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:	:	
	:	
STEPHANIE G. REICH,	:	
	:	Board Docket No. 19-ND-009
Respondent.	:	Disciplinary Docket No. 2015-D241
	:	
A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 473039)	:	

REPORT AND RECOMMENDATION OF
AD HOC HEARING COMMITTEE
APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This is a disciplinary proceeding based upon Respondent's conviction of a serious crime, initiated pursuant to D.C. Bar R. XI, § 10. On July 22, 2016, the Board on Professional Responsibility determined that Respondent's guilty plea to the misdemeanor offense of making a false statement to obtain unemployment compensation, in violation of D.C. Code § 51-119(a), did not constitute moral turpitude *per se*. Accordingly, the matter was referred for a hearing to determine whether Respondent's crime involved moral turpitude on the facts and the final discipline to be imposed for her misconduct. Order, *In re Reich*, Board Docket No.

---

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

16-BD-024 at 2 (July 22, 2016). A one-day hearing on the matter was held on February 21, 2020.[1]

Between September 28, 2010, and November 9, 2010, Respondent certified to the District's Department of Employment Services ("DOES") that she was not working. In fact, Respondent was compensated during this period by the Vincent Gray mayoral campaign, for which Respondent served as chief of staff. On June 11, 2015, Respondent agreed to plead guilty to one count of Making a False Statement to Obtain Unemployment Compensation, a misdemeanor in violation of 51 D.C. Code § 119(a), which criminalizes "mak[ing] a false statement or representation knowing it to be false . . . to obtain or increase" unemployment benefits. Respondent acknowledged that the government's proffer of facts was true and correct. Respondent's guilty plea was accepted, and on August 7, 2015, she was sentenced to 60 days of incarceration, fully stayed in favor of 30 days of probation. Respondent successfully completed her probation.

On June 3, 2016, Respondent was issued an interim suspension by the Court of Appeals on notice of her misdemeanor conviction. She has been suspended from

[1] The record does not disclose any reason why nearly three years separates the Board reference to a hearing committee and the filing of a petition for negotiated discipline on July 18, 2019. Disciplinary Counsel suggested at the hearing that there were "many fruitless attempts to get information from the [g]overnment, and I know there were various negotiations with prior counsel. But I don't have a set answer of any one thing that caused the delay." Hearing Transcript ("Tr.") 69. A hearing chair was named in early September 2019, who held *ex parte* discussions with Disciplinary Counsel in the fall. Other panel members were designated in January 2020. A one-day hearing was completed on February 21, 2020. Both Disciplinary Counsel and counsel for Respondent filed post-hearing briefs in response to a Committee request on March 10 and 11, 2020, respectively.

the bar since that time. Although admitted to the bar in 2001, Respondent never has practiced law, other than as a lobbyist. Respondent filed a compliant Section 14(g) affidavit on July 5, 2016.

This disciplinary matter is the subject of a Petition for Negotiated Discipline, filed on July 18, 2019 ("Petition"). On February 21, 2020, this Ad Hoc Hearing Committee held a limited hearing on the Petition in which Assistant Disciplinary Counsel William R. Ross represented the Office of Disciplinary Counsel and Respondent appeared and was represented by counsel, Paul L. Knight. The Hearing Committee has carefully considered the Petition for Negotiated Discipline signed by Disciplinary Counsel and Respondent, the supporting affidavit submitted by Respondent (the "Affidavit"), and the representations made by Respondent and Disciplinary Counsel during the limited hearing. The Chair of the Hearing Committee also conducted an *in camera* review of Disciplinary Counsel's files and records, and held an *ex parte* meeting with Disciplinary Counsel, as permitted by D.C. Bar R. XI, § 12.1(c). Both Disciplinary Counsel and Respondent submitted post-hearing briefs at the request of the Committee.

For the reasons set forth below, we approve the Petition, find that Respondent's conviction did not involve moral turpitude on the facts, find that the negotiated discipline of a three-year suspension without a fitness requirement, deemed to run *nunc pro tunc* from July 5, 2016, the date on which she filed a compliant Section 14(g) affidavit, is justified, and recommend that it be imposed by the Court.

II. FINDINGS

Pursuant to D.C. Bar R. XI § 12.1(c) and Board Rule 17.5, the Hearing Committee, after full and careful consideration, finds that:

1. The Petition and Affidavit are full, complete, and in proper order.

2. Respondent is aware that there is currently pending against her a disciplinary matter involving allegations of misconduct. Tr. 14; Affidavit ¶ 2.

3. Specifically, Disciplinary Counsel is investigating that the Respondent's conviction in the District of Columbia was for a serious misdemeanor crime, in violation of D.C. Rules of Professional Conduct 8.4(b) and 8.4(c), and D.C. Bar R. XI, § 10(d). Tr. 15-16; Petition at 4-5, ¶ 21.

