DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
AROON R. PADHARIA,	:	
	:	Board Docket No. 12-BD-080
Respondent.	:	Bar Docket No. 2012-D238
A Temporarily Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration Number: 470038)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFEESIONAL RESPONSIBILITY

Disciplinary Counsel charged Respondent with violations of the Rules of Professional Conduct arising from thirty separate cases. Prosecuting in bulk is not the typical approach, and it presents unique challenges for the disciplinary system. Nonetheless, on the whole, the Hearing Committee did an admirable job and, with a few exceptions, we adopt its Report and Recommendation.

We depart from those recommendations in three areas, as discussed in more detail below. First, we do not agree with the Hearing Committee's conclusion that routinely disregarding court orders did not seriously interfere with the administration of justice. Second, we do not agree with the Hearing Committee's conclusion that a lawyer must set forth all of the reasons why he or she would like more time to file a brief in a consent motion for an extension of time. Third, we do not agree with the Hearing Committee that when a lawyer seeks more time so that he or she can resolve

the financial details of a relationship with his or her client, that constitutes a delay for no legitimate purpose. Finally, we do think that on these facts the Respondent should be required to show fitness.

I. Background

In this case, Disciplinary Counsel alleged that Respondent violated several of the District of Columbia Rules of Professional Conduct ("Rules") in the course of his work on thirty separate Petitions for Review filed with the United States Court of Appeals for the Fourth Circuit in immigration matters. Disciplinary Counsel alleged that in connection with these thirty Petitions for Review, Respondent filed motions for extension of time solely to delay proceedings, made false statements in these motions, and failed to comply with briefing orders. Disciplinary Counsel alleged that this conduct violated Rule 3.3(a) (for knowingly making a false statement of fact or law to a tribunal); Rule 3.4(c) (for knowingly disobeying an obligation under the rules of a tribunal); Rule 4.4(a) (for using means that had no substantial purpose other than to delay); Rule 8.4(c) (for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(d) (for engaging in conduct that seriously interfered with the administration of justice). Additionally, Disciplinary Counsel alleged that Respondent knowingly failed to respond reasonably to its lawful demand for information, violating Rules 8.1(b) and 8.4(d).

II. Procedural History

Disciplinary Counsel served Respondent with the Petition and Specification of Charges on November 20, 2012. Disciplinary Counsel subsequently petitioned the Court to suspend Respondent pursuant to D.C. Bar R. XI, § 3(c) on the ground that he presented a substantial threat of serious harm to the public, based on the allegations contained in the Specification of Charges, as well as allegations that Respondent engaged in similar misconduct in thirteen matters before the Board of Immigration Appeals (Bar Docket Nos. 2012-D111 and 2012-D322), one matter before the United States District Court for the District of Columbia (Bar Docket No. 2012-D243), twelve additional matters before the Fourth Circuit (Bar Docket No. 2012-D317), and fifty-four matters before the BIA and multiple immigration courts (Bar Docket No. 2012-D356).[1] The Court granted Disciplinary Counsel's petition on February 6, 2013, temporarily suspending Respondent. He remains suspended.[2]

[1] Disciplinary Counsel's petition seeking Respondent's suspension pursuant to D.C. Bar R. XI, § 3(c) was filed with the Court under seal because the allegations of misconduct were still under investigation by Disciplinary Counsel, and thus were confidential matters. *See* D.C. Bar R. XI, § 17(a). Respondent sought to lift the seal in the temporary suspension case on April 3, 2015. The Court granted Respondent's motion on May 5, 2015. Respondent attached a copy of Disciplinary Counsel's temporary suspension motion as Exhibit C to Respondent's Response to Disciplinary Counsel's Exceptions to Ad Hoc Hearing Committee's Recommendations and Reply to Disciplinary Counsel's Response to Respondent's Brief, dated October 21, 2016. Respondent's Exhibit C is the sole source of the information in this report and recommendation that relate to allegations of misconduct other than those contained in the Specification of Charges.

[2] D.C. Bar R. XI, § 3(d) provides that an attorney who has been temporarily suspended on the ground that the attorney appears to pose a substantial threat of serious harm to the public may request dissolution of the order by petition filed with the Court. Respondent has not filed such a petition.

A hearing was held before an Ad Hoc Hearing Committee on July 16-17, 2013. On June 13, 2016, Respondent filed with the Court a motion/request for decision. The Hearing Committee issued its report and recommendation ("H.C. Rpt.") on August 10, 2016. On August 12, 2016, the Court denied Respondent's motion/request for a decision, without prejudice to renewal in the event that the Board did not issue its report and recommendation within 120 days of oral argument before the Board (which was then expected to take place in September or October 2016). On Respondent's motion, the oral argument date was continued, and was rescheduled to January 12, 2017.

The Hearing Committee determined that Respondent violated Rules 3.3(a), 4.4(a), and 8.4(c), though—as we discuss below—he did not violate each Rule for each Petition for Review. The Hearing Committee also determined that Respondent failed to obey an obligation under the rules of a tribunal, in violation of Rule 3.4(c), and failed to respond timely to Disciplinary Counsel's requests for information, in violation of Rules 8.1(b) and 8.4(d). The Hearing Committee did not find that Respondent's disregard of Fourth Circuit orders violated Rule 8.4(d). The Hearing Committee recommended a six-month suspension with certain conditions on reinstatement. H.C. Rpt. at 117-19.

