THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
May 6, 2024

In the Matter of:	:	
	:	
JEHAN A. CARTER,	:	
	:	Board Docket No. 22-BD-052
Respondent.	:	Bar 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
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

This matter ("*Carter II*") arises out of Respondent Jehan A. Carter's statements about the status of a pending discipline matter against her ("*Carter I*") in a small claims complaint she filed in the Superior Court of the District of Columbia. The Ad Hoc Hearing Committee found that Disciplinary Counsel proved by clear and convincing evidence that Respondent made a knowingly false statement to a tribunal in violation of Rule 3.3(a)(1) when she asserted in her pleading that a former client's bar complaint had been "dismissed because it was unsubstantiated." Based on the same conduct, the Committee found that Respondent also violated Rule 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). The Committee recommended a sanction of a six-month suspension, with three months stayed in

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* 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.

favor of one year of unsupervised probation, for the two Rule violations.[1] Disciplinary Counsel does not take exception to the Committee's Report and Recommendation, but Respondent takes exception and argues that none of the charges were proven or, in the alternative, that a public censure is the more appropriate sanction.

Having considered the record evidence, including the witnesses' hearing testimony and the Committee's credibility findings, and the parties' briefing and oral argument to the Board, we adopt the Committee's finding that the Rule 3.3(a)(1) and 8.4(c) violations were proven by clear and convincing evidence. Based on our review of comparable cases, we recommend a 60-day suspension for the misconduct at issue here, without a stay.

II. FACTS

Respondent is a member of the D.C. Bar but not a member of the California Bar. As described more fully in *Carter I*,[2] Respondent represented Dominique Collier in a defamation action related to Ms. Collier's appearance on a television show. The defamation action was filed and ultimately resolved in a California court.

[1] The Hearing Committee found that Disciplinary Counsel did not prove that Respondent seriously interfered with the administration of justice in violation of Rule 8.4(d), a conclusion to which Disciplinary Counsel does not take exception.

[2] *In re Carter*, Board Docket No. 22-ND-002 (HC Rpt. July 21, 2022), *recommendation approved*, 280 A.3d 193 (D.C. 2022) (per curiam).

See FF 2, 4, 8.[3] Unhappy with Respondent's work in that matter for multiple reasons, Ms. Collier filed a bar complaint with the District of Columbia Office of Disciplinary Counsel in May 2019. FF 9. Ms. Collier's submission included a list of eight enumerated complaints against her former attorney, among which was the following paragraph number 5:

> [Respondent] 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 LinkedIn). Made me believe she was able to file complaint in California and Virginia. She did not disclose she could not file until after the statute of limitations date had passed. She kept urging me to settle with demand letter and I said I wanted to file lawsuit.

See DCX 9 at 3; FF 9.[4] As a result of Ms. Collier's bar complaint, Disciplinary Counsel initiated an investigation of Respondent's conduct in the California defamation action. That investigation ultimately resulted in a Specification of Charges served on Respondent in August 2021. FF 13.[5] Respondent and

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[3] "FF" refers to the Hearing Committee's Findings of Fact; "ODC Br." refers to Disciplinary Counsel's Jan. 26, 2024 brief to the Board; "Resp. Br." refers to Respondent's Jan. 8, 2024 brief to the Board; "DCX" refers to Disciplinary Counsel's exhibits; and "RX" refers to Respondent's exhibits.

[4] Respondent argues that the Hearing Committee improperly abbreviated the language in paragraph 5 in its factual findings. *See* Resp. Br. at 1-2 (noting exception to FF 9). We disagree and do not believe the final two sentences are determinative but provide the entire paragraph 5 here.

[5] The *Carter I* Specification alleged a violation of D.C. Rule 5.5(a) ("that Respondent practiced law in California, a jurisdiction where doing so violated the regulation of the legal profession in that jurisdiction") but that charge was ***not*** included in the petitions for negotiated discipline. *Compare* DCX 10 at 11 (Specification, ¶ 42 (b)), *with* DCX 11 at 7-8.

Disciplinary Counsel worked to resolve that matter through negotiated discipline, and they filed an initial petition for negotiated discipline on February 25, 2022. FF 16. Approximately three months later, on May 26, 2022, the parties filed an amended petition for negotiated discipline that added a requirement that Respondent take a CLE course as part of the agreed-upon sanction. DCX 11 at 8. Three months later, the Court of Appeals approved that negotiated disposition on August 18, 2022. DCX 12.