4. Respondent has knowingly and voluntarily acknowledged that the material facts in the Petition are true and support the stipulated misconduct. Tr. 15. Specifically, Respondent admits the following facts set forth in the Petition:

   a. Between September 28, 2010 and November 9, 2010, Respondent intentionally filed seven false claims for unemployment benefits through the DOES, for which she received a total of $2,688. In each electronically filed form, Respondent certified that she was not working.

   b. Each of these seven claims was false, in that Respondent claimed she was not working when, in fact, she had been compensated for her work on the Vincent Gray for Mayor election campaign staff. Respondent was paid approximately $18,000 between September 21,

2010 and November 12, 2010. These payments were labeled in expense reports filed some time later by the Gray campaign as, variously, "Salary/Stipend," or "Consultant."

c. Respondent was not entitled to receive any portion of the $2,688 in unemployment benefits because she was employed with the Gray campaign during that time.

d. In October 2014, Respondent repaid $2,688 to DOES, representing the funds she obtained through her seven false electronic certifications.

e. On June 11, 2015, Respondent agreed to plead guilty to one misdemeanor count of Making a False Statement to Obtain Unemployment Compensation, in violation of 51 D.C. Code § 119(a), which criminalizes making a false statement or representation "knowing it to be false" to obtain or increase unemployment benefits. Respondent acknowledged that the government's proffer of facts (summarized above) was true and correct.

f. Respondent's guilty plea was accepted and, on August 7, 2015, she was sentenced to 60 days of incarceration, fully stayed in favor of 30 days probation, which was completed successfully.

g. Respondent cooperated with the investigation of this matter. Disciplinary Counsel has no information that Respondent has

engaged in any misconduct in the five years since entering her plea of guilty. Tr. 23; Petition at 9.

5. In addition to Respondent's admissions above, the record discloses the following:

a. On May 13, 2016, Disciplinary Counsel reported Respondent's conviction to the Court pursuant to D.C. Bar R. XI § 10(a) and requested that Respondent be suspended based on her conviction of a "serious crime" within the meaning of D.C. Bar R. XI § 10(b). On June 3, 2016, 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 offense and whether it involves moral turpitude within the meaning of D.C. Code § 11-2503(a). Order, *In re Reich*, No. 16-BG-464 (D.C. June 3, 2016).

b. On July 22, 2016, the Board on Professional Responsibility referred this matter to a hearing committee to determine: (1) whether Respondent's conviction involves moral turpitude on the facts, and (2) what final discipline is appropriate in light of Respondent's conviction of a "serious crime." Order, Board Docket No. 16-BD-024 at 2 (July 22, 2016).

c. Disciplinary Counsel filed with the Board the subject Petition for Negotiated Discipline and Respondent's Affidavit on July 18, 2019.

d. The Chair of this Committee reviewed the investigative file and conferred *ex parte* with Disciplinary Counsel in the fall of 2019. No amendments or changes were made to the Petition as a result.

e. A one-day hearing on this matter was conducted on February 21, 2020, at which Respondent appeared, testified and was represented by counsel.

f. At the Committee's request, post-hearing briefs were filed by the parties on March 10 and 11, 2020.

6. Respondent is agreeing to the disposition because she believes that she cannot successfully defend against discipline based on the stipulated misconduct. Tr. 20; Affidavit ¶ 5.

7. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition for Negotiated Discipline. Petition at 5; Tr. 21. Those promises and inducements are limited to an agreement as to the appropriate discipline and an agreement not to pursue any further charges arising out of the conduct described in the Petition. *Id.*

8. Respondent has stated during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. at 21.

9. Respondent was represented by counsel both during the negotiation of the negotiated disposition and at the limited hearing. Affidavit ¶ 1; Tr. 9-10.

10. Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition for Negotiated Discipline and agreed to the sanction set forth therein. Tr. 15-22; Affidavit ¶ 4.

11. Respondent is not being subjected to coercion or duress. Tr. 22; Affidavit ¶ 6.

12. Respondent is competent and not under the influence of any substance or medication. Tr. 10.

13. Respondent is fully aware of the implications of the disposition being entered into, including, but not limited to, the following:

a. she has the right to assistance of counsel if she is unable to afford counsel;

b. she will waive her right to cross-examine adverse witnesses and to compel witnesses to appear on her behalf;

c. she will waive her right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;

d. she will waive her right to file exceptions to reports and recommendations filed with the Board and with the Court;

e. the negotiated disposition, if approved, may affect her present and future ability to practice law;

f. the negotiated disposition, if approved, may affect her bar memberships in other jurisdictions; and

g. any sworn statement by Respondent in her Affidavit or any statements made by Respondent during the proceeding may be used to impeach her testimony if there is a subsequent hearing on the merits.

Tr. 23-27; Affidavit ¶¶ 1, 9-10, 12.

14. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a three-year suspension, which should be imposed *nunc pro tunc*, deemed to take effect from July 5, 2016, the date on which she filed a compliant Section 14(g) affidavit. There is no requirement that a showing of fitness be made by Respondent for regaining her active bar membership. Petition, pp. 6-7; Tr. 21.

III. DISCUSSION

The Hearing Committee shall recommend that the Court approve a petition for negotiated discipline if it finds:

a. that the attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition and agreed to the sanction therein;

b. that the facts set forth in the petition or as shown during the limited hearing support the attorney's admission of misconduct and the agreed-upon sanction; and

c. that the agreed sanction is justified.

