THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
February 2, 2022

In the Matter of:	:	
	:	
HARRY TUN,	:	
	:	Board Docket No. 19-BD-019
Respondent.	:	Disc. Docket No. 2017-D215
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 416262)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

An Ad Hoc Hearing Committee ("Hearing Committee") recommends a three-year suspension for Respondent's perjurious and dishonest failure to disclose professional discipline on six attorney renewal applications he filed with the United States District Court for the District of Maryland. It is undisputed that between November 8, 1993 and October 10, 2013, Respondent received five Informal Admonitions from the Office of Disciplinary Counsel. Respondent intentionally failed to disclose any of those Informal Admonitions on renewal applications filed with the Maryland federal court between May 10, 1997 and July 31, 2017, even though each renewal asked if he had "been denied admission to practice, disbarred, suspended from practice, or disciplined by any court or bar authority." In addition, Respondent's July 31, 2017 renewal application noted that he had previously

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

reported prior discipline on November 7, 2011[1], but denied that there were any disciplinary proceedings pending against him, even though two weeks earlier (on July 14, 2017), this Board recommended to the Court that Respondent be suspended for one year, with proof of fitness.[2] Despite failing to truthfully disclose his prior disciplinary history, and the pendency of an active disciplinary matter, Respondent certified under penalty of perjury on each renewal application that the information provided was "true and correct."

The Hearing Committee found by clear and convincing evidence that Respondent's failure to disclose the five Informal Admonitions and the pending Board Report and Recommendation violated Maryland Rules of Professional Conduct[3] 19-303.3(a)(l) (knowingly making a false statement of fact or law to a

[1] On August 11, 2011, the Court approved a negotiated disposition and suspended Respondent for eighteen months, with six months stayed in favor of one year of probation, with conditions, for his misrepresentations on CJA vouchers due to poor recordkeeping, which were reckless but did not involve fraud, dishonesty or deceit. *In re Tun* (*Tun I*), 26 A.3d 313 (D.C. 2011) (per curiam); *see also In re Tun*, Bar Docket. No. 273-06, at 26-27 (HC Rpt. June 24, 2011).

[2] *In re Tun*, Board Docket No. 14-BD-099 (BPR July 14, 2017). The Court ultimately suspended Respondent for one year for intentionally making false statements regarding the status of *Tun I* in a recusal motion filed in D.C. Superior Court. *In re Tun* (*Tun II*), 195 A.3d 65 (D.C. 2018).

[3] Under the choice of law provision of D.C. Rule of Professional Conduct 8.5, Disciplinary Counsel charged Respondent under both the old Rules (Maryland Lawyers' Rules of Professional Conduct, or "MLRPC") and the current Maryland Attorneys' Rules of Professional Conduct ("MARPC") because the conduct at issue began prior to, and continued after, July 1, 2016, when the Maryland Rules of Professional Conduct were incorporated within Title 19, Chapter 300 of the Maryland Rules. Accordingly, MLRPC applied when Respondent falsely answered and filed five of the six renewal applications prior to July 1, 2016. The Hearing Committee noted that the change from the MLRPC to the MARPC was made "without substantive change," so their conclusions would apply to both. HC Rpt. at 1-2 n.1 (quoting *Attorney Grievance Comm'n v. Bellamy*, 162 A.3d 848, 852 n.1 (Md. 2017)). For the sake of simplicity, we refer to both sets of Rules as the "Maryland Rules of Professional Conduct" or "Maryland Rules."

tribunal), 19-308.4(b) (committing perjury in violation of 18 U.S.C. § 1621 and Maryland Code, Criminal Law, § 9-101, a criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer), 19-308.4(c) (engaging in conduct involving dishonesty), and 19-308.4(d) (engaging in conduct prejudicial to the administration of justice[4]). The Hearing Committee also found that Respondent gave intentionally false testimony at the hearing. The Hearing Committee recommended that Respondent be suspended for three years as a sanction for his misconduct, without a requirement to prove fitness because it could "envisage no fitness requirements, probation conditions, or CLE courses that will correct Respondent's disregard for the truth when he is confronted with a court submission in the future." HC Rpt. at 38.