Both Respondent and Disciplinary Counsel filed exceptions. Respondent challenges the findings that he violated any of the Rules and makes arguments seeking summary dismissal of this proceeding; Disciplinary Counsel argues that Respondent's conduct before the Fourth Circuit constituted a serious interference

with the administration of justice, in violation of Rule 8.4(d), and he should be subject to a fitness requirement following a six-month suspension.

We discuss first the underlying conduct in the thirty Petitions for Review and the Hearing Committee's determinations about Rule violations. Second, we discuss the Respondent's failure to respond to Disciplinary Counsel's request for information. Third, we discuss Respondent's procedural challenges to this proceeding. Finally, we discuss sanction, including whether a fitness requirement is appropriate.

III. The Thirty Petitions for Review

A bit of background understanding of the procedure in the kinds of cases Respondent handled is useful. Respondent is an immigration attorney. In an immigration case, after an immigrant's a motion to prevent removal, deportation, or exclusion has been denied by an Immigration Judge and then by the Board of Immigration Appeals, the person can file a Petition for Review to a United States Court of Appeals, here the Fourth Circuit. For all relevant purposes, these Petitions function as a notice of appeal would in a federal criminal or civil case. After the Petition is filed, counsel is required to file certain initial documents: a notice of appearance, a corporate disclosure statement, and a docketing statement. A briefing schedule then issues from the Clerk's office setting out when the parties must file their briefs and a joint appendix.

In the cases at issue here, Respondent represented the petitioners in the immigration proceedings before a Petition was filed. Respondent's alleged Rule

violations stem from his practice of filing Petitions for Review without first resolving whether his clients wanted him to file and pursue the Petition, or whether the clients would be able to pay for Respondent's legal work. Disciplinary Counsel has not alleged that this practice of immediately seeking review—on its own—is a Rule violation.

However, after filing the thirty Petitions for Review, Respondent failed to file a brief in twenty-nine of those cases because his clients determined that they could not go forward with the Petition. Even in the one case in which Respondent did file a brief, he failed to file an appendix. Yet Respondent did not dismiss the actions when his clients decided not to go forward; instead, he simply did nothing, and the Fourth Circuit dismissed the petitions for failure to prosecute under Fourth Circuit Rule 45.

As a result, Respondent ignored court filing deadlines in all thirty cases. However, in seventeen of those cases, Respondent filed one or more consent motions for more time. Disciplinary Counsel noted that these requests for more time used the same boilerplate language in each case—that Respondent was a busy solo practitioner and that the case was complicated. Disciplinary Counsel alleges that Respondent filed these motions for different reasons than those given in the consent motions, and that the real reason for filing the extensions was that the persons for whom he filed Petitions had either not yet determined whether to hire Respondent or had already decided not to pursue the Petition.

The Hearing Committee determined that there were three clusters of violations in connection with this conduct. We address each below.

A. Failure to Follow Court Orders and Serious Interference with the Administration of Justice

Disciplinary Counsel alleged that Respondent's failure to follow the Fourth Circuit's orders—the briefing schedules—resulted in violations of Rule 3.4(c) and 8.4(d).

1. Failure to follow court orders

The Hearing Committee determined that Respondent ignored briefing orders in the thirty Petitions, thereby violating Rule 3.4(c), which provides that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal," which includes the deadlines set forth in briefing orders. *See, e.g.*, *In re Askew*, Board Docket No. 12-BD-037 at 21-22 (BPR May 22, 2013), *recommendation adopted in relevant part*, 96 A.3d 52 (D.C. 2014) (per curiam) ("*Askew I*"); H.C. Rpt. at 97-98 (citing comparable cases). The Hearing Committee Report on this score is well-reasoned and incredibly thorough, particularly in light of the sheer number of Petitions at issue. We adopt the factual findings in connection with the failure to follow these orders, as well as the Hearing Committee's conclusion that Disciplinary Counsel established by clear and convincing evidence that Respondent's conduct

violated his obligations under the rules of a tribunal, and thus violated Rule 3.4(c). H.C. Rpt. at 97-98.

2. Interference with the administration of justice in the Fourth Circuit

The Hearing Committee found that Respondent's conduct in the Fourth Circuit did not violate Rule 8.4(d), though, because Respondent did not seriously interfere with the administration of justice. H.C. Rpt. at 103-06. The Hearing Committee concluded that Respondent's failure to comply with court orders in all thirty cases violated the first two prongs of the *Hopkins* test—that is, Respondent's failure to comply with the Fourth Circuit's briefing orders was both (1) improper, and (2) bore directly upon the judicial process with respect to an identifiable case or tribunal. *Id.* at 103-04 (citing *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996)).[3]

However, the Hearing Committee determined that Respondent's conduct did not meet the third prong of *Hopkins*—that Respondent's conduct "taint[ed] the judicial process in more than a *de minimis* way; that is, at least potentially impact[ing] upon the judicial process to a serious and adverse degree." *Hopkins*, 677 A.2d at 61. The Hearing Committee concluded that Respondent did not violate Rule 8.4(d) because the Fourth Circuit's staff had an efficient system for administratively

[3] The Hearing Committee also concluded that Respondent engaged in improper conduct when he made misrepresentations in the motions seeking extensions of time in the *Lazo II*, *Ali*, and *Bowen* appeals. H.C. Rpt. at 104. However, as discussed below, we find that Respondent did not make misrepresentations in the extension motions.

handling violations of its court orders of the kind Respondent routinely engaged in here. H.C. Rpt. at 106 (citing *In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009)).