D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(i)-(iii). In this case, the Hearing Committee is also specifically charged with determining if the offense to which Respondent pled guilty constitutes moral turpitude. Order, Board Docket No. 16-

BD-024 at 2 (BPR July 22, 2016). Such a consideration would have to be resolved in any event under (c) above to determine if the agreed sanction is justified and not unduly lenient.[2]

None of the checks drawn to the Respondent by the Gray campaign were included in the record. It appears that the Assistant Disciplinary Counsel responsible for this matter was changed during the period in which this matter was pending. According to present Disciplinary Counsel, there were "fruitless attempts to get information from the [g]overnment." Tr. 69. The Petition states, "We [Disciplinary Counsel] were unable to obtain additional evidence from DOES or the U.S. Attorney's office regarding Respondent's criminal conduct." Petition, ¶ IV(2), p. 6. There is no further evidence in the record on this point. Because nearly 10 years have passed since Respondent's criminal conduct, and nearly five years since her misdemeanor guilty plea, enhancement of the record is not promising.

---

[2] Respondent's counsel repeatedly suggested at the hearing that by addressing moral turpitude, the Hearing Committee was "trying to turn this into a full hearing" and that "you are injecting an entirely new matter into the record, which is not proper." Tr. 58. "There is nothing in the record which comes close to suggesting moral turpitude. It is not alleged in the record, and no one is even pursuing that. You are raising an entirely new issue, not part of negotiated discipline." Tr. 61. Counsel continued to assert in his post-hearing brief that the Committee had no authority to consider issues related to moral turpitude in determining whether a petition for negotiated discipline should be approved, implying the issue could only be considered in a contested evidentiary hearing. Respondent's Brief in Response to the Ad Hoc Committee's Questions, March 11, 2020, p. 2. Counsel's position is in error for the reasons stated in the body of this report. *See In re Rigas*, 9 A.3d 494, 498 (D.C. 2010).

A. Respondent Knowingly Agreed to the Negotiated Discipline

Respondent, after being placed under oath, admitted the stipulated facts and charges set forth in the Petition and denied that she was under duress or had been coerced into entering into this negotiated discipline. Respondent testified that she understood the implications and consequences of entering into this negotiated discipline. Respondent acknowledged that any and all promises that have been made to her by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the Petition and that there are no other promises or inducements that have been made to her. Moreover, Respondent is agreeing to this negotiated discipline because she believes that she could not successfully defend against the misconduct described in the Petition.

Throughout the hearing, Respondent spoke carefully and clearly. Her conduct, manner and testimony support the Hearing Committee's finding that Respondent was competent to testify and understood the proceedings. The facts set forth in the Petition and records in Disciplinary Counsel's files corroborate Respondent's testimony. With regard to the first factor, this Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and has agreed to the sanction therein.

B. The Stipulated Facts Support the Admitted Misconduct and the Agreed-Upon Sanction

The Hearing Committee has carefully reviewed the facts set forth in the Petition and established during the hearing and concludes that they support the admission of misconduct and the agreed-upon sanction. Respondent's guilty plea,

discussed above, established that she violated Rule 8.4(b) (prohibiting criminal conduct that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), and Rule 8.4(c) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation). Respondent's criminal conviction is considered a "serious crime" as defined by D.C. Bar R. XI, § 10(d), because her offense involved false swearing, misrepresentation, and/or fraud.[3]

C. Respondent's Conduct Does Not Qualify as Moral Turpitude

A serious crime referred to a hearing committee for a determination of moral turpitude on the facts can be the subject of negotiated discipline. *In re Rigas*, 9 A.3d 494, 496 (D.C. 2010). In reviewing such a proposed negotiated discipline, the Hearing Committee must independently evaluate Disciplinary Counsel's decision that a particular criminal conviction does not involve moral turpitude on the facts or that the proof is insufficient to support such a finding. *Id.* at 498. In order for a crime to involve moral turpitude, "the actions of the attorney must be motivated by personal gain or manifest intentional dishonesty for the purpose of personal gain, rather than be simply 'misguided' actions." *In re Sims*, 844 A.2d 353, 365 (D.C. 2004) (citations omitted), *vacated on other grounds*, 861 A.2d 1 (D.C. 2004). *See generally In re Tucker*, 766 A.2d 510, 513 (D.C. 2000) (per curiam). Respondent

[3] As discussed elsewhere in this Report, we do not find that Respondent engaged in fraud, or that her criminal conduct raises any questions about her current fitness to practice law.

pled guilty to one misdemeanor count of making a false statement to obtain unemployment compensation, in violation of D.C. Code § 51-119(a).

We are required to determine whether the crime to which Respondent pled guilty is one involving moral turpitude. If we conclude that it was, we would be required to reject the petition as unduly lenient because disbarment is required for an offense that involves moral turpitude. D.C. Code § 11-2503(a). However, "no conviction of a misdemeanor may be deemed a conviction of a crime involving moral turpitude *per se*, even though that misdemeanor may be properly characterized as a 'serious crime.'" *In re McBride*, 602 A.2d 626, 629 (D.C. 1992) (en banc). The sanction of disbarment, which is automatic for crimes found to involve moral turpitude, is reserved for "the most extreme attorney misconduct," usually involving intentional or reckless misappropriation or "dishonesty 'of the flagrant kind.'" *In re Howes*, 52 A.3d 1, 15 (D.C. 2012) (citations omitted). Concealment of misconduct aggravates an offense. *See id.*

Respondent acknowledged in her plea agreement and in her Affidavit that her filing of seven false unemployment compensation claims was intentional. It also was done for personal gain -- $2,688. That does not, however, automatically make her offense one of moral turpitude. *McBride*, 602 A.2d at 635, overruled the portion of *In re Willcher*, 447 A.2d 1198 (D.C. 1982), that held that misdemeanor offenses with a statutory element of "intent to defraud" are crimes involving *per se* moral turpitude. The *McBride* court adopted the argument that focusing exclusively on whether a misdemeanor statute includes as an element of an offense an "intent to

defraud" when assessing whether a respondent's actions involve *per se* moral turpitude sweeps too broadly, and can encompass matters in which statutory language requiring intent does "not manifestly involve moral turpitude" as applied at common law. *See McBride*, 602 A.2d at 630-33.