A. The Circumstances in *Carter I* as Stipulated by Respondent

Beginning in 2016, Respondent represented Ms. Collier by attempting to negotiate a settlement in a defamation action that Ms. Collier had filed *pro se* against Steve Harvey and the Steve Harvey Show ("Harvey"), a television program in which Ms. Collier had appeared. FF 4. When the case did not settle, Respondent and Ms. Collier looked for local counsel who was licensed to practice law in California. FF 5. Ms. Collier hired Candice Bryner, Esquire, who entered an appearance in the defamation case, while Respondent simultaneously filed a motion to appear *pro hac vice*. FF 5.

Under penalty of perjury, Respondent asserted in her *pro hac vice* application that "she was not a resident of California, nor had she regularly practiced in California." FF 5. Counsel for Harvey filed an opposition to Respondent's application on the basis that mail sent to Respondent's D.C. address was returned as "undeliverable," that Respondent had a California address which she had asked

opposing counsel to use, and that she had been holding herself out as a Los Angeles or Hollywood attorney on her website and on social media. FF 6-7.

Counsel for Harvey discovered that Respondent's law practice's website included a profile for an attorney named "Michael Smith" as an attorney for Respondent's firm, but he did not exist. FF 7. Counsel for Harvey alleged in a supplemental opposition filed with the California court that the photo of "Michael Smith" on Respondent's website was a stock photo and that the attorney biography had been copied from the website of Michael Kernan, a lawyer barred in California whom Ms. Collier had previously retained as local counsel and whom Respondent knew. FF 7. In response to that opposition, Respondent submitted a declaration that falsely claimed that the "Michael Smith" biography was from a Word Press template, when in actuality Respondent had copied it from Mr. Kernan's background biography. FF 7.

The California court held a hearing and denied Respondent's application to appear *pro hac vice*. During the hearing, the court voiced concerns about Respondent's credibility and honesty with respect to the biography of Michael Smith on her website. DCX 11 at 6, ¶ 14.

In the course of negotiating discipline to resolve the Specification of Charges in *Carter I*, Respondent stipulated that the above facts violated California Business and Professions Code § 6106 (commission of act involving dishonesty),[6] D.C. Rule

[6] The Specification of Charges in *Carter I* cited and quoted the choice of law provision encapsulated in D.C. Rule 8.5(b)(1) ("For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the

8.1(a) (knowingly made a false statement of fact in connection with a disciplinary matter[7]), and D.C. Rule 8.4(c) (dishonesty). Respondent agreed to a six-month suspension, with all but 90 days stayed, and probation during which she would complete three hours of pre-approved CLE on "online and website policies and practices and ethically networking and advertising online." DCX 11 at 8. A further condition of her probation was that she not engage in any misconduct in any jurisdiction within a year of her reinstatement. DCX 11 at 9.

B. Respondent's False Statement About the Status of *Carter I*

While the February 25, 2022 petition for negotiated discipline was pending approval, Respondent filed a small claims action against Ms. Collier in D.C.

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jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise . . . ."). DCX 10 at 10 n.1. California Business and Professions Code § 6106 provides "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

We note that the Committee mistakenly stated that the D.C. Rule 8.4(c) violation in *Carter I* related to the *pro hac vice* application. *See Carter II* HC Rpt. at 11. Because that conduct was in connection with a matter pending before the California tribunal, the D.C. Rules did not apply to the *pro hac vice* application, but Cal. Bus. & Prof. Code § 6106 applied. *See* D.C. Rule 8.5(b)(1). The D.C. Rule 8.4(c) violation in *Carter I* related to her knowingly false statements to Disciplinary Counsel during its investigation. *Carter I* HC Rpt. at 13-14.

[7] In response to Disciplinary Counsel's inquiry letter asking Respondent for an explanation as to how "Michael Smith" had appeared on her website, Respondent falsely stated to Disciplinary Counsel that it was obtained as a sample from a website template. *See* DCX 11 at 6-7 (Amended Petition, ¶ 18). This conduct was the basis for the D.C. Rule 8.1(a) and 8.4(c) violations. *Carter I* HC Rpt. at 13-14.