However, the Hearing Committee's application of *Hopkins* and *Cole* produces a counterintuitive result: whether a lawyer violates Rule 8.4(d) would seem to depend not on the lawyer's conduct but, rather, on how efficiently the court before which the lawyer practices is managed. A lawyer who routinely disregards court orders—as Respondent did here—when practicing before a well-run court receives a disciplinary windfall under the Hearing Committee's reading of *Hopkins*, which asked only if there was an *actual* interference with the administration of justice. However, Rule 8.4(d) broadly encompasses conduct that at least *potentially* impacts the judicial process to a "serious and adverse degree." *Hopkins*, 677 A.2d at 61.

In light of our recent decision in *In re Askew*, Board Docket No. 14-BD-084 (BPR Feb. 9, 2017) ("*Askew II*") (repeated motions for extension of time and failure to comply with filing deadlines violated Rule 8.4(d)), *review pending,* D.C. App. No. 17-BG-152—which was issued after the Hearing Committee report in this case—we have little trouble concluding that Respondent's practice of ignoring court orders (not just the filing of extensions) had at least the potential to taint the judicial process in more than a *de minimis* way, and thus that Respondent violated Rule 8.4(d). This is particularly so when one considers the quantity of conduct at issue here. The Fourth Circuit had to contact Respondent in all thirty cases, often multiple times per case. Respondent violated orders requiring the filing of initial docketing statements and orders that set a briefing schedule. His failure to follow these court

orders required the Clerk of the Fourth Circuit to dismiss his clients' cases under Fourth Circuit Rule 45. While perhaps one missed deadline is not a serious interference with the administration of justice, surely as the number of orders ignored rises, the potential for interference with the administration of justice does as well, making it more than *de minimis*. *See, e.g.*, *In re Murdter*, 131 A.3d 355, 357 (D.C. 2016) (failure to file brief despite numerous orders to do so was among conduct violating Rule 8.4(d)); *Askew I*, 96 A.3d at 57.

We find, as a result, that Disciplinary Counsel established by clear and convincing evidence that Respondent violated Rule 8.4(d).

B. Candor to the Tribunal

Disciplinary Counsel charged that Respondent violated Rules 3.3(a) and 8.4(c) in forty-three motions for extension filed in seventeen of the cases by filing what was basically the same boilerplate motion for an extension in each case. H.C. Rpt. at 85. The Hearing Committee determined that in all but three of these cases (*Lazo II*, *Ali*, and *Bowen*) Disciplinary Counsel failed to show violations of Rules 3.3(a) or 8.4(c). Disciplinary Counsel does not contest this conclusion.[4] However, Respondent argues that there was no evidence that he made false statements in any of his extension motions, and thus the Hearing Committee erred in finding violations

[4] Disciplinary Counsel argued that it was stymied in its ability to present specific proof about these motions because Respondent failed to timely respond to Disciplinary Counsel. ODC Br. at 2. Perhaps so. But that is a separate issue that we discuss below as a separate violation of the Rules; it is not a cure for a failure of proof here.

of Rule 3.3(a) and 8.4(c). We agree with Respondent. Our determination is that Respondent did not violate his duties to be honest with the Fourth Circuit.

1. Rule 3.3(a)

Rule 3.3(a) provides that a lawyer "shall not knowingly . . . make 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 . . . ." Additionally, Comment [2] to Rule 3.3 states that "[t]here may be circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."

2. Rule 8.4(c)

Rule 8.4(c) prohibits engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Although "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), each of its four terms "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), and each 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), and is 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.

Shorter, 570 A.2d at 767-68 (quoting *Tucker v. Lower*, 434 P.2d 320, 324 (Kan. 1967)). 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." *Id.* at 767 n.2 (quoting 37 C.J.S. *Fraud* § 1 (1943)). Deceit 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." *Id.* (quoting 26 C.J.S. *Deceit* (1956)). Misrepresentation is a "statement . . . that a thing is in fact a particular way, when it is not so." *Id.* (quoting 58 C.J.S. *Misrepresentation* (1948)).

3. The Fourteen Cases

The Hearing Committee determined that Respondent did not violate his duties of candor in fourteen of the seventeen cases, because Disciplinary Counsel did not prove by clear and convincing evidence that any of the statements made in the motions for more time in those fourteen cases were false or failed to include a material fact. H.C. Rpt. at 86-87.