"Moral turpitude" is defined by the Court of Appeals as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *In re Colson*, 412 A.2d 1160, 1168 (D.C. 1979) (quoting 2 Bouvier's Law Dictionary 2247 (Rawle's Third Revision)). Even granting some flexibility due to the archaic mid-19th century language of Bouvier, it is difficult to characterize Respondent's conduct as "baseness, vileness or depravity" warranting disbarment.

The Committee concludes that Respondent's conduct and the statutory language, taken as a whole, do not indicate moral turpitude. The statute does not attribute "moral turpitude" to one who fails to treat as reportable income for unemployment purposes compensation received while volunteering for a political campaign. DC Code § 51-119(a) does not use either "intent" or "defraud," but "knowing it to be false" as an element of the offense. The penalty imposed for a violation of the statute is a fine of "not more than $100 or imprison[ment for] not more than 60 days, or both." This is far less than the penalty imposed on employers furnishing a false record to DOES under § 51-119(b) (fine of $1,000 or imprisonment for not more than six months, or both). The lighter penalty suggests

that Congress, which adopted the provisions before Home Rule, did not consider filing a false statement to receive unemployment compensation to be a crime of moral turpitude.

Respondent's work for the Gray campaign (Gray was chairman of the D.C. Council at the time) very nearly avoids the statutory definition of "employment" in the Code. D.C. Code § 51-101 (E) provides that

> "The term 'employment' shall *not* include:
>
> . . . .
>
> (xvi) Service performed in the employ of a Senator, Representative, Delegate, Resident Commissioner or any organization composed solely of a group of the foregoing, insofar as such service is in connection with political matters;
>
> . . . .
>
> (xix) Service performed by the Mayor, a member of the Council of the District of Columbia, or a member of the District of Columbia Board of Education.

(emphasis supplied). D.C. Code § 51-101(F), reproduced in the footnote, further suggests that the circumstances in which Respondent found herself may not have been "employment" at all.[4] It is not necessary to parse further these provisions.

---

[4] (F) If the services performed during one-half or more of any pay period by an individual in employment for the person employing him constitute employment, all the services of such individual in employment for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual in employment for the person employing him do not constitute employment, then none of the services of such individual in employment for such period shall be deemed to be

They do not insulate Respondent's conduct from prosecution. But they tend to show that Congress and the D.C. Council, which inherited most of these provisions on Home Rule, did not view conduct such as Respondent's as constituting "moral turpitude."

The fact that Respondent admitted to making intentionally false statements for personal gain could make hers a crime of moral turpitude despite our statutory analysis. But the statute Respondent breached itself contemplates personal gain, but not moral turpitude.

The Court has sustained a Board finding of no moral turpitude in cases in which the facts are much closer to "an act of baseness, vileness or depravity" than is presented here. No moral turpitude was found by the Board or the Court in *In re Abrahamson*, 852 A.2d 949, 950 (D.C. 2004) (per curiam), in which a misdemeanor plea to unlawful receipt of compensation with the intent to defeat the purposes of the United States Department of Housing and Urban Development ("HUD") resulted in only a six-month suspension from practice. Respondent in that case removed criminally inculpating evidence from documents produced by his partners in a $1.5 million fraud on HUD. Although he learned his partners were defrauding the government, the respondent continued to receive the benefits of the fraud

---

employment. As used in this subsection the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual in employment by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an individual in employment for the person employing him, where any of such service is excepted by paragraph (2)(E)(vi) of this section.

through his salary and never volunteered his cleansing of the inculpatory documents from the files produced to law enforcement. *In re Abrahamson*, Bar Docket. No. 201-01, at 8-10, 16-17 (BPR May 20, 2004).

Another attorney willfully filed a false tax return, excluding $8,000 from his income. The Board's decision that such conduct was not moral turpitude and warranted only a one-year suspension was affirmed. *In re Kerr*, 611 A.2d 551, 552, 554-56 (D.C. 1992).

In another case, Washington lawyer James D. Hutchinson was tipped to the acquisition of Brunswick Corporation, bought options in the stock and made a $72,000 profit. He lied about the tip under oath when questioned by the United States Securities and Exchange Commission ("SEC"), though he later confessed. He settled a civil enforcement action for insider trading brought by the SEC, without admitting or denying liability, and surrendered his profits.[5] Hutchinson later was convicted of communicating inside information about a tender offer, a misdemeanor. Intent was not required to violate the provision. He was fined $10,000. Neither the Board nor the Court even addressed whether Hutchinson had engaged in conduct involving moral turpitude because the Court had previously determined that the misdemeanor was not a "serious crime." *In re Hutchinson*, 534 A.2d 919, 922 (D.C. 1987) (citing *In re Hutchinson I*, 474 A.2d 842 (D.C. 1984)).

[5] Martha M. Hamilton, *3 Accede to Court on Insider Trading*, Wash. Post, July 16, 1982, https://www.washingtonpost.com/archive/business/1982/07/16/3-accede-to-court-on-insider-trading/dba2163d-202b-4487-8d86-be2c646afb4e/.

