

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
DAVID H. SAFAVIAN,	:	
	:	
Respondent.	:	D.C. App. No. 06-BG-
	:	Bar Docket No. 339-05
A Suspended Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 448540)	:	

REPORT AND RECOMMENDATION OF
THE BOARD ON PROFESSIONAL RESPONSIBILITY

This matter comes before the Board on Professional Responsibility (the “Board”) as a result of Respondent’s criminal convictions in the United States District Court for the District of Columbia. The Board recommends that the District of Columbia Court of Appeals (the “Court”) disbar Respondent for conviction of a crime of moral turpitude *per se* pursuant to D.C. Code § 11-2503(a).

I. BACKGROUND

On June 20, 2006, Respondent was convicted in the United States District Court for the District of Columbia of two felony offenses, obstruction of justice in violation of 18 U.S.C. § 1505, and false statements in violation of 18 U.S.C. § 1001. Bar Counsel reported the convictions to the Court by letter dated July 7, 2006, and the Court referred the matter to the Board to determine the nature of the offenses for the purpose of determining whether the crimes involve moral turpitude within the meaning of D.C. Code § 11-2503(a). Order, *In re Safavian*, No. 06-BG-781 (D.C. Aug. 8, 2006). On November 3, 2006, the Board

filed a report with the Court, finding that Respondent's conviction of obstruction of justice involves moral turpitude *per se* and recommending that he be disbarred.

On November 20, 2006, Respondent filed a motion with the Court to stay disbarment proceedings pending the appeal of his criminal convictions before the United States Court of Appeals for the District of Columbia Circuit. The Court granted the motion and continued Respondent's suspension pursuant to D.C. Bar R. XI, § 10(c). Order, *In re Safavian*, No. 06-BG-781 (D.C. Dec. 18, 2006).

On June 17, 2008, Respondent's convictions were reversed and the case remanded for a new trial. *United States v. Safavian*, No. 06-3139 (D.C. Cir. June 17, 2008). Respondent then moved the Court to set aside the order of interim suspension, and the Court reinstated him to practice pending the outcome of the new trial. Order, *In re Safavian*, No. 06-BG-781 (D.C. Aug. 12, 2008).

On December 19, 2008, Respondent was again convicted of one count of obstructing an agency investigation in violation of 18 U.S.C. § 1505, and three counts of false statements in violation of 18 U.S.C. § 1001. Bar Counsel reported the convictions to the Court by letter dated January 28, 2009.¹

By Order dated February 18, 2009, the Court suspended Respondent pursuant to D.C. Bar R. XI, § 10(c) and directed the Board to institute a formal proceeding to determine the nature of the offenses for the purpose of determining whether the crimes of which Respondent was convicted involve moral turpitude within the meaning of D.C. Code § 11-2503(a). Order, *In re Safavian*, No. 06-BG-781 (D.C. Feb. 18, 2009).

¹ Bar Counsel reports that Respondent notified "the District of Columbia" of his conviction by letter dated January 7, 2009. Respondent's letter is not part of the record filed by Bar Counsel.

On March 4, 2009, Bar Counsel filed a statement with the Board recommending that Respondent be disbarred pursuant to D.C. Code § 11-2503(a), because the Court has previously determined that obstruction of justice under 18 U.S.C. § 1505 is a crime involving moral turpitude *per se*. Respondent has not filed a response to Bar Counsel's statement but on March 23, 2009, filed an affidavit that complies with the requirements of D.C. Bar R. XI, § 14(g).