Each time the Respondent sought more time, he filed a motion that stated that he was a solo practitioner, that he was very busy with other cases, and that the case was complicated. H.C. Rpt. at 85-86. These statements were lifted from a boilerplate motion. *Id.*

The Hearing Committee determined that, except for three cases—*Lazo II*, *Ali*, and *Bowen*—Respondent did not violate Rules 3.3(a) or 8.4(c) because "Disciplinary Counsel proffered no evidence to show that the issues on appeal were not complex, or to show that Respondent's representations about his docket, and his ability to handle it, were false." H.C. Rpt. at 86 (discussing Rule 3.3(a)); *see id.* at 101-03 (discussing Rule 8.4(c)). We agree that Disciplinary Counsel therefore failed to

provide clear and convincing evidence of a Rule 3.3(a) or Rule 8.4(c) violation in connection with these fourteen cases. H.C. Rpt. at 86-87, 101-03.

> We may be skeptical that a boilerplate, template motion used in every instance an extension was requested fully and accurately set forth the reason the extension was needed, but skepticism is insufficient to prove, and does not excuse Disciplinary Counsel from presenting, the clear and convincing evidence necessary to establish an ethical violation.

H.C. Rpt. at 95. Additionally, Disciplinary Counsel did not file an exception relating to these fourteen cases. We therefore adopt the Hearing Committee's determination that there was not sufficient evidence that Respondent violated Rules 3.3(a) or 8.4(c) with respect to these fourteen cases. *Id.*

4. The Remaining Three Cases—*Lazo II, Ali, and Bowen*

The Hearing Committee did find, however, that Respondent violated Rule 3.3(a) and 8.4(c) because he omitted material facts regarding his reason for the extensions he requested in the *Lazo II*, *Ali*, and *Bowen* cases. H.C. Rpt. at 95-97, 102.

We disagree. Instead, we find that Disciplinary Counsel did not prove by clear and convincing evidence that any of the motions for extension in these three cases contained falsehoods or material omissions.

The Hearing Committee found that Respondent violated Rules 3.3(a) and 8.4(d) when he failed to disclose the "principal or substantial" reason for seeking an extension. H.C. Rpt. at 87-89; *see id.* at 102-03. We agree that Respondent's motions in these cases did not disclose the principal or substantial reason for the extension. However, we disagree that this violated either Rule 3.3(a) or Rule 8.4(c).

Respondent's motions did not contain false statements, and there is no evidence that the information omitted was material to the court's consideration of the extension requests. As such, these omissions could not have misled the court.

A motion for an extension does not require a confession of the lawyer's primary reason for the request—for example, prior procrastination. Failing to disclose to the court the primary reason for a request for an extension is not generally misleading or dishonest, nor is it misleading or dishonest in this case. There is no requirement that an attorney "disclose a principal or substantial reason for [his or her] request, wholly apart from the reasons proffered to the court." H.C. Rpt. at 87. Rules 3.3(a) and 8.4(c) require candor and honesty, not an exhaustive litany of every motivation for filing a motion. Respondent need only truthfully provide one or more of the legitimate reasons the Court would be justified in granting an extension, and not omit material facts in an effort to mislead the court. Rule 8.4(c) requires candor, but not completeness. *See* Rule 8.4(c) ("It is professional misconduct for a lawyer to . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."). Here, the information Respondent did not include was not material. It is hard to imagine, for example, that Respondent's failure to include his clients' financial situation would, in any way, have mattered to the Fourth Circuit. This is a far cry from misleading or lying to the Court. We do not agree with the Hearing Committee's determination in these three cases that Respondent violated Rule 3.3(a) and Rule 8.4(c), because neither Rule requires that a lawyer present every reason, or even the principal reason, for the Court to grant a motion for extension. Disciplinary

Counsel therefore did not prove by clear and convincing evidence that the reasons proffered in the motions for extension in either *Lazo II*, *Ali*, or *Bowen* were false or misleading.

Moreover, consent motions, generally, require less explanation of why they are justified. Short consent motions are good for every part of the legal system: judges have to wade through fewer papers; lawyers have less writing to do; and clients do not pay for lawyers to fight about things that are not in dispute.

We have reviewed the record and find that there is not evidence sufficient to show that Respondent made a false statement in the motions for an extension in these three cases or omitted a material fact in an effort to mislead the court. Accordingly, we find that Disciplinary Counsel has not proven by clear and convincing evidence that Respondent violated Rules 3.3(a) or 8.4(c).

C. Engaging in Conduct with no Substantial Purpose Other than Delay

Disciplinary Counsel alleged that Respondent violated Rule 4.4(a), which prohibits a lawyer from using "means that have no substantial purpose other than to . . . delay."

The Hearing Committee determined that Disciplinary Counsel did not have sufficient proof of a Rule violation in connection with Respondent's conduct in connection with fourteen of the Petitions—the same fourteen cases where the Hearing Committee did not find a violation of Rules 3.3(a) or 8.4(c). Disciplinary

Counsel concedes that "it is impossible to identify which of Respondent's overdue submissions were filed solely for the purpose of delaying proceedings," but nevertheless argues that based on circumstantial evidence and Respondent's testimony "at least some of them were." ODC Post-Hearing Br. at 32-33; H.C. Rpt. at 99. We agree with the Hearing Committee's analysis that Respondent's conduct in these fourteen cases do not violate Rule 4.4(a) and adopt these findings.

