clearly a knowingly false statement to a tribunal. She knew that the complaint had not been dismissed; at the time that she made the statement, she and her counsel were still in negotiation with the Office of Disciplinary Counsel and the Amended Petition included a reference to Respondent and Ms. Collier's allegation in paragraph 5 of her Bar complaint. Further, Respondent was not party to the Office of Disciplinary Counsel's state of mind and was not in a position to speak for them.

Respondent's conduct in stating that Ms. Collier "filed a Bar complaint that was later dismissed because it was unsubstantiated," was a knowing false statement to the Superior Court and thus violated Rule 3.3(a)(1).

B. Disciplinary Counsel Proved that Respondent Violated Rule 8.4(c) by Misrepresenting the Status of the Ms. Collier's Complaint.

Disciplinary Counsel charges Respondent with a violation of Rule 8.4(c) (engaging in conduct involving dishonesty and misrepresentation[3]). The Court has held that each of these terms encompassed within Rule 8.4(c) "should be understood as separate categories, denoting differences in meaning or degree." *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam). Each category requires proof of different elements. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

Dishonesty is the most general category in Rule 8.4(c), defined as:

> 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.

In re Shorter, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam) (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007). Dishonesty in violation of Rule 8.4(c) does not require proof of deceptive or fraudulent intent. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). 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." *Id.* 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

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[3] The Specification of Charges did not allege fraud or deceit, two other categories of Rule 8.4(c).

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 her actions. *Id.*

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). This precisely describes Respondent's conduct here. Misrepresentation requires active deception or a positive falsehood. *See id*. at 767. 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). For Respondent to swear that her client's Bar complaint had been "dismissed as unsubstantiated," even assuming that were true, while failing to mention that it had led to a significant disciplinary proceeding was misleading.

The Court has held that Disciplinary Counsel does not need to establish that a respondent acted with "deliberateness" in making a misrepresentation in order to prove a violation of Rule 8.4(c). *In re Rosen*, 570 A.2d 728, 728-30 (D.C. 1989) (per curiam). Rather, establishing a violation of Rule 8.4(c) based on a misrepresentation only requires proof that the respondent "acted in reckless disregard of the truth." *Id.* (finding material misrepresentation in bar application where the respondent acted in reckless disregard of the truth). Even if Respondent actually believed that the Bar complaint had been dismissed (which we do not

accept), swearing to that belief without knowing it was true, was conduct involving a reckless disregard of the truth.

For the reasons explained above and in Section III A concerning Respondent's knowing dishonesty before a tribunal, this conduct was also a violation of Rule 8.4(c).

C. Disciplinary Counsel Did Not Prove that Respondent Violated Rule 8.4(d).

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

Because the Court of Appeals has held that the administration of justice had to be influenced in more than a "*de minimis* way" for a violation of Rule 8.4(d), the Hearing Committee does not believe that this charge has been proven by clear and convincing evidence. There were two or three small claims division court dates in

the second case, but the matter was then dismissed on Respondent's motion. Because there had not been proper service, the substance of the small claims matter was not addressed so any appearance would have been very brief – and Disciplinary Counsel has not introduced any evidence suggesting otherwise. Additionally, Respondent did not file any subsequent pleadings after she moved to dismiss. The false allegation that the Bar complaint had been dismissed had no impact on the case, and Respondent's motion to dismiss prior to serving Ms. Collier ensured that the statement lacked the potential to impact the judicial process "to a serious or adverse degree." *See Hopkins*, 677 A.2d at 61.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a one-year suspension with a fitness requirement. Respondent has requested that the Hearing Committee recommend public censure or informal admonition. For the reasons described below, we recommend the sanction of a six-month suspension, with 90 days stayed in favor of one year of unsupervised probation. We recommend that Respondent not be required to report her probation status to clients, but we include a condition that Respondent not commit any ethical rule violations during the entire period of probation.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal

profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

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

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent's misconduct was serious because it was a false statement under oath to a court. Dishonesty in a lawyer is always serious. This factor is lessened in importance by the fact that there was ultimately no significant impact on anyone but Respondent. On the other hand, this is the second time that the Respondent has been involved in a disciplinary matter where she was found to have been dishonest. The Court of Appeals has disbarred lawyers for flagrant dishonesty. Respondent is not yet at the point where that sanction would be invoked, but she is cautioned not to repeat her errors.

2. Prejudice to the Client

Ms. Collier was required to appear at more than one hearing. If in fact, she owed Respondent money, that would not be prejudice to her. Respondent spent significant time on the case and believed she earned her fee. At least some of that time was spent on press relations, a service Ms. Collier did not want. DX 9. The client alleged that Respondent mishandled her case. We do know that the relationship between client and counsel had broken down by the time the Harvey case settled. Respondent alleges that Ms. Collier filed her Bar complaint because she did not want to pay her fee. That is one interpretation of the client's conduct. Another interpretation would be that Ms. Collier believed her services not worthy of a fee. Because we cannot determine if there was prejudice to the client, this factor does not weigh in the Hearing Committee's decision.

3. Dishonesty

As discussed above, Respondent's conduct was dishonest and a knowingly false statement to a court in violation of Rule 3.3(a)(1) or misrepresentation in violation of Rule 8.4(c) cannot be tolerated in a lawyer. The dishonesty was about the status of Respondent's own pending attorney discipline matter which makes the dishonesty more serious.

4. Violations of Other Disciplinary Rules

Here, Respondent's misconduct resulted in the violation of two Rules.