Neither Respondent nor Disciplinary Counsel except to the Hearing Committee's findings of fact regarding the underlying misconduct, or its recommendations regarding the Rule violations. Both except to the sanction recommendation. Disciplinary Counsel argues that Respondent should be disbarred for his repeated perjury, false hearing testimony, and history of serious dishonesty. Respondent excepts to the Hearing Committee's finding that he gave intentionally false testimony during the disciplinary hearing regarding his state of mind when

[4] The language from the Specification of Charges ¶ 29 tracks D.C. Rule of Professional Conduct 8.4(d)'s standard of "seriously interferes with the administration of justice." The relevant Maryland Rule notes that it is a violation to engage in "conduct that is prejudicial to the administration of justice." The Hearing Committee analyzed Respondent's conduct under the language of the Maryland Rule. *See* HC Rpt. at 23-24.

providing the false answers on the renewal applications.[5] Respondent argues for an eighteen-month suspension.

The Board, having reviewed the record, the briefs of the parties, and their oral arguments, concurs with the Hearing Committee's factual findings regarding the underlying conduct as supported by substantial evidence in the record and with its conclusions of law, as set forth in the Hearing Committee's Report and Recommendation, which is attached hereto and adopted and incorporated by reference. However, we conclude that the Hearing Committee's findings regarding false hearing testimony are not supported by substantial evidence in the record as a whole. Despite the absence of a finding of false testimony, we recommend that Respondent be disbarred based on the underlying misconduct and Respondent's continuing and intentional dishonesty about his own discipline.

I. SANCTION

The Hearing Committee recommends a three-year suspension for Respondent's perjury, false statements, dishonesty, and conduct prejudicial to the administration of justice in violation of Maryland Rules 19-303.3(a)(l), 19-308.4(b), 19-308.4(c), and 19-308.4(d). In reaching its sanction recommendation the Hearing Committee considered Respondent's conceded perjury, along with the aggravating

[5] In Respondent's brief to the Board and in oral argument, Respondent seemed to argue as if he were taking exception to the Hearing Committee's findings, in addition to taking exception to the term of suspension. However, ultimately, in his brief and when his attorney was pressed in oral argument, Respondent made clear he takes exception to the determination that he gave false testimony to the Hearing Committee and to his suspension, and not to the Hearing Committee's findings on the Rules he violated. Accordingly, the Board considers his arguments in opposition to the Hearing Committee's finding that he gave false testimony, which bear on the length of his suspension, and not the Hearing Committee's conclusions regarding Rule violations.

factors of "Respondent's intentional and repetitious dishonesty" over an extensive time period, his "intentionally false testimony to the Hearing Committee[,]" and his two previous one-year suspensions, which were also for misconduct that included false statements to the court. HC Rpt. at 28-30; *see Tun*, Bar Docket. No. 273-06, HC Rpt. at 26-27, *recommendation adopted*, *Tun I*, 26 A.3d 313.

Standard of Review

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

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other

provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

Application of the Sanction Factors

Respondent's Protracted Dishonesty

Respondent's conduct was undeniably serious. He submitted six false renewal applications over a period of twenty years. He signed each application under penalty of perjury. Had he been criminally convicted of felony perjury, his disbarment would have been mandatory. *See In re Daum*, 69 A.3d 400, 401 (D.C. 2013) (per curiam) ("[P]erjury and perjury-related offenses, such as subornation of perjury, involve moral turpitude *per se*[;]" thus "disbarment is mandatory under D.C. Code § 11–2503(a)."); *see also In re Meisnere*, 471 A.2d 269, 270 (D.C. 1984) (per curiam) (appended Board Report) (18 U.S.C. § 1623 is "essentially a perjury statute" the violation of which is moral turpitude *per se*); *In re Gormley*, 793 A.2d 469, 470 (D.C. 2002) (per curiam). In the District of Columbia, "[a] lawyer need not actually be convicted of a crime of moral turpitude in order to be disbarred on the basis of the underlying conduct." *In re Corizzi*, 803 A.2d 438, 442 (D.C. 2002) (citing *In re Slattery*, 767 A.2d 203, 207 (D.C. 2001)). In considering *Corizzi*, we recognize that

Respondent's conduct may be somewhat less serious than Corizzi's because Respondent did not instruct his clients to commit perjury.[6]

Respondent's Misconduct is Consistent with Prior Dishonesty-Related Misconduct

This matter is the third in a series of disciplinary cases brought against Respondent due to his failure to tell the truth to a court. This disciplinary history "is an important factor because it 'sheds considerable light on continued fitness.'" *In re Bettis*, 855 A.2d 282, 289 (D.C. 2004) (quoting *In re Rosen*, 481 A.2d 451, 455 (D.C. 1984)).