Although concluding that Hutchinson "engaged in reprehensible conduct," the Court suspended him for only one year. *Id.* at 920-22.

Even a misdemeanor conviction of attempted carnal knowledge of a 14-year-old was held not to involve moral turpitude. *In re Lovendusky*, No. 84-1672 (D.C. 1986), as cited in *McBride*, 602 A.2d at 633.[6]

Here, as in *Hutchinson*, mitigating circumstances include repayment of proceeds, cooperation (immediately, not after first lying under oath) and a spotless record before and after the misdemeanor offense. *See* 534 A.2d at 924-25. Nor did Respondent violate the law while in a position of trust. *See Sims*, 861 A.2d at 4. The personal gain realized by the Respondent was far less than that realized by Hutchinson, Abrahamson or Kerr.

The conduct here is well outside that of a serious violation of law constituting moral turpitude.

D. The Agreed Sanction is Justified

In determining whether the agreed-upon sanction is justified, the Hearing Committee is to "tak[e] into consideration the record as a whole,

---

[6] *Lovendusky* is not available on the Bar's website, but we have attached a copy of the Board's report, which discusses the facts. *Lovendusky* does not involve a crime of moral turpitude because the hearing committee determined that he reasonably believed that his sexual partner was above the age of consent. Nevertheless, the facts of a 30-year-old man sexually engaging repeatedly with a 14-year-old (though one claiming to be 17) he met on the streets and who encouraged the victim to lie when first giving her statement to the police constitute conduct far more egregious than that of Respondent in this matter. The importance of knowledge in moral turpitude cases is discussed in the Board report and Court opinion in *In re Torres*, in which the victim was 12. 221 A.3d 101 (D.C. 2019) (per curiam); Board Docket No. 19-BD-027 (BPR Aug. 1, 2019).

including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel's evidence, any circumstances in aggravation and mitigation . . . and relevant precedent." Board Rule 17.5(a)(iii).

The range of sanctions for the violations to which Respondent has admitted extends from a 30-day to a three-year suspension. *In re Royer*, 35 A.3d 1138, 1139 (D.C. 2012) (per curiam) (30-day suspension for second degree theft); *In re Soininen*, 783 A.2d 619, 621-22 (D.C. 2001) (30-day suspension for misdemeanor theft of potting soil); *In re Kent*, 467 A.2d 982, 985 (D.C.1983) (per curiam) (imposing 30-day suspension for misdemeanor theft); *In re Zarate*, 53 A.3d 328 (D.C. 2012) (per curiam) (90-day suspension for petit larceny); *In re Rigas*, 9 A.3d 494 (D.C. 2010) (one-year suspension for willfully making false or incomplete entries on financial statement); *In re Wittig*, 704 A.2d 1205 (D.C. 1998) (per curiam) (three-year suspension for two counts of offering illegal gratuities to public officials and two counts of willful failure to pay federal income tax). Respondent has consented to the maximum allowable sanction for an offense which does not require disbarment. The remaining issue is whether a showing of fitness should be required before restoring Respondent's license to practice law, such that its absence would make the stipulated sanction unduly lenient.

The Court very recently ruled that "a determination that a substantial sanction is warranted is not necessarily sufficient to justify a fitness requirement." Instead, such a sanction must focus on concern about whether the attorney "will act ethically

and competently in the future after the period of suspension has run." *In re Askew*, 17-BG-0152, slip op. at 27-28 (D.C. Feb. 20, 2020) (citing *In re Cater*, 887 A.2d 1, 22 (D.C. 2005)).

"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.*, slip op. at 28 (quoting *In re Ditton*, 980 A.2d 1170, 1174 (D.C. 2009)).

The record discloses no disciplinary or law enforcement issues in Respondent's history to date except that before us. Disciplinary Counsel states that Respondent was cooperative in the investigation. There is nothing to suggest she also was not cooperative with the Office of the United States Attorney.

Although none is offered by the parties because this is a negotiated disposition, a possible reason to impose a fitness requirement on this Respondent might be that she has never practiced as an attorney. As are many other licensed attorneys in the District, Respondent is and has been a lobbyist, presumably using her legal skills in that capacity. Tr. 51 (Respondent's counsel noting Respondent's employment as a lobbyist during argument to the Hearing Committee). In at least one instance, a fitness requirement was imposed following suspension of a man who never had practiced law. *In re Spiridon*, 755 A.2d 463 (D.C. 2000). In that case, the respondent, a young man, not long out of law school, was employed as a bus driver in Ocean City, MD. Unless the Court wishes to conclude that, as a matter of law, a

lobbyist does not perform as an attorney any more than does a beach resort bus driver, a fitness requirement is not warranted here.

IV. CONCLUSION AND RECOMMENDATION

It is the conclusion of the Hearing Committee that Respondent's conviction was not a crime involving moral turpitude on the facts and that the discipline negotiated in this matter is appropriate. For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court suspend Respondent for three years. Respondent's suspension should be deemed to run *nunc pro tunc* from July 5, 2016, the date on which she filed a compliant Section 14(g) affidavit.