However, the Hearing Committee did determine that there was a violation of 4.4(a) in the three cases discussed above: *Lazo II*, *Ali*, and *Bowen*, where Respondent allegedly delayed the proceedings so that he could get paid. H.C. Rpt. at 101. The Hearing Committee determined that, in these three cases, "the motions [for an extension of time to file a brief] were filed with no purpose other than to delay the appeal to see whether such payments would be forthcoming." H.C. Rpt. at 101. However, as discussed above, we conclude that Disciplinary Counsel did not prove that Respondent falsely asserted that he needed the extensions because he was busy and because the cases were complex. Instead, the Hearing Committee found that Respondent should have disclosed the primary reason for the extension, to allow more time to get paid. Because we find that Disciplinary Counsel failed to prove that his busy schedule and case complexity were not true, we cannot find that he filed these motions solely for delay.

Moreover, Respondent had a purpose in bringing these motions other than delay: to allow Respondent to receive payment. The implicit premise in the argument that supports the Hearing Committee's conclusion is that delaying a proceeding in order for the lawyer to receive payment is an improper purpose. The Hearing Committee does not offer support for this proposition. We have been able to find none.

We find the name of Rule 4.4 instructive—"Respect for the Rights of *Third* Persons." (emphasis added). While, of course, the title of a rule does not have the same force as its text, it is helpful in understanding it. Reading Rule 4.4(a) to be primarily focused on delay that interferes with the rights of a third person is wholly consonant with prior decisions on the application of Rule 4.4(a). *See, e.g.*, *In re Fastov*, Board Docket No. 10-BD-096 (BPR July 31, 2013) (finding a violation where the conduct was "initiated in bad faith with the intent to subject [Defendants] to the 'worst and most costly' litigation"), *dismissed as moot on suggestion of death*, D.C. App. No. 13-BG-850 (Sept. 26, 2014); *In re Schwartz*, Bar Docket No. 216-01 (BPR Apr. 11, 2002) (in reciprocal discipline proceeding, finding a violation where frivolous bankruptcy petitions were filed in bad faith solely to delay foreclosure on the attorney's house), *recommendation adopted*, 802 A.2d 339 (D.C. 2002) (per curiam).

Again, the motions Respondent filed were consent motions. The affected third-party agreed to the delay. While it may have been annoying for the Executive Office for Immigration Review to be unable to move the case along, these extensions of time added no more work, no more cost, and no potential for prejudicing that third-party's interests. The third-party, in short, was minimally affected, if affected at all. Moreover, the reason Respondent sought the delay was not to injure or harass the third-party but, instead, to get paid. This is, of course, less noble than working to advance his client's cause, but getting paid is an important reality of the private practice of law. In the absence of authority to the contrary, we are reluctant to determine that modest delay that does not meaningfully injure a third-party is an improper purpose such that it would violate Rule 4.4(a).

Because there was a reason for Respondent to seek the delay beyond inflicting improper harm on a third-party, and because Respondent did have a purpose in seeking these delays, we find there was no violation of Rule 4.4(a).

IV. Failure to Provide Information to Disciplinary Counsel

There is little question that Respondent failed to timely respond to written requests for information from Disciplinary Counsel, thereby violating Rule 8.1(b) (in that Respondent knowingly failed to respond reasonably to a lawful demand for information from a disciplinary authority) as well as Rule 8.4(d) (in that Respondent engaged in conduct that seriously interfered with the administration of justice).

On August 13, 2012, Disciplinary Counsel personally served Respondent with a written inquiry into his actions in cases in the Fourth Circuit. His reply was due within thirty-five days. Respondent did not respond until March 11, 2013.

"An attorney under investigation has an obligation to respond to Disciplinary Counsel's written inquiries in the conduct of an investigation, subject to constitutional limitations." D.C. Bar R. XI, § 8(a). Respondent appears to have conceded before the Hearing Committee that he violated Rules 8.1(b) and 8.4(d) by failing to timely respond to Disciplinary Counsel. Respondent's Post-Hearing Br. at 11, ¶ 27. We agree. *See In re Shariati*, 31 A.3d 81, 86-87 (D.C. 2011) (per curiam) (Rule 8.4(d) violation where attorney failed to respond to Disciplinary Counsel's inquiries); *In re Steinberg*, 864 A.2d 120, 128 (D.C. 2004) (per curiam) (appended Board Report) (attorney's belated response to lawful demands for information from disciplinary authorities after repeated inexcusable failures to do so prior to formal disciplinary proceedings constituted clear violation of Rule 8.1(b)).