In *Tun I*, Respondent agreed that between 1999 and 2003, he submitted CJA vouchers that recklessly included 162 instances of double-billing for his work, with the result that he sought and received payment for 1,180.25 hours of services that he did not provide, or that he did not provide at the time that he claimed on the voucher. *Tun*, Bar Docket No. 273-06, HC Rpt. at 10. The *Tun I* Hearing Committee report describes Respondent's recklessness in some detail.

> Because of his poor record-keeping, Respondent could not submit accurate vouchers. Instead, he simply submitted vouchers that roughly reflected the time – in the aggregate – he had spent on CJA cases. Thus, if Respondent had spent "X" hours during a certain time period on CJA cases, he would submit a voucher reflecting approximately "X" hours. The specific time charges on the vouchers, however, were frequently inaccurate. In some instances Respondent might not have performed the charged-for services at all in the specific case. In other instances,

[6] Because of Respondent's extensive dishonesty and other misconduct discussed below, we need not consider whether Respondent's perjury alone would require his disbarment.

> Respondent may have performed the services, but not at the time he certified.

Id. In short, Respondent represented that he had performed certain tasks at certain times when he did not know whether those representations were true. Notably, although Respondent made reckless misrepresentations, he did not believe that he overcharged for CJA work in the aggregate, and did not engage in fraud, dishonesty, or deceit. *Id.* at 26-27. The Court approved the negotiated disposition of an eighteen-month suspension, with six months stayed in favor of one year of probation with conditions. *Tun I*, 26 A.3d at 315.

Tun II arose out of an intentional misrepresentation Respondent made to a Superior Court Judge in 2009 regarding the status of the *Tun I* disciplinary matter. In *Tun II*, Respondent represented a client before the judge who had previously alerted the Chief Judge of the Superior Court about his concerns regarding the accuracy of Respondent's CJA vouchers, which ultimately led to *Tun I*. Respondent filed a motion to recuse the judge, asserting that the judge had

> reported undersigned counsel for an alleged ethical violation, which was then investigated by D.C. Bar Counsel. The investigation was then dismissed without any disciplinary action being instituted against undersigned counsel.

Tun II, 195 A.3d at 69-70. The assertion that the investigation was dismissed without disciplinary action was false. At the time that Respondent filed the motion to recuse, he and Disciplinary Counsel had already agreed to enter into a negotiated disposition in which he admitted violating the Rules. *Id.* at 70. The Court found that Respondent made an intentional misrepresentation regarding the *Tun I* investigation in an

apparent effort to bolster his recusal motion. *Id.* at 74. He was suspended for one year.

Unfortunately, it is now clear that *Tun I* and *Tun II* were not isolated incidents of Respondent failing to tell the truth to a court. As he has now admitted, Respondent perjured himself on the Maryland federal court renewal applications filed in 1997, 1999, 2002, 2005, 2011, and 2017, by failing to disclose Informal Admonitions issued in 1993, 1995, 2004, 2011, and 2013. In addition, although Respondent's 2011 renewal disclosed the existence of *Tun I*, he did not disclose the existence of *Tun II* in 2017, even though the Board Report had been issued only two weeks before he filed the renewal. Shortly thereafter, he corrected this omission, but dishonestly claimed to the Maryland federal court that he thought he had to disclose only disciplinary actions against him before that court. *See* Hearing Committee Report, Finding of Fact ("FF") 17-18. Despite this correction, he did not correct the six prior failures to disclose his Informal Admonitions.

In addition to the unfortunately abundant evidence of Respondent's dishonesty, Respondent's extensive disciplinary history is a seriously aggravating factor. He received five Informal Admonitions between 1993 and 2013:

> In 1993, he was disciplined for violating Rule 1.4 (a) by failing to keep his client informed about the status of a matter, and Rule 1.5 (b) by failing to give his client a written statement of the basis or rate of his fee. In 1995, respondent was disciplined for violating Rule 1.15 (b) by withholding funds that a third person was entitled to receive. In 2004, respondent was disciplined for violating Rules 1.15 (a) and 1.16 (d) by failing to retain a client's file and records showing how he had handled settlement funds. In 2011, he was disciplined for violating Rule 1.6 by revealing a client's confidences and secrets. In 2013, respondent was

> disciplined for violating Rule 4.3 (a)(1) by giving legal advice to an unrepresented person whose interests conflicted with the interests of his client.