AD HOC HEARING COMMITTEE

James A. Kidney
Chair

Billie LaVerne Smith
Public Member

Christian White
Attorney Member

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of MICHAEL LOVENDUSKY, Respondent.	:	Bar Docket Number: 416-84

OPINION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

FACTS

On September 19, 1984, Respondent, Michael Lovendusky, entered a plea of guilty to attempted carnal knowledge, a violation of 22 D.C. Code 103, 2801. The offense arose from an incident that occurred on October 15, 1985, when Respondent engaged in sexual intercourse with a female child who was then fourteen years of age. On November 16, 1984, Respondent was sentenced to a period of incarceration of six months with three months of that term to be served in a work-release program. The remaining three months of Respondent's sentence was suspended and Respondent was placed on probation for a period of three years.

On November 20, 1984, Respondent notified the Court of Appeals of his conviction and also filed a motion to refer the conviction to the Board on Professional Responsibility (Board) for disciplinary proceedings without suspension. Respondent's motion was denied by a panel of the Court in a per curiam order on January 3, 1985. The Court, ruling that attempted carnal knowledge is a "serious crime" under Rule XI, Section 15(2) of

the Rules of the Court Governing the Bar of the District of Columbia (Rule XI), ordered Respondent suspended from the practice of law.[1/] The Court further directed the Board under Rule XI, Section 15(4) to institute a formal proceeding to determine the nature of the final discipline to be imposed and specifically to review the elements of the crime for which Respondent was sentenced to determine whether the crime involves moral turpitude within the meaning of 11 D.C. Code 2503(a).

On February 26, 1985, the Board issued an order finding that a conviction of attempted carnal knowledge does not necessarily involve moral turpitude. The Board referred the matter of Respondent's conviction to Bar Counsel for the purpose of instituting a formal hearing in accordance with Rule XI, Section 7.

Bar Counsel filed a petition that charged Respondent with the conviction of a crime involving moral turpitude in violation of 11 D.C. Code 2503(a) and DR 1-102 (A)(3); with engaging in illegal conduct involving moral turpitude in violation of Disciplinary Rule 1-102 (A)(3); with conviction of a "serious crime" in violation of Rule XI, Section 2; and with a violation of the Attorney's Oath of Office. Respondent, in response, admitted the acts charged by Bar Counsel but denied that they constituted grounds for discipline.

---

[1] A petition for reconsideration en banc of the stay order was denied on March 22, 1985.

A hearing was held before Hearing Committee Number Six on May 21, 1985.

The significant facts are undisputed. Respondent, who was thirty years old at the time, met the girl in question in Georgetown while she was walking a dog. In the course of the ensuing conversation, she told him that she was seventeen and a junior at the Ellington School for the Arts. They met for lunch some time thereafter and engaged in a long conversation. The girl told Respondent that she did not get along with her mother (who was divorced from her father) and her mother's boyfriend, and that her mother did not allow her to date. On October 15, 1983, the girl came to Respondent's apartment, and they engaged in sexual intercourse. She told Respondent that she was a virgin. The uncontroverted evidence showed that Respondent did not force the girl against her will.

Respondent and the girl met and engaged in sexual intercourse and oral sodomy on at least four occassions during the month of October, 1983.

In early November, 1983, the girl ran away from home and asked Respondent if she could spend the night in his apartment since it was too late to catch a subway to her father's house. She spent the night at Respondent's apartment but did not engage in sexual intercourse with him.

The girl's mother called the girl at her father's apartment and confronted her with the fact of her relationship with

Respondent. She took the girl to the police station where she was questioned by police detective Geraldine Clark. Only after the detective told her that she would be taken to the hospital for a pelvic examination did she admit to sexual relations with Respondent. She had called Respondent earlier and warned him that the police were seeking him. In the second of these conversations, he asked her how old she was and she admitted that she was fourteen. Respondent at that time told her to say that they had only kissed.

Subsequently, in interviews with the police and the United States Attorney's office, Respondent gave a truthful account of the relationship.

THE HEARING COMMITTEE'S FINDINGS

1. Moral Turpitude in Violation of 11 D.C. Code 2503 (a).

In sending the case to a hearing committee, the Board necessarily found that the crime of attempted carnal knowledge did not per se involve moral turpitude. The reason underlying this ruling is that, since in the District of Columbia, the age of consent is 16 years, and since the offense of carnal knowledge is one of "strict liability" in which the knowledge and intent of the offender is immaterial, moral wrongdoing contrary to the standards of society may not be involved where the defendant could reasonably have believed that the girl involved was a consenting adult. The Hearing Committee recognized the Board's

ruling in this respect. Although the Committee stated that it was "unable to make any findings of fact" with respect to the impression the girl "would have made on an objective, but uninformed, observer in the fall of 1983," it found that the "record of the circumstances of this Respondent's particular conviction did not establish that his acts involved moral turpitude." This amounts to a ruling that there was not clear and convincing evidence that Respondent knew that the girl was under sixteen when he engaged or attempted to engage in sexual intercourse with her on October 15, 1983.

The Hearing Committee further held that since, under In re Willcher, 447 A.2d 1198 (D.C. 1982), the term "moral turpitude" as used in DR 1-102 (A)(3) has the same meaning as the term in 11 D.C. 2503 (a), it need not make any findings under the DR charge with respect to whether the conviction adversely reflected on Respondent's fitness to practice.