Accordingly, we agree with the Hearing Committee that Respondent violated Rules 8.1(b) and 8.4(d) by failing to timely respond to Disciplinary Counsel's inquiries.[5]

[5] As discussed in Section VI.A, below, we disagree that Respondent had an obligation to provide substantive responses to investigatory interrogatories propounded by Disciplinary Counsel. Thus, our conclusion that Respondent violated Rule 8.1(b) and 8.4(d) with respect to his responses to Disciplinary Counsel rests entirely on his failure to *timely* respond, and not his failure to *substantively* respond to interrogatories.

V. Respondent's Dispositive Motions

Respondent argues that this matter should be dismissed for several reasons: (1) he has been suspended since February 2013, and has been prejudiced by the Hearing Committee's delay in preparing its report and recommendation; (2) the Hearing Committee failed to complete its report within 120 days, in violation of D.C. Bar R. XI, § 9(a); (3) under D.C. Bar R. XI, § 3(a)(2), he cannot be suspended for more than three years (and he has already been suspended for more than four years pursuant to D.C. Bar R. XI, § 3(c)); (4) the evidence does not support a finding of misconduct; (5) the Board does not have jurisdiction to discipline him; and (6) he was not served with a copy of the hearing transcript together with the Hearing Committee report and recommendation. We reject these arguments.

A. Respondent was not prejudiced by delay.

Respondent recognizes that he is not entitled to any relief simply because the Hearing Committee was delayed in issuing its report. As he notes, citing *In re Williams*, 513 A.2d 793 (D.C. 1986) (per curiam), "delay coupled with actual prejudice could result in a due process violation." He argues that he was prejudiced because he has been suspended during the pendency of these proceedings, and any potential witnesses "are long gone." Respondent Br. at 6. On these facts, we do not agree with either argument.

First, the Hearing Committee's delay in resolving this case is regrettable. That said, this is a tremendously complicated and factually dense case. The volunteers on the Hearing Committee sorted through the facts of thirty separate cases in a diligent, responsible, and thorough way. If the disciplinary system is going to confront a case this sprawling, delay in the issuance of the Hearing Committee report is foreseeable. And, of course, it bears noting that none of this delay is attributable to Respondent.

However, as Disciplinary Counsel correctly argues, Respondent was suspended based on the Court's consideration of Disciplinary Counsel's temporary suspension motion, which was based on the allegations in the Specification of Charges in this case and other alleged misconduct. *See* Part II, above. Moreover, D.C. Bar R. XI, § 3(d) provides that a respondent who has been temporarily suspended because he poses a substantial threat of serious harm to the public may file a petition with the Court requesting dissolution of the suspension order. Respondent could have sought dissolution of the order while the case was pending before the Hearing Committee, but he did not do so (nor has he done so since the Hearing Committee issued its report). Thus, there is no reason to conclude that Respondent was prejudiced because he has been suspended during the pendency of this matter. The length of his practical suspension from the practice of law is a function of his failure to attempt to dissolve the suspension order; it is not fairly attributable to the Hearing Committee.

Finally, Respondent has not made a showing of actual prejudice because of the unavailability of witnesses. There is no merit to his argument that Respondent was prejudiced because his witnesses are now "long gone." He does not identify witnesses he would have called, or assert how their testimony would have benefitted his case. Moreover, it is difficult to understand what Respondent's clients could have said to assist in his defense because our conclusion that he violated the Rules is based on Respondent's own testimony and the documents filed in the Fourth Circuit.

B. The Failure to Meet the 120-day Deadline is Not a Basis for Dismissal.

Respondent seeks dismissal because the Hearing Committee failed to complete its report within 120 days of the hearing. While it would be better if hearing committees issued their reports within 120 days, the 120-day deadline for the hearing committee report set forth in D.C. Bar R. XI, § 9(a) is aspirational, not mandatory. *In re Morrell*, 684 A.2d 361, 370 (D.C. 1996); *see also In re Green*, 136 A.3d 699, 700 (D.C. 2016) (per curiam). This delay—though regrettable for the reasons set forth above—does not provide a basis for dismissal.

C. Suspension for Respondent's Misconduct Does Not Violate D.C. Bar R. XI, § 3(a)(2).

Respondent argues that because he has been suspended for more than three years already pursuant to D.C. Bar R. XI, § 3(c), he cannot be suspended for misconduct in this case. He correctly notes that D.C. Bar R. XI, § 3(a)(2) limits a

suspension for disciplinary misconduct to three years. However, as discussed above, Respondent has been suspended since April 2013 because it appeared that he presented a danger of serious harm to the public if he remained in practice. He has not received a suspension as a sanction for his misconduct, which is the three-year limit discussed in D.C. Bar R. XI, § 3(a)(2).

D. Disciplinary Counsel Proved Misconduct by Clear and Convincing Evidence.

Respondent argues that the case should be dismissed because the evidence does not support a finding of misconduct. As is discussed above, we find that there is substantial evidence to support a finding of misconduct.

E. Respondent is Subject to the Disciplinary Jurisdiction of the Court and the Board.

Respondent argues that the Court and the Board do not have disciplinary jurisdiction over him because he is subject to the disciplinary jurisdiction of the the Executive Office for Immigration Review and the Fourth Circuit. That argument cannot succeed. D.C. Bar R. XI, § 1(a) provides that "[a]ll members of the District of Columbia Bar . . . are subject to the disciplinary jurisdiction of [the] Court and its Board on Professional Responsibility." The fact that he may also be subject to the disciplinary jurisdiction of the EOIR and the Fourth Circuit does not deprive the Court and the Board of jurisdiction; both regulatory authorities have jurisdiction.