Tun II, 195 A.3d at 79 (Glickman, J., concurring in part and dissenting in part). As noted above, Respondent was suspended for one year in *Tun I* and for another year in *Tun II*.

Mitigating Evidence

In mitigation, we consider that no clients were harmed by Respondent's misconduct here (or in *Tun I* or *Tun II* for that matter). We agree with Disciplinary Counsel that Respondent deserves some credit for admitting his misconduct.

Aggravating Evidence

The Hearing Committee found that Respondent gave intentionally false testimony regarding his state of mind when completing the renewal forms. Specifically, the Hearing Committee found that Respondent gave intentionally false testimony when he testified:

- "that he did not understand that an Informal Admonition constituted 'a disciplinary action.'" FF 22.
- "that he did not understand that he was required to disclose each Informal Admonition as 'a disciplinary action' on his Maryland renewal applications." FF 23.
- "that he did not understand that he was required to disclose the pending motion to recuse case [(*Tun II*)] on his 2017 Maryland renewal application." FF 24.

We agree with the Hearing Committee that Respondent knew at the time he completed each renewal application that the Informal Admonitions were "disciplinary actions," and that he knew he was required to disclose each Informal

Admonition and the motion to recuse case, *Tun II*. We also agree with the Hearing Committee that, at points in his testimony, Respondent seemed to deny that he knew at the time that these disclosures were required. We also agree with the Hearing Committee that any such denials would be false.

We, however, disagree with the Hearing Committee's conclusion that Respondent gave intentionally false testimony, as it is not supported by substantial evidence on the record as a whole. In other words, the record does not support that he crafted intentional false testimony for the purpose of deceiving the Hearing Committee. We reach this conclusion because our review of the entirety of Respondent's testimony shows that he did not deny that he knew that he was required to make the disclosures. Instead, he testified that despite that knowledge, he had convinced himself that the disclosures were not required. In short, he convinced himself that lies were permitted.

A detailed review of his testimony demonstrates that rather than intending to deceive with false testimony, Respondent endeavored to "explain" how he came to make the false statements in his renewal applications. He in fact even admitted that he had made false statements, but his admissions were not clear or precise. First, under questioning by Disciplinary Counsel, Respondent admitted that he knew that he was required to make each of the disclosures at issue. Tr. 24-32. For example, Respondent had this exchange with Disciplinary Counsel:

> Q. And if you look at page 2, and the background questionnaire section, question 2, it said, "Have you ever been denied admission to practice, disbarred, suspended from practice or disciplined by any court or bar authority"; correct?

A. That's correct.

Q. And you answered, "No."

A. I did.

Q. And that was false; wasn't it?

A. Yeah. I realize it's false now.

Q. And you knew it was false at the time that you submitted it?

A. Yes.

Q. Because you knew you had, in fact, been disciplined; correct?

A. Yes, I was. It was informal admonition, yes, it was.

(Off the record.)

A. It was [informal] admonition, and yes, I did. It was -- it was false.

Tr. 24-25. But then under questions from his own counsel, Respondent appeared to contradict himself, as he testified that he did not disclose the Informal Admonitions because he did not understand until now that they were "discipline." Tr. 59-60.

Given this, from our review of the entire record, we find that there is not substantial evidence that Respondent tried to retract or contradict his earlier admissions, or that he was set on intentionally deceiving the Hearing Committee, but rather, that he gave ineffectual explanations as to why he thought he could lie on the renewal forms.

Respondent argues in his brief to the Board that his testimony "sought to illustrate the various mental gymnastics he went through that led him to believe that giving the false answer was appropriate." R. Br. at 4. He further argues that he failed to make the required disclosures due to the "shame and embarrassment of

having to make a public admission of his failure to comply with the Rules of Professional Conduct." *Id.* at 7. His testimony supports his argument, but deploying mental gymnastics to convince himself that his dishonesty when completing his renewal applications is permitted, is not acceptable when measured against the Rules of Professional Conduct. Likewise, he also testified that he had convinced himself that an Informal Admonition was not discipline because he was embarrassed and disappointed in himself. *See, e.g.*, Tr. 60 ("I was totally embarrassed, it was embarrassment, disappointed in myself that I did what I did."). He continued to lie on the renewal applications as the disciplinary proceedings mounted against him and the embarrassment and disappointment increased. *See, e.g.*, Tr. 34-44.