Superior Court, seeking payment of approximately $3,000 in unpaid fees for Respondent's work on the *Harvey* matter. FF 10, 16. In her April 14, 2022 Statement of Claim, Respondent pled under oath that Ms. Collier "filed a Bar complaint that was later dismissed because it was unsubstantiated." FF 12, 21.[8] When Respondent made this statement in her pleading, the petition for negotiated discipline in *Carter I* was pending but not yet resolved.[9]

During the hearing in this matter, Respondent conceded that no one in the Office of Disciplinary Counsel ever told her that *Carter I* had been dismissed or that Ms. Collier's bar complaint had been dismissed. FF 22. Further, in *Carter I* Respondent stipulated to having committed serious Rule violations including dishonesty before the California tribunal – an issue clearly raised on the face of Ms. Collier's bar complaint. The Hearing Committee noted that Ms. Collier's bar complaint led to Disciplinary Counsel's investigation and that the bar complaint's allegations in paragraph 5 raised Respondent's false claims to the California tribunal. *See* FF 23.

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[8] Respondent had filed an earlier small claims case on November 26, 2021, but that case was dismissed when Ms. Collier was not timely served. FF 11. In the Statement of Claim in that initial complaint, Respondent asserted under oath that Ms. Collier filed "an unsubstantiated bar complaint." *Id*. The Committee found that this statement was not knowingly false because it was "arguably opinion," *Carter II* HC Rpt. at 14, and Disciplinary Counsel does not challenge that finding.

[9] That petition was amended on May 26, 2022. The amended petition recited the same facts and violations as the original with the only changes being whether Respondent had asked opposing counsel to send future mail to her California address and increasing the sanction with the condition that pre-approved CLE be completed. *Compare* RX 5 at 2-9, *with* DCX 11 at 2-9.

The Hearing Committee found that Respondent's small claims complaint contained knowingly false statements of fact because she could not have misunderstood that her negotiated discipline with Disciplinary Counsel constituted a "dismissal" of Ms. Collier's bar complaint. *See* FF 22 (discrediting argument that not including the entirety of Ms. Collier's bar complaint in the petitions for negotiated discipline constituted a dismissal: "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 . . . did not state that Ms. Collier's complaint had been dismissed."). Nor was the underlying *Carter I* disciplinary matter resolved at the time Repondent represented it had been "dismissed." As Respondent confirmed in her Amended Affidavit of Negotiated Discipline, she understood "that this negotiated discipline could be rejected by the Hearing Committee pursuant to D.C. Bar Rule XI, § 12.1(c) and Board Rule 17.7, or by the Court pursuant to D.C. Bar Rule XI, § 12.1(d)." *See* DCX 11 at 16, ¶ 11.[10]

Having considered Respondent's demeanor when testifying before it, the Committee did not find that Respondent intentionally testified falsely but the

[10] Respondent erroneously suggests that the petition for negotiated discipline was already before the Court of Appeals when she made the false statement on April 14, 2022. *See* Resp. Br. at 4. At the time Respondent made the false statement in April 2022, the limited hearing in *Carter I* had not yet been scheduled and the hearing committee had not issued a report to the Court with a recommendation. *See* FF 18 (limited hearing occurred on June 13, 2022, and an Ad Hoc Hearing Committee issued its report and recommendation in *Carter I* on July 21, 2022).

Committee treated her explanations and recollections about the small claims pleading as "post-hoc rationalizations" that were unpersuasive or not credible. FF 23.

III. DISCUSSION

While the Board may make its own findings of fact, it "must accept the Hearing Committee's evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record." *In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam) (quoting *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam)); *see also In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam) (appended Board Report) (defining "substantial evidence" as "enough evidence for a reasonable mind to find sufficient to support the conclusion reached"). Here, we adopt the Hearing Committee's findings in totality, including its credibility findings. Respondent's exceptions to certain findings of fact can best be characterized as objections to the weight given to evidence, but the Board defers to the Committee about reliance on certain record evidence and whether to give less weight to other evidence. *See In re Johnson*, 298 A.3d 294, 310 (D.C. 2023); *In re Godette*, 919 A.2d 1157, 1164 (D.C. 2007). We do not disturb the Committee's factual findings unless they are unsupported by substantial evidence in the record, a problem which does not confront us on this record.

As provided below, we review *de novo* the Committee's legal conclusions and its determinations of ultimate fact. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194 (Board owes "no deference to the Hearing Committee's determination of

'ultimate facts,' which are really conclusions of law and thus are reviewed de novo"). Accordingly, we address the charged violations of Rule 3.3(a)(1) and 8.4(c).