5. Previous Disciplinary History

As discussed above, Respondent's prior disciplinary history, *In re Carter*, 280 A.3d 193 (D.C. 2022) (per curiam), involved violations of California Rules and Professions Code § 1606, in that she committed an act involving moral turpitude and dishonesty; D.C. Rule 8.1(a), in that she knowingly made a false statement of fact in connection with a disciplinary matter; and (3) D.C. Rule 8.4(c), in that she engaged in conduct involving dishonesty. *See* FF 15; DX 12. Because the prior discipline also involves dishonesty, we give this aggravating factor additional weight.

6. Acknowledgement of Wrongful Conduct

Respondent has not acknowledged that her conduct was wrongful, instead arguing a tortured interpretation of the statements she made to the Superior Court. Her failure to acknowledge her errors is of significant concern to the Hearing Committee, particularly in light of her prior misconduct.

7. Other Circumstances in Aggravation and Mitigation

There are no additional circumstances in aggravation and mitigation.

C. Sanctions Imposed for Comparable Misconduct

Generally, a wide range of sanctions have been imposed for dishonesty in violation of Rule 3.3(a)(1) and 8.4(c), ranging from a thirty-day suspension to the most severe sanction of disbarment where the dishonesty is flagrant. *See, e.g.*, *In re Rosen*, 481 A.2d 451 (D.C. 1984) (30-day suspension for violations of DR 1-102(A)(4) (dishonesty) and DR 7-102(A)(5) (false statement to a tribunal) where the respondent, who had no prior discipline, filed papers with misrepresentations on three separate occasions); *In re Phillips*, 705 A.2d 690 (D.C. 1998) (per curiam) (60-day suspension for violations of Rules 3.3(a)(1), 8.4(c), and 8.4(d) where the respondent, who had no prior discipline, filed false and misleading petition in federal court); *In re Soininen*, 853 A.2d 712 (D.C. 2004) (six-month suspension for violations of Rules 3.3(a)(1), 5.5(a) (unauthorized practice), 8.4(c), and 8.4(d) where the respondent, who had prior discipline, failed to correct earlier notices of appearance which misrepresented bar status by indicating she was a member in good standing); *In re Mayers*, 943 A.2d 1170 (D.C. 2008) (per curiam) (18-month suspension for violations of Rules 3.3(a)(1), 3.4(a) (altering evidence), 3.4(b) (falsifying evidence), 8.4(a) (attempt), 8.4(b) (criminal act), 8.4(c), and 8.4(d) where the respondent, who had no prior discipline, made false statements to the Superior Court that he made child support payments that he did not actually make); and *In re Cleaver-Bascombe*, 986 A.2d 1191 (D.C. 2010) (per curiam) (disbarment

for violations of Rules 1.5(a) (unreasonable fee), 3.3(a)(1), 8.4(c), and 8.4(d) where the respondent, who had no prior discipline, submitted a fraudulent CJA voucher and gave knowingly false testimony in support of the voucher).

As stated earlier, we have not made a finding of false testimony during the disciplinary hearing, which would be a significant aggravating factor. However, Respondent's misconduct was serious because the dishonesty was directed at a tribunal, it misrepresented a disciplinary matter, the false statement was knowingly made, and its intended purpose was to prejudice a former client in a fee dispute.

Disciplinary Counsel directs our attention to *In re Tun II*, 195 A.3d 65 (D.C. 2018) as a comparable case and in support of its argument for a one-year suspension. *See* ODC Br. at 17. The respondent in *Tun II* was shown to have testified falsely during the disciplinary hearing. Additionally, the false statement in *Tun II*, that his disciplinary matter had been "dismissed without any disciplinary action being instituted against him" was made in conjunction with "'multiple instances of dishonesty – to the court (in the recusal motion0 and the Hearing Committee (in his false testimony)' and with a 'disturbing pattern of dishonesty.'" *Tun II*, 195 A.3d at 72. Here, Respondent does have prior misconduct involving dishonesty so a brief suspension would not be appropriate, but we believe a 6-month suspension is lengthy enough to deter similar misconduct and to protect the public. We find this case comparable to the respondent in *Soininen*, who had prior misconduct and received a sanction of a six-month suspension for failing to correct

her bar status before the immigration tribunal and knowingly misrepresenting her bar status. *See Soininen*, 853 A.2d at 724, 730-32.

D. Fitness

A fitness showing is a substantial undertaking. *In re Cater*, 887 A.2d 1, 20 (D.C. 2005). Thus, in *Cater*, the Court held that "to 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." *Id*. 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). 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.

In addition, the Court found that the five factors for reinstatement set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985), should be used in applying the *Cater* fitness standard. They include:

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

Cater, 887 A.2d at 21, 25.

We find that although this is Respondent's second disciplinary matter involving dishonesty, the evidence is not sufficiently clear and convincing so as to cause the Hearing Committee to have a serious doubt of Respondent's continuing fitness to practice law. Respondent moved to dismiss the second small claims action in order to focus on complying with the conditions of the negotiated discipline case; although we did not find Respondent to be remorseful, we credit her decision not to exacerbate the misconduct by continuing to pursue her small claims matter. We do not have a "real skepticism" of Respondent's ability to comport her conduct consistent with the Rules in the future. *See Guberman*, 978 A.2d at 213.

V. CONCLUSION

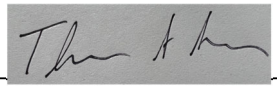
For the foregoing reasons, the Committee finds that Respondent violated Rules 3.3(a)(1) and 8.4(c), and recommend a sanction of a six-month suspension with 90 days stayed in favor of a one-year unsupervised probation, with the condition that she not violate any Rules of Professional Conduct. She will not be required to report her probation status.

As to her period of suspension, however, we recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).]

AD HOC HEARING COMMITTEE

Sheila J. Carpenter

Sheila J. Carpenter, Chair



Thomas Alderson, Public Member

Brian W. Baker

Brian W. Baker, Attorney Member