While not false testimony, his testimony that he convinced himself that lying is permissible is hardly exculpatory. Respondent did not testify that he had a reasonable, good-faith belief that he was not required to disclose D.C. discipline on the Maryland renewal form, or that he provided the false answer due to mistake or inadvertence.[7] Instead, he testified that: "I committed a false statement, there's no doubt, no way about going around it, okay, I'm not going to go and say I did it because of mistake or inadvertent [sic], it was not." Tr. 44. Thus, although we find that Respondent did not provide intentionally dishonest testimony in an attempt to

[7] For instance, Respondent testified that he did not believe that an Informal Admonition was discipline because "[i]t's not like they're giving you a letter or a reprimand, and, therefore, I didn't think it was a Disciplinary action." Tr. 59-60. Of course, this is wrong; an Informal Admonition is actually a letter. *See, e.g.*, DX 1. Later in his testimony, Respondent said that he did not think an Informal Admonition was discipline because he only received a letter, and did not go to Court. Tr. 62, 83-84. We note that each Informal Admonition letter made specific findings that Respondent had violated one or more Rules. *See, e.g.*, DX 1 at 2, ¶ 3 (finding that Respondent "violated" Rule 1.5(b)).

mislead the Hearing Committee, the testimony remains a seriously aggravating factor because Respondent himself established that he can convince himself that dishonesty is permitted when it is too painful to tell the truth. Accordingly, while his inconsistent and contradictory explanations for why he failed to disclose his discipline on the forms was not intentionally dishonest testimony, we find that his approach to his testimony is an aggravating factor because it demonstrates that he is willing to untether himself from facts and that he is unwilling to honor the sanctity of providing a court, whatever forum, clear, precise, and honest answers.

Discussion of Comparable Cases

The Hearing Committee relied primarily on three cases involving false statements in bar applications in recommending a three-year suspension. *In re Rohde*, 234 A.3d 1203 (D.C. 2020) (per curiam) (public censure for knowingly false statement by failing to disclose a felony conviction and the related disciplinary proceeding on a *pro hac vice* application in violation of Virginia Rules 3.3(a)(1) and 8.4(c)); *In re Adkins*, 219 A.3d 524 (D.C. 2019) (per curiam) (three-year suspension with proof of fitness for, *inter alia*, failing to disclose several criminal convictions and misrepresenting an alcohol-related hit-and-run conviction on his D.C. Bar application and supplemental questionnaire in violation of Rules 8.1(a), 8.1(b), 8.4(b), 8.4(c), and 8.4(d)); *In re Small*, 760 A.2d 612 (D.C. 2000) (per curiam) (three-year suspension with proof of fitness for failing to update the pending D.C. Bar application and making a misleading statement on the supplemental questionnaire regarding a felony DWI vehicular homicide conviction in violation of

Rules 8.1(b) and 8.4(b)). These cases involve the same type of misconduct at issue here, but they are not sufficiently comparable for purposes of D.C. Bar R. XI, § 9(h)(1) because they do not involve the protracted dishonesty found here.

We recognize that the "flagrant dishonesty" cases that result in disbarment typically involve more serious tangible harm to clients and/or the judicial system than found here. *See, e.g.*, *Corizzi*, 803 A.2d at 442-43 (instructing clients to commit perjury, leading to the "destruction" of their cases); *In re Bynum*, 197 A.3d 1072, 1073-74 (D.C. 2018) (per curiam) (protracted dishonesty to clients and intentionally false hearing testimony); *In re Omwenga*, 49 A.3d 1235, 1239 (D.C. 2012) (per curiam) (repeated dishonesty in dealing with clients, the courts, Disciplinary Counsel, and the Hearing Committee where the respondent refused to take responsibility for his actions, was indifferent to client's interests, and lacked remorse); *In re Howes*, 39 A.3d 1, 16-18 (D.C. 2012) (long course of dishonest conduct including false certifications, deliberate withholding of exculpatory evidence, and false and misleading statements); *In re Cleaver-Bascombe*, 986 A.2d 1191, 1199-1200 (D.C. 2010) (deliberate submission of "patently fraudulent" Criminal Justice Act voucher, false testimony to cover up her fraud, and never acknowledging her misconduct); *Goffe*, 641 A.2d 458 (dishonest conduct for personal gain, a pattern of dishonesty and fabrication of evidence over a number of years; his "entrenched dishonesty" was his "principal means of dealing with the legal system"); *In re Anya*, Bar Docket Nos. 200-02 *et al.* (BPR June 1, 2004), *recommendation adopted*, 871 A.2d 1181 (D.C. 2005) (per curiam) (pattern of

dishonest conduct: falsely representing to a client that he was licensed to practice law in Maryland, falsely representing to a Maryland court that a licensed associate attorney would join in the representation, falsifying the official notes of a courtroom clerk in an attempt to obtain disbursement of funds, and falsely telling a Deputy U.S. Marshall that a writ of execution had been suspended, in order to prevent his client's eviction).