A. Respondent's Knowingly False Statement in Violation of Rule 3.3(a)(1)

The record supports the finding that Respondent made a false statement to the Superior Court when she characterized Ms. Collier's bar complaint as "dismissed because it was unsubstantiated." *See* FF 23.[11] We are mindful that in other contexts, statements about the interpretation or impact of legal proceedings are often treated as statements of non-actionable opinion and not ascertainable fact. *See, e.g.*, *Live Face on Web, LLC v. Five Boro Mold Specialist Inc.*, No. 15-CV-4779 (LTS) (SN), 2016 U.S. Dist. LEXIS 56601, 2016 WL 1717218, at *2 (S.D.N.Y. Apr. 28, 2016) ("hyperbolic and imprecise" statements describing filed complaint as "frivolous" are non-actionable opinion and "[c]ourts have consistently found that statements calling into question the legitimacy of litigation are non-actionable statements of

[11] We understand Respondent's position to be that the bar complaint was "dismissed" because much of what Ms. Collier had written in her bar complaint was not articulated in the precise way that the Specification of Charges was drafted. *See, e.g.*, Resp. Br. at 3 ("[T]he false statements [alleged] in the Specification of Charges were not mentioned in paragraph 5 of Ms. Collier's Bar complaint."); *id.* at 7-8 ("Paragraph 5 of Collier's complaint clearly states that Respondent made 'false claims she was able to practice in Los Angeles' and not that 'Respondent engaged in dishonesty and made false statement[s] in her pro hac vice application.'"). The fact that a Specification of Charges does not recite the exact wording or details from a bar complaint cannot mean that the bar complaint's allegations were "dismissed." We agree with Disciplinary Counsel that bar complainants cannot be expected to articulate precise legal grounds for a Rule violation and clients often present their claims in ordinary parlance. *See* ODC Br. at 7-8.

opinion").[12] While a less precise allegation about the status or impact of Respondent's negotiated discipline in *Carter I* might have survived scrutiny in this discplinary proceeding, the definitive nature of her pleading's misrepresentation – that Ms. Collier's bar complaint was "dismissed as unsubstantiated" – cannot escape sanction here.

As to whether Respondent's false statement was made knowingly, 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). 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 term "knowingly" denotes "actual knowledge of the fact in question" and this knowledge may be inferred from the circumstances. Rule 1.0(f).

[12] *See also Scholastic, Inc. v. Stouffer*, 124 F. Supp. 2d 836, 850 (S.D.N.Y. 2000) (statements that legal claims were "absurd," "ridiculous" and "meritless" are non-actionable opinion); *Karp v. Hill and Knowlton, Inc.*, 631 F. Supp. 360, 365 (S.D.N.Y. 1986) (statement interpreting appellate court decision as supporting a company's claim is non-actionable opinion when the merits are "still an open question"); *Gotbetter v. Dow Jones & Co.*, 259 A.D.2d 335, 335 (N.Y. App. Div. 1999) (defense counsel's statement calling plaintiff's lawsuit "baseless" is non-actionable opinion); *Moya v. United Airlines, Inc.*, No. 18-CV-14829, 2019 U.S. Dist. LEXIS 13888, 2019 WL 351904, at *4 (D.N.J. Jan. 29, 2019) ("Courts generally find parties' statements regarding the probable outcome of a litigation to be non-actionable opinion.") (collecting cases).

A respondent's state of mind or intent "must ordinarily be established by circumstantial evidence, and in assessing intent, the court must consider the entire context." *Ukwu*, 926 A.2d at 1116. Rule 1.0(f) similarly states that knowledge may be inferred from the circumstances. Actual knowledge can be proven by circumstantial evidence so long as it is clear and convincing. Order, *In re Luxenberg*, Board Docket No. 14-BD-083, at 22 (BPR July 6, 2017) (citing *In re Ponder*, Board Docket No. 12-BD-069, at 20-21 (BPR July 31, 2014), *recommendation adopted*, 114 A.3d 1289 (D.C. 2015) (per curiam)). The entire context of the respondent's actions, including their credibility at the hearing, is relevant to a determination of intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-97 (D.C. 2019) (per curiam).