2. Illegal Conduct Involving Moral Turpitude.

The Committee also found that Respondent was not guilty of illegal conduct involving moral turpitude in violation of DR 1-102 (A)(3). Although in considering the imposition of discipline, the Committee noted that Respondent's conduct gave "the justifiable impression that he was deliberately taking advantage of her inexperience and emotional vulnerability for his own gratification", the Committee found that the consensual acts of sexual intercourse and oral sodomy with a girl believed to be

seventeen years old did not amount to moral turpitude.

3. Violation of the Oath.

The Committee rejected Bar Counsel's charge that Respondent's conduct was a violation of Respondent's oath that he would demean himself "uprightly and according to law." It found no evidence that, during the times Respondent engaged in the acts charged in the petition, Respondent had any intent to violate the oath nor even that the oath was in anyway within his consciousness. It found that the unprecedented invocation of the oath as a ground for discipline was unnecessary and unjustified in a case which Bar Counsel had described as an unintentional inadvertent crime outside the scope of the profession for which the oath was administered.

4. Conviction for a Serious Crime.

The Committee sustained Bar Counsel's position, which Respondent did not contest, that Respondent was subject to discipline under Section 2 of Rule XI in that Respondent had been convicted of a serious crime as that term is defined in Section 15.

Under that count, the Committee recommended suspension for a period of two years, to be calculated from the time Respondent was suspended by order of the Court dated January 3, 1984. It considered in mitigation the fact that Respondent had no prior disciplinary record, and his employer's personal belief in

Respondent's fitness to practice, reflected in his willingness to keep Respondent in a paralegal capacity after he had been suspended. It found those facts outweighed by the impropriety of Respondent's conduct in exploiting a young girl for his personal gratification, his lack of any recognition that his actions were culpable, and particularly by Respondent's advice to the girl, when he first learned her age, to lie to the police about their relationship.

RECOMMENDATION OF THE BOARD

We agree with the Committee's recommendation except as to the period of discipline.

1. The Board has already ruled, and we now affirm that ruling, that attempted carnal knowledge is not on its face, a crime involving moral turpitude. With the age of consent placed at sixteen by the District of Columbia Code, it is possible for the offense to be committed without culpable intent by a man who reasonably believes his partner to be a consenting adult even though she is in fact under the age of sixteen. The question of whether Respondent's conviction was for a crime involving moral turptitude thus turns on the issue of whether he knew or had reason to believe that the girl was under the age of sixteen. The Hearing Committee in effect found that there was no clear and convincing evidence that Respondent did know or have reason to believe that the girl was under sixteen when he had sexual relations with her, on October 15, 1983. We accept that

finding. It is undisputed that the girl told Respondent that she was 17 and that she tried to make him believe that she was older than she was, using make-up and writing him letters that she thought a seventeen year old would write. The policewoman who interviewed Respondent at the police station testified that, on physical appearance alone, Respondent could be taken as from thirteen to seventeen years, but that her demeanor was that of a girl of fourteen or fifteen. The Hearing Committee expressed the view that, at the hearing, the girl looked and acted like a girl of fifteen. However, we recognize that a young girl faced with persons in authority might well look and act younger than she would to someone meeting her in a purely social situation. We therefore agree with Bar Counsel and the Committee that there is no clear and convincing evidence that Respondent knew or had reason to know that the girl was less than the seventeen year old she claimed to be.

2. We also accept the Committee's finding that Respondent's conduct in having sexual relations, including oral sex, on a number of occasions during the month of October, 1983, did not constitute illegal conduct involving moral turpitude in violation of DR 1-102 (A)(3). Respondent's actions in initiating sexual intercourse with a young girl who, even if seventeen, was to his knowledge a virgin with emotional problems at home, and who was not allowed to date, and his acts of oral sodomy thereafter, do, as the Committee said "smack of impropriety." Nevertheless, with the Committee, we do not believe that they are so contrary to the moral standards of the community as to constitute moral turpitude

as that term has been defined in In re Colson, 412 A.2d 1160 (D.C. 1979).

3. We agree with the Committee that Respondent should not have been charged with violations of his oath merely because he was convicted of a misdemeanor and engaged in other conduct not amounting to moral turpitude, none of which had any connection with the practice of law. To base a charge of violation of the lawyer's oath on any infraction of the Criminal Code, whether slight or serious, with no other limitation or definition of the prescribed conduct, would import into the disciplinary system a degree of vagueness that would raise serious constitutional questions. We see no reason for such a broad construction of the oath.

4. The charge that Respondent was subject to discipline under Section 2 of Rule XI is also unprecedented, but, in our view justified.

Section 2 states that conviction of a crime shall "be grounds for discipline as set forth in §15 of this Rule". Section 15 (2) defines a "serious crime" to include "any felony" or "an attempt" to commit a 'serious crime.'" Since carnal knowledge is a felony under 22 D.C. Code 2801, attempted carnal knowledge, although a misdemeanor, is a "serious crime" as defined in Section 15(2).

Under Section 15 (1), where the Court finds that Respondent has been convicted of a serious crime, it immediately suspends

that attorney from practice.[2/] In addition, under Section 15 (4), the Court refers the matter to the Board on Professional Responsibility for the institution of a formal proceeding "in which the sole issue to be determined shall be the nature of the final discipline to be imposed."