In certain respects, Respondent's conduct is comparable to dishonesty cases imposing three-year suspensions. No client was harmed by Respondent's conduct, and he was not motivated by personal gain, but rather moved to protect his reputation; and, he has, at least somewhat, accepted responsibility for his wrongdoing and realizes that a sanction is appropriate. *In re Silva*, 29 A.3d 924, 925-26, 940 (D.C. 2011) (and appended Board Report) (respondent neglected a real estate transaction, created a false document with forged signatures to cover up his neglect, and lied about the matter to his client, but dishonesty was intended to protect his reputation rather than to produce illicit financial gain); *In re Slaughter*, 929 A.2d 433, 447 (D.C. 2007) (respondent "engaged in repeated acts of dishonesty, deliberately preparing and forging documents to support his on-going misrepresentations to his law firm," but this was "not a case involving dishonesty that defrauded a client for personal gain").

However, given that Disciplinary Counsel proved by clear and convincing evidence that for twenty years, Respondent lied to the Maryland Court about his disciplinary history; that in *Tun II*, he lied to a Superior Court Judge about the status

of *Tun I*; and that in *Tun I*, his failure to keep records led to submitting recklessly false time sheets, we find this situation distinguishable from the cases on which the Hearing Committee relied. Further, and most damning, Respondent testified that he failed to disclose his prior discipline because he convinced himself that dishonesty was permissible. By his own admission, Respondent can convince himself to lie when it suits him. Though Respondent's conduct may not have been as a bad or as harmful as some of the "flagrant dishonesty" cases discussed above, his repeated, protracted, and intentional dishonesty about his own discipline can only be described as reflecting "'a continuing and pervasive indifference to the obligations of honesty in the judicial system,'" warranting his disbarment. *See In re Guberman*, 978 A.2d 200, 210 n.13 (D.C. 2009) (quoting *In re Pelkey*, 962 A.2d 268, 282 (D.C. 2008)). Accordingly, Respondent's continuing dishonesty makes this case more comparable to those cases resulting in disbarment, than those imposing a lesser sanction.

II. CONCLUSION

For the foregoing reasons, the Board recommends that the Court conclude that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Maryland Rules of Professional Conduct 19-303.3(a)(1) (knowingly making a false statement of fact or law to a tribunal), 19-308.4(b) (committing perjury in violation of 18 U.S.C. § 1621 and Maryland Code, Criminal Law, § 9-101, a criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer), 19-308.4(c) (engaging in conduct involving dishonesty), and 19-308.4(d) (engaging in conduct prejudicial to the administration of justice). We

recommend that the Court disbar Respondent. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Margaret M. Cassidy
Margaret M. Cassidy

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

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:	:	
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HARRY TUN,	:	
	:	
Respondent.	:	Board Docket No. 19-BD-019
	:	Disciplinary Docket No. 2017-D215
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 416262)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Harry Tun, Esquire, is alleged to have dishonestly failed to fully disclose his District of Columbia disciplinary history on his renewal applications filed with the U.S. District Court of Maryland that included a pending disciplinary proceeding and five Informal Admonitions he had received over a 20-year period. Under District of Columbia Rule of Professional Conduct 8.5(b) (choice of law) Disciplinary Counsel charged Respondent with violating Maryland Rules of Professional Conduct[1] 19-303.3(a)(l) (knowingly making a false statement of fact or

[1] Disciplinary Counsel alleges that the conduct at issue began prior to, and continued after July 1, 2016, when the Maryland Rules of Professional Conduct were incorporated within Title 19, Chapter 300 of the Maryland Rules (the "Maryland Attorneys' Rules of Professional Conduct" or the "MARPC"). Accordingly, Disciplinary Counsel notes that it charged Respondent under both the old Rules (Maryland Lawyers' Rules of Professional Conduct, or "MLRPC"), and the current Rules (the MARPC).