Disciplinary Counsel describes the following context and circumstances, *see* ODC Br. at 12-13, which we find establishes clear and convincing knowledge of Respondent's actual knowledge:

- Respondent knew that the bar complaint involved her representation of Ms. Collier.

- Respondent knew Ms. Collier had alleged in the bar complaint how the *pro hac vice* application was denied for Respondent's false statements.

- Respondent knew Ms. Collier described her as holding herself out as a California attorney.

- Respondent knew the bar complaint resulted in a Specification of Charges that reiterated issues related to the *pro hac vice* application raised by opposing counsel.

- Respondent knew the Specification of Charges was still pending.

We additionally note that Respondent verified in her signed affidavit that she could not have successfully defended against the discipline charges, which included the allegation that she acted dishonestly in connection with the matter before the California court. *See* California Business and Professions Code § 6106 and D.C. Rule 8.5(b)(1); *see also* DCX 10 at 10, DCX 11 at 15. Thus, at the time she asserted in her April 14, 2022 pleading in the Superior Court that Ms. Collier's complaint had been "dismissed because it was unsubstantiated," Respondent had already admitted to the veracity of facts regarding the allegations in the February 25, 2022 *Carter I* petition for negotiated discipline involving the *pro hac vice* motion – including opposing counsel's investigation which determined that she had held herself out as a California attorney in her website and in her social media.[13]

[13] Respondent asserts that her "factual admission in the Negotiated Petition is clearly stated in paragraphs 1 through 18 of the Amended Petition for Disciplinary Act" and the stipulated facts are *unrelated* to Ms. Collier's bar complaint. Resp. Br. at 4. However, those paragraphs of stipulated facts clearly are *connected* to Ms. Collier's bar complaint. Paragraph 1 refers to the representation of Ms. Collier, Paragraph 3 introduces Respondent's application to be admitted *pro hac vice*, and Paragraph 5 provides that when counsel for Harvey asked Respondent for her "current address," she responded with her "California address." DCX 11 at 2-3 (Stipulations of Facts). In paragraph 6, Respondent admits to having engaged in supervised work in California and stipulates that opposing counsel "discovered that she held herself out as a Los Angeles or Hollywood attorney on her website and on social media because many of her clients had Hollywood or Los Angeles connections." DCX 11 at 3. Alternatively, Respondent testified that she believed her *pro hac vice* application was denied more due to the misinformation in her website than due to any unauthorized practice of law. FF 22. The Hearing Committee rejected this testimony as a post-hoc rationalization and did not credit it. FF 23.

The context and circumstances in this case differ markedly from the situation in *In re Edwards*, where we found that the respondent did not knowingly fail to disclose prior discipline to the D.C. Circuit and, hence, the Rule 3.3(a)(1) violation was not proven. *In re Edwards*, Board Docket No. 15-BD-030, at 12-13 (BPR July 25, 2019), *recommendation adopted*, 278 A.3d 1171 (D.C. 2022) (per curiam). In *Edwards*, actual knowledge could not be inferred by clear and convincing evidence because the respondent had a "general habit of rushing, leading to errors [and] was suffering through a myriad of personal and family challenges" so that it was probable that her failure to disclose and to correct the omission was reckless but not intentional. *Edwards*, Board Docket No. 15-BD-030, at 8 (testimony from court staff regarding the respondent's habit of making errors in filings because she was always rushing). Here, as discussed above, the circumstantial evidence of Respondent's actual knowledge that Ms. Collier's bar complaint was pending a petition for negotiated discipline and had not, in fact, "been dismissed," is clear and convincing. The record supports the inescapable inference that Respondent knowingly made a false statement in the small claims action.

Additionally, we have no reason to set aside the Hearing Committee's credibility finding that Respondent, despite her explanations given at the hearing, knew that her client's bar complaint had *not* been "dismissed as unsubstantiated" when she made the false statement in her pleading on April 14, 2022. The Committee had the opportunity to observe Respondent's demeanor at the hearing and found her testimony regarding her professed state of mind to be unreliable. *See*

Ekekwe-Kauffman, 210 A.3d at 797 (deferring to Hearing Committee's assessment of the respondent's credibility); *In re Krame*, 284 A.3d 745, 754 (D.C. 2022) ("[A]lthough a respondent's state of mind might be an ultimate fact that is reviewed de novo, a Hearing Committee's credibility findings can still constrain the determination of ultimate fact.").