II. ANALYSIS

Crimes involving moral turpitude require disbarment under D.C. Code § 11-2503(a). Once the Court has determined that a particular crime involves moral turpitude *per se*, disbarment must be imposed. *See In re Colson*, 412 A.2d 1160, 1165 (D.C. 1979) (en banc). If the Court has not previously determined that a particular crime involves moral turpitude, then the Board must review the elements of the offense to consider whether the crime involves moral turpitude *per se*. *Id.*

In our earlier report, we recommended that the Court disbar Respondent based on his conviction of obstruction of justice in violation of 18 U.S.C. § 1505, because the Court has already determined that it is a crime of moral turpitude *per se*. *In re Safavian*, Bar Docket No. 339-05 at 2 (BPR Nov. 3, 2006) (citing *In re Schwartz*, 619 A.2d 39 (D.C. 1993) (per curiam); *In re Laurins*, 576 A.2d 1351 (D.C. 1990) (per curiam)). For the reasons set forth in that report, which is attached hereto, we recommend that Respondent be disbarred for his conviction of the same obstruction of justice offense. The period of disbarment should run, for purposes of reinstatement, from March 23, 2009, when Respondent filed the affidavit required by D.C. Bar R. XI, § 14(g).

III. CONCLUSION

For the foregoing reasons, the Board recommends that Respondent be disbarred pursuant to D.C. Code § 11-2503(a), for conviction of a crime of moral turpitude *per se*.² For purposes of reinstatement, the period of disbarment should run from March 23, 2009, the date that he filed an affidavit pursuant to D.C. Bar R. XI, § 14(g). *See In re Slosberg*, 650 A.2d 1329, 1331 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /JSK/
Jean S. Kapp

Dated: May 7, 2009

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

² The record before the Board does not include a final judgment of conviction. The Court should withhold action in this matter until Bar Counsel files a certified copy of the judgment of conviction and all direct appeals from the conviction have been completed. *See* D.C. Code § 11-2503(a); *In re Hirschfeld*, 622 A.2d 688, 689-90 & n.1 (D.C. 1993) (withholding action on the Board's recommendation until resolution of direct appeal of conviction).

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Respondent.	:	
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A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	

REPORT AND RECOMMENDATION OF
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Respondent was convicted in the United States District Court for the District of Columbia of two felony offenses: obstruction of justice (in violation of 18 U.S.C. § 1505) and false statements (in violation of 18 U.S.C. § 1001). Bar Counsel reported Respondent's conviction to the District of Columbia Court of Appeals ("Court") by letter dated July 7, 2006.

By Order dated August 8, 2006, the Court suspended Respondent and directed the Board to institute a formal proceeding to determine the nature of the offenses for the purpose determining whether the crimes of which Respondent was convicted involve moral turpitude within the meaning of D.C. Code § 11-2503(a). Respondent's conviction involves a serious crime as defined by D.C. Bar R. XI, § 10(b). *In re Safavian*, No. 06-BG-781 (Aug. 8, 2006).

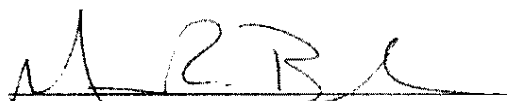
By letter dated September 11, 2006, from the Office of the Board's Executive Attorney the Respondent was notified of this proceeding and the procedure to be followed, including Respondent's right to file a response to Bar Counsel's statement. Respondent has filed nothing in this matter.

Crimes involving moral turpitude require disbarment under D.C. Code § 11-2503(a). The Court has determined that obstruction of justice is a crime of moral turpitude *per se*. *See In re*

Colson, 412 A.2d 1160, 1168 (D.C. 1979) (en banc). Mr. Colson was convicted of violating 18 U.S.C. § 1503, but in a later decision the Court determined that obstruction of justice in violation of § 1505 is also a crime of moral turpitude *per se*. See *In re Schwartz*, 619 A.2d 39 (D.C. 1993) (per curiam); *In re Larins*, 576 A.2d 1351 (D.C. 1990) (per curiam). Therefore Respondent has been convicted of a crime of moral turpitude *per se*. Accordingly, the Board recommends that Respondent be disbarred pursuant to D.C. Code § 11-2503(a), because he was convicted of a crime of moral turpitude *per se*. For purposes of reinstatement, Respondent's disbarment should begin to run from the date that he files an affidavit pursuant to D.C. Bar R. XI, § 14(g). See *In re Slosberg*, 650 A.2d 1329, 1331 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By:


Martin R. Baach
Chair

Dated: NOV - 3 2006

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