But the Specification of Charges appears to charge Respondent only under the MARPC, Specification ¶ 29, despite that most of Respondent's conduct at issue—falsely answering and

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law to a tribunal), 19-308.4(b) (committing perjury in violation of 18 U.S.C. § 1621 and Maryland Code, Criminal Law, § 9-101, a criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer), 19-308.4(c) (engaging in conduct involving dishonesty), and 19-308.4(d) (engaging in conduct that seriously interfered with the administration of justice[2]).

Disciplinary Counsel contends that Respondent committed all of the charged violations including perjury in violation of 18 U.S.C. § 1621, a crime of moral turpitude, on each of the six renewal applications, and should be disbarred as a sanction for his misconduct. Respondent concedes that his failure to report the pending disciplinary proceeding on his 2017 renewal application constituted perjury, in violation of Maryland Rule 308.4(b) and also violated Maryland Rules 19-303.3(a)(l), 19-308.4(c), and 19-308.4(d). However, Respondent argues, somewhat inexplicably in light of the foregoing concession, that because he sincerely believed that the five Informal Admonitions did not constitute discipline, his failure to report them on the renewal applications was not perjury and did not violate Maryland Rules 19-303.3(a)(1), 19-308.4(c), or 19-308.4(d). Respondent contends that the

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filing five of the six renewal applications—occurred prior to July 1, 2016. It then follows that the MLRPC would apply to most of Respondent's conduct. *See, e.g.*, *Attorney Grievance Comm'n v. Bellamy*, 162 A.3d 848, 852 n.1 (Md. 2017). Respondent did not object thereto, but any objection would seem merely technical, as the MLRPC became the MARPC "without substantive change." *Id.* Accordingly, our conclusions under the MARPC also apply to the MLRPC.

[2] This language from the Specification seems to track D.C. Rule of Professional Conduct 8.4(d). Either relevant Maryland Rule (*see* n.1), however, notes that it a violation to engage in "conduct that is prejudicial with the administration of justice." Because we have determined that the Maryland Rules apply, we analyze the conduct against the language of the Maryland Rule. *See infra* Section III.

appropriate sanction for a single act of misconduct for failing to report the pending disciplinary proceeding on his 2017 renewal application is a one-year suspension.

As set forth below, the Ad Hoc Hearing Committee finds that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Maryland Rule 19-308.4(b) by committing perjury in violation of both the federal and state statutes, as well as violating 19-303.3(a)(l), 19-308.4(c), and 19-308.4(d). The Hearing Committee recommends that Respondent be suspended for a period of three years.

I. PROCEDURAL HISTORY

On March 3, 2019, Disciplinary Counsel personally served Respondent with the Specification of Charges. Respondent filed an Answer admitting to all of the factual allegations set forth in paragraphs 1-27 of the Specification of Charges. Answer ¶¶ 1-2.[3] On June 13, 2019, the parties filed joint stipulations of fact ("Stip."), agreeing to all of the factual allegations set forth in the Specification in paragraphs 1-27.

A hearing was held on June 26, 2019 before this Ad Hoc Hearing Committee. Assistant Disciplinary Counsel Hendrik R. deBoer represented the Office of Disciplinary Counsel. Respondent was present, and was represented by Abraham C. Blitzer, Esquire. The following exhibits were received in evidence: DX A-D and

[3] The "Answer to Petition and Specification of Charges" was filed with a "Motion For Leave To Late File Answer" on March 28, 2019. The unopposed motion was granted at the start of the hearing. Tr. 4 ("Tr." refers to the transcript of the hearing held on June 26, 2019).

DX 1-20.[4] All of Disciplinary Counsel's exhibits were received into evidence without objection. Tr. 85-86. Respondent did not file exhibits. During the hearing, Disciplinary Counsel called as witnesses Respondent and David Ciambruschini, Esq., an Attorney Advisor with the U.S. District Court for the District of Maryland. Respondent testified on his own behalf and did not call any other witnesses.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification of Charges. Tr. 91-92; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel stated that the only evidence in aggravation was Respondent's prior discipline, which was part of the record. Tr. 92. Respondent's counsel argued that Respondent's cooperation during the disciplinary investigation should be considered in mitigation of sanction. Tr. 92.

II. FINDINGS OF FACT

The following findings of fact are based on the parties' stipulations, testimony, and documentary evidence admitted at the hearing, and these findings of fact are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("clear and convincing evidence [is] more than a preponderance of the evidence[,]" it is '"evidence that will produce in the mind of

[4] "DX" refers to Disciplinary Counsel's exhibits.

the trier of fact a firm belief or conviction as to the fact sought to be established"' (quoting *In re Dortch*, 860 A.2d 346, 358 (D.C. 2004))).