Finally, because the evidence is clear and convincing that Respondent knowingly made a false statement of fact to a tribunal, that same evidence supports a finding that Respondent engaged in dishonesty in violation of Rule 8.4(c).

IV. SANCTION

The sanction imposed in an attorney disciplinary matter must 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 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; *Martin*, 67 A.3d at 1053; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

Respondent argues that if the Rule 3.3(a)(1) and 8.4(c) violations are adopted, the Board should recommend a sanction of a public censure "given the unique circumstance[s] of this [sic] facts of this case." Resp. Br. at 15. Respondent does not cite any case law or provide what she means by "unique circumstances."[14] Disciplinary Counsel argues that the six-month suspension with a 90-day stay in favor of one-year probation was appropriate given Respondent's prior discipline involving dishonesty. *See* ODC Br. at 16. [15]

Upon consideration of comparable cases, we conclude that a 60-day suspension is an appropriate sanction for Respondent's knowing false statement in her small claims action. In *In re Owens*, 806 A.2d 1230, 1231 (D.C. 2002) (per curiam), the Court found the respondent violated Rules 3.3(a)(1), 8.4(c), and 8.4(d), and imposed a 30-day suspension for his false statements to an administrative law judge. In *In re Rosen*, 481 A.2d 451, 452, 455 (D.C. 1984), the respondent violated

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[14] In *In re Molovinsky*, No. M-31-79 (D.C. Aug. 27, 1979) (per curiam), the respondent was sanctioned with a public censure for lying to the court about his reason for being late. Here, even without the prior dishonesty, the misconduct was more serious; Respondent's false statement was made in a sworn legal pleading and directed against a former client. *See supra* p. 7.

[15] The Hearing Committee specifically did not find that Respondent gave intentionally false testimony at the hearing, a serious aggravating factor for sanction. Before the Board, Disciplinary Counsel does not take exception to the Committee's finding that her "tortured interpretation" was more akin to "post-hoc rationalizations" than intentionally false testimony. *See* ODC Br. at 11; *Carter II* HC Rpt. at 12, 21. We do not find evidence in the record to disagree. *Cf. Bradley*, 70 A.3d at 1194-95 (evidence in record did not support hearing committee's finding that the respondent did not remember sufficient details of the misconduct to make her testimony intentionally false).

DR 1-102(A)(4) (dishonesty) and DR 7-102(A)(5) (false statement to a tribunal) and the Court, while describing the Board's recommended sanction of a three-month suspension as excessive and "disproportionate," instead imposed a 30-day suspension for the respondent's misrepresentations in three separate pleadings. The respondent in *Rosen* had two prior discipline cases, and one of the prior cases involved dishonesty. *Id*. at 454-55. Finally, in *In re Phillips*, 705 A.2d 690, 691 (D.C. 1998) (per curiam) (violations of Rules 3.3(a)(1), 8.4(c), and 8.4(d)), the Court imposed a 60-day suspension for the respondent's "false and misleading petition in federal court."

Here, Respondent's knowing false statement was only in a single pleading, and she voluntarily withdrew the small claims action before serving Ms. Collier with that Statement of Claim.[16] However, we cannot ignore the context in which the dishonesty was directed against a former client and made for the benefit of Respondent seeking to prevail in her fee suit. Respondent continues to show a lack of remorse for not making an accurate representation to the Superior Court about the status of the petition for negotiated discipline then-pending as a direct result of Ms.

[16] The limited circumstances presented by Respondent's misrepresentation differ quantitatively and qualitatively from *In re Soininen*, 853 A.2d 712 (D.C. 2004), cited by the Hearing Committee in support of its six-month suspension. In *Soininen*, the respondent violated a court-ordered suspension and kept practicing law while suspended, misrepresenting her suspension status to several tribunals. *Id*. at 716-18. Here, Respondent misrepresented the status of a pending negotiated discipline petition in the context of a single small claims case.

Collier's bar complaint. For these reasons, we believe a 60-day suspension is consistent with the sanctions imposed in cases involving comparable misconduct.

V. CONCLUSION

For the foregoing reasons, the Board finds that Respondent violated Rules 3.3(a)(1) and 8.4(c) and should receive the sanction of a 60-day suspension. We further 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).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Thomas Gilbertsen

Thomas Gilbertsen

All members of the Board concur in this Report and Recommendation, except Mr. Tigar who is recused.