Respondent made the same argument in a motion to dismiss filed with the Hearing Committee. We deny the motion for the reasons set forth above.

F. Respondent Misunderstands D.C. Bar R. XI, § 9(a)'s Requirement that the Hearing Transcript be Included in the Record Submitted to the Board.

Citing to D.C. Bar R. XI, § 9(a), Respondent argues that he was denied due process because he did not receive a copy of the hearing transcript with the Hearing Committee report. Respondent misreads the rule.

D.C. Bar R. XI, § 9(a) provides that the Hearing Committee shall submit to the Board "a report containing its findings and recommendation, together with a record of its proceedings and the briefs of the parties, if any were submitted. The record shall include a transcript of the hearing." Thus, the Rule requires that the *Board* receive a copy of the hearing transcript as part of the record of proceedings before the Hearing Committee. It does not require that Respondent receive a copy of the transcript with a copy of the Hearing Committee report.

Respondent does not claim that he did not receive the transcript in time to prepare his post-hearing brief and his brief to the Board. The records in this case show that a copy of the transcript was sent to Respondent's counsel. We do not read Rule XI, § 9(a) to require that Respondent receive a second copy with the Hearing Committee Report. Accordingly, we reject Respondent's argument.

VI. Sanction

The Hearing Committee recommended that Respondent be suspended for six months and required to take CLE as a condition of reinstatement. That recommendation "rest[ed] on [Respondent's] false statements to the Court in three extension motions, his practice of completely ignoring the Fourth Circuit's Rules and procedures with respect to filing deadlines, and his failure to timely respond to Disciplinary Counsel." H.C. Rpt. at 117. The Board has found that Respondent did not make false statements in his extension motions in *Lazo II*, *Ali*, and *Bowen*, but that his failure to abide by court filing deadlines constituted a serious interference with the administration of justice in violation of Rule 8.4(d).

Before the Board, Disciplinary Counsel agrees with the Hearing Committee's recommendation of a six-month suspension, but argues that Respondent should be required to prove his fitness to practice prior to reinstatement. Respondent argues that he has been temporarily suspended since 2013, and no additional term of suspension should be imposed. In addition, he argues that the Hearing Committee erred in relying on *In re Soininen*, 853 A.2d 712 (D.C. 2004) and *In re Uchendu*, 812 A.2d 933 (D.C. 2002).

The appropriate sanction is one that is necessary to protect the public and the courts, maintain the integrity of the profession, and deter other attorneys from engaging in similar misconduct. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013)

(citing *In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007)). The sanction imposed must be consistent with sanctions for comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the factors to be considered include: (1) the seriousness of the misconduct, (2) the presence of misrepresentation or dishonesty, (3) Respondent's attitude toward the underlying conduct, (4) prior disciplinary violations, (5) mitigating circumstances, (6) whether counterpart provisions of the Rules of Professional Conduct were violated, and (7) prejudice to the client. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *Martin*, 67 A.3d at 1053.

Respondent's conduct was serious. He failed to file briefs, ignored court orders, and made the Fourth Circuit issue dozens of unnecessary orders. Respondent also failed to timely file responses to Disciplinary Counsel's written inquiries. Respondent does not believe that any of his conduct was wrong, and in fact represented that he would repeat his strategy of causing the courts to dismiss cases, rather than seeking a voluntary dismissal of cases that his client does not intend to prosecute. However, Respondent's conduct did not involve dishonesty, he has no prior discipline, and there is no evidence that any of Respondent's clients were prejudiced by his conduct.

Because we conclude that Respondent did not engage in dishonesty, we disagree with the Hearing Committee that *Soininen* and *Uchendu* are the most

comparable cases. Instead, we find this case most comparable to *Murdter* and *Askew*, both of which involved the repeated failure comply with filing deadlines in appellate cases. In both cases, the respondents were suspended for six months, with all but sixty days stayed in favor of probation. However, the scope of the misconduct is far greater here than in either *Askew* or *Murdter*, given the number of times Respondent failed to comply with Court orders and seriously interfered with the administration of justice. Based on our recommendation that Respondent be required to show fitness before he resumes his practice, we do not believe that it is appropriate to stay any portion of the suspension.

Thus, we recommend that Respondent be suspended for six months. We also recommend suspension with fitness, but not for all the reasons advanced by Disciplinary Counsel.