Where the conviction is found to involve moral turpitude, either per se or as found with respect to the particular crime of which the attorney was convicted, the superdisbarment statute, 11 D.C. Code 2503 (a) mandates disbarment, irrespective of any circumstances in mitigation. Most of the cases under Section 15 of Rule XI have involved the question of whether the conviction at issue did or did not involve moral turpitude within the meaning of the superdisbarment statute. Moreover, where a hearing is necessary to determine whether a particular crime not involving moral turpitude per se does or does not involve moral turpitude, in the circumstances of the particular case at issue, Bar Counsel usually has filed a petition alleging some violation of the Code resulting from the action which led to the conviction. See, e.g., In re Kent, 467 A.2d 982 (D.C. 1983), where Respondent was convicted of taking property without right, a crime held not to involve moral turpitude in the circumstances of that case, but was charged with violating DR 1-102 (A)(3) and DR 1-1-02 (A)(4) and found subject to discipline for conduct

---

2/ We do not believe that the fact that the court suspended Respondent from practice necessarily decided the question of whether he is subject to discipline since the court would suspend on the possibility that the crime for which Respondent was convicted could involve moral turpitude.

involving dishonesty in violation of DR 1-102 (A)(4). However, the fact that Bar Counsel usually has found other bases for charging an attorney who has been convicted of a crime which may not involve moral turpitude does not justify us in disregarding the definition of serious crime in Section 15 (3) as including an attempt to commit a felony. Nor does the lack of precedent justify us in disregarding the language of Section 15 (4) which requires the Board to determine "the nature of the final discipline to be imposed." Rather that language, together with the language of Section 2 quoted above, seems to us to require that, if the conviction is for a "serious crime" even though it is not for a crime involving moral turpitude, some "final discipline" should be recommended.

We disagree, as does Bar Counsel, with the Committee's recommendation of suspension for two years. Two year suspensions have been imposed where there have been grave and repeated violations of the Code that directly impact on the attorney's practice, to the client's detriment. See, e.g., In re Alexander, 496 A.2d 244 (D.C. 1985) (two year suspension for twelve violations of the Disciplnary Rules in seven matters including conduct involving neglect, conduct prejudicial to the administration of justice, deceit); In re Hines, 482 A.2d 378 (D.C. 1984) (two year suspension in two matters for commingling, dishonesty and misappropriation); In re Thorup, 461 A.2d 1018 (D.C. 1983) (two year suspension for misconduct in three matters, including two instances of neglect of two clients, failure to seek lawful objectives of one of the clients, failure to respond

to Bar Counsel's inquiries); In re Sheehy, 454 A.2d 1360 (D.C. 1983) (two year suspension for neglecting a legal matter entrusted to him and making serious misrepresentations to both the client and Bar Counsel); In re James, 452 A.2d 163 (D.C. 1982), cert. denied, 460 U.S. 1038 (1938) (two year suspension in two matters for failure to fully disclose client conflict of interest and dishonest conduct in retaining client funds). Here Respondent's conduct was wholly unrelated to the practice of law. His conduct, while far from exemplary, was found not to constitute moral turpitude. A period of suspension for two years seems to us, as it does to Bar Counsel, not to meet the consistency requirement of Rule XI, Section 7(3).

The Committee, aside from its disapproval of Respondent's attitude, seems to have been greatly influenced by the testimony that, when Respondent was first told by the young girl that she was only 14, he told her to tell the police that they had not had sexual relations. Bar Counsel did not charge Respondent with a violation of DR 1-102 (A)(4), explaining to the Board in oral argument that this conduct was regarded as a spontaneous panic reaction and that Respondent had thereafter been truthful in his dealings with the police and the United States Attorney's office. If Respondent's conduct was not deemed serious enough to warrant a charge, we do not believe it can serve to justify the long period of suspension proposed by the Committee for conduct unrelated to the practice of law. Actual misrepresentations to the Court have resulted in penalties less than a two year suspension. See In re Rosen, 481 A.2d 451 (D.C. 1984) (thirty

day suspension for three false statements in papers filed with the court); In re Wild, 361 A.2d 182 (D.C. 1976) (one year suspension for misrepresentations designed to cover up unlawful conduct); In re Hadzi-Antich, No. 85-52 (D.C. Aug. 9, 1985) (public censure for misrepresentation on resume); In re Molovinsky, M-31-79 (D.C. Aug. 23, 1979) (public censure for misrepresentation to court for failure to appear on time). Only where coupled with other serious violations of the Code of Professional Responsibility that directly relate to the attorney's practice and adversely impact on the attorney's clients, has the Court imposed suspension of a year and a day or more in cases involving deceit and misrepresentation. See, e.g., In re Sheehy, supra; In re Fogel, 422 A.2d 966 (D.C. 1980) (one year and a day suspension for neglect, misrepresentations to client, court and hearing committee); In re Haupt, 422 A.2d 768 (D.C. 1980) (three year suspension for extreme neglect, misrepresentations in two separate proceedings); In re Smith, 403 A.2d 296 (D.C. 1979) (18 months suspension for neglect of two civil matters and misrepresentations to clients).

In view of Respondent's rather reckless treatment of the girl even though he believed her to be seventeen, we think some period of suspension is warranted. We ordinarily would recommend suspension for six months as consistent with the cases cited above. However, since Respondent already has been suspended for a period of almost a year (as does not occur while the usual disciplinary proceeding is pending), we do not recommend further suspension.

BOARD ON PROFESSIONAL RESPONSIBILITY

BY: Beatrice Rosenberg
Beatrice Rosenberg

Date: November 4, 1985

All members of the Board concur in this report and recommendation except Dr. Alexander and Mr. Carter who did not participate.