A. Fitness is Not Warranted for Respondent's Failure to Respond to Disciplinary Counsel's Investigative Interrogatories.

While we are persuaded that fitness is appropriate, we do not think Respondent's failure to respond to specific requests for information from Disciplinary Counsel is a sufficient reason to impose fitness. First, Disciplinary Counsel argues that fitness should be required because Respondent's failure to respond to its specific requests thwarted its ability to investigate and prosecute this case. Disciplinary Counsel's August 2012 written inquiry contained detailed

interrogatories asking Respondent to "please explain" why he acted or failed to act. *See* Disciplinary Counsel's Exhibit 35. Respondent's March 11, 2013 response letter did not provide substantive responses to these interrogatories. Instead, Respondent noted that he had already provided a response to the Specification of Charges filed against him and asserted that "the burden in on the Bar Counsel to prove each and every allegation by clear and convincing evidence that I was involved in misconduct." *Id.* In Respondent Aroon R. Padharia, Esq. Responses to the Specification of Charges, filed on February 26, 2013, Respondent either admitted, denied, or stated that he had insufficient information to admit or deny each of the 256 numbered paragraphs in the Specification of Charges.

Substantive responses to Disciplinary Counsel's interrogatories would have provided Disciplinary Counsel with information about the details of Respondent's practice around the time of each of his thirty motions for an extension of time. Disciplinary Counsel could have used those as a basis to investigate Respondent's explanations. Disciplinary Counsel argues that it was unable to cross-examine Respondent effectively because it did not have sufficient time to investigate Respondent's explanations.

Readers who represent attorneys in disciplinary proceedings in the District of Columbia will find this complaint familiar. Not infrequently Disciplinary Counsel will announce that it intends to call a witness at a hearing and respondent's counsel

seeks discovery about that witness to allow an effective cross-examination. Such requests are rejected unless respondent's counsel can show a compelling need. *See* Board Rule 3.2 (a respondent may take pre-hearing discovery from non-parties "only if respondent demonstrates that respondent has a compelling need"). A request for discovery justified by a mere need to be able to cross-examine effectively is uniformly opposed by Disciplinary Counsel and routinely deemed insufficient by a hearing committee. This does not resolve the question of whether such a failure by a respondent to answer interrogatories should warrant fitness, but it does suggest that Disciplinary Counsel's position about the harm from an inability to investigate for a later cross-examination may be a bit overstated.

Doctrinally, we are guided by *In re Artis*, 883 A.2d 85 (D.C. 2005). There, an attorney offered only a general denial of Disciplinary Counsel's allegations. The attorney was given lengthy interrogatories and did not answer them. The Court agreed with the Board that the failure to answer detailed interrogatories from Disciplinary Counsel did not violate Rule 8.4(d) and did not warrant a fitness requirement. The Court distinguished that case from those where an attorney simply failed to participate in the process at all. *Artis*, 883 A.2d at 95-96 (citing *In re Giles*, 741 A.2d 1062 (D.C. 1999); *In re Wright*, 702 A.2d 1251, 1257 (D.C. 1997); *In re Delaney*, 697 A.2d 1212, 1213-14 (D.C. 1997); *In re Lockie*, 649 A.2d 546, 547 (D.C. 1994)).

Here, Respondent filed a denial of the charges in his Answer and participated in the hearing, but did not address Disciplinary Counsel's request for information until six months after the deadline, and even then, did not answer the questions posed. Doubtless this frustrated Disciplinary Counsel. Doubtless this interfered with its ability to prosecute the case. But, under *Artis*, a general denial is sufficient. Following *Artis*, we reject Disciplinary Counsel's argument for a fitness requirement on this basis.

B. Fitness is Appropriate Because There is Clear and Convincing Evidence that Respondent Will Repeat the Same Conduct in the Future.

Disciplinary Counsel also argues that fitness should be imposed because any additional requirements will not be sufficient to ensure that Respondent will comply with the Rules of Professional Conduct. Here, Disciplinary Counsel's argument is persuasive.

"[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 1, 6 (D.C. 2005). Proof of a "serious doubt" under *Cater* 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 instead "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*,

887 A.2d at 24). "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. . . ." *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*, 877 A.2d at 21.

In thirty cases, Respondent ignored court orders. He did so as a matter of course. He testified that he believed having the Fourth Circuit dismiss an appeal instead of voluntarily dismissing it would help his clients (*see, e.g.*, Tr. 392-96) when that is flatly inconsistent with the text of the rule and the testimony of an expert (*see, e.g.*, Tr. 117-18). And he testified not only that this was his understanding in the past, but that it continued to be his understanding even as these proceedings unfolded, even during oral argument before the Board.

We are impressed by the sheer number of cases—thirty!—where Respondent violated court orders, his response to being corrected about basic issues such as how the rules of the Fourth Circuit function throughout this process, and his intransigence with respect to numerous points about how basic parts of the practice of law work (*e.g.*, it is wrong to have a client sign something while in custody because that would be inherently coercive (Tr. 458)). On this record, with this quantum of continued misconduct and the likelihood of his repeating such conduct, we have little trouble concluding that there is "clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Carter*, 887 A.2d at 6.

Conclusion

Based on the foregoing, the Board recommends that the Court find that Respondent violated Rules 3.4(c), 8.1(b), and 8.4(d), that he should be suspended for six months, and that he be required to prove his fitness to practice prior to reinstatement.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /MGK/
Matthew G. Kaiser

Dated: April 7, 2017

All members of the Board concur in this Report and Recommendation except Mr. Bundy and Mr. Bernstein, who are recused.