Background

1. Respondent is a member of the District of Columbia Bar, having been admitted on November 14, 1988, and subsequently assigned Bar number 416262. DX A; Stip. ¶ 1.

2. On March 26, 1993, Respondent was admitted to practice before the United States District Court for the District of Maryland (the "Maryland District Court"). DX 10 at 1; Stip. ¶ 2.

Respondent's Failure to Disclose Informal Admonitions

3. Over the span of almost twenty years, between November 8, 1993 and October 10, 2013, Respondent received five Informal Admonitions from the Office of Disciplinary Counsel. Each letter of Informal Admonition included Disciplinary Counsel's explanation for finding that Respondent's misconduct had violated the D.C. Rules of Professional Conduct.[5] DX 1 (violations of Rule 1.4(a) and 1.5(b)); DX 2 (violation of Rule 1.15(b)); DX 3 (violations of Rule 1.15(a) and 1.16(d)); DX 5 (violation of Rule 1.6); DX 7 (violation of Rule 4.3(a)(1)); Stip. ¶¶ 3, 4, 8, 16, 18. Respondent read each Informal Admonition around the time it was issued. Tr. 22-23, 27, 29, 30 (Respondent). In each matter, Respondent had the option to request a formal hearing on the matter to challenge the finding that his conduct

[5] The Office of Disciplinary Counsel was previously known as the Office of Bar Counsel.

violated the Rules as explained in the letter. But rather than requesting a hearing to contest the Rule violations, Respondent chose to accept the Informal Admonitions. DX 1 at 3; DX 2 at 3; DX 3 at 3; DX 5 at 3; DX 7 at 3; Tr. 22-23, 27 (Respondent). Each and every Informal Admonition Respondent received over the twenty-year period stated that it was issued pursuant to D.C Bar Rule XI, §§ 3, 6, and 8 of the District of Columbia Court of Appeals Rules Governing the Bar. DX 1 at 1; DX 2 at 1; DX 3 at 1; DX 5 at 1; DX 7 at 1. D.C Bar Rule XI, § 3(a) identifies "Informal admonition" as a "[t]ype[] of discipline."

4. Over the course of nearly twenty years, between May 10, 1997 and July 31, 2017, Respondent filed six renewal applications with the Maryland District Court. DX 10 (May 10, 1997 renewal application); DX 11 (March 14, 1999 renewal application); DX 12 (March 19, 2002 renewal application); DX 13 (March 2, 2005 renewal application); DX 14 (March 9, 2011 renewal application); DX 15 (July 31, 2017 renewal application); Stip. ¶¶ 5, 6, 7, 9, 13, 23. Each renewal application included a background questionnaire which asked Respondent whether he had "ever been . . . disciplined by any court or bar authority." *Id.* On the first five applications, Respondent falsely answered "No," and failed to disclose any of the Informal Admonitions, despite knowing at the time he submitted his answers on the applications that the letters of admonition had been issued by the Office of Disciplinary Counsel. DX 10; DX 11; DX 12; DX 13; DX 14; Stip. ¶¶ 5, 6, 7, 9, 13; Tr. 23-29, 39-40 (Respondent). On the sixth application, Respondent answered "Yes," and disclosed a suspension imposed by the D.C. Court of Appeals that he

previously had served, but Respondent did not disclose any of the previously issued Informal Admonitions. DX 15; Stip. ¶ 23; Tr. 29-32. For each application, Respondent certified or declared under penalty of perjury that his foregoing answers were true and correct. DX 10; DX 11; DX 12; DX 13; DX 14; DX 15; Stip. ¶¶ 5, 6, 7, 9, 13, 23-24.

5. At the hearing, Respondent gave inconsistent explanations for his false responses to the renewal applications and failure to disclose his Informal Admonitions to the Maryland District Court. On direct examination, Respondent admitted that he knew when he completed the renewal applications that he had been disciplined and that his answers stating otherwise were false. Tr. 24-25, 26, 28, 31-32 (Respondent). Later, he contradicted his earlier testimony and claimed that he did not understand that an Informal Admonition constituted "a disciplinary action." Tr. 59-60 (Respondent). He also attempted to justify and explain his actions by claiming that he was "embarrassed." Tr. 60-61 (Respondent). He further stated that he "convince[d] [him]self" that he did not have to disclose the Informal Admonitions on his applications to the Maryland District Court. Tr. 60-61 (Respondent).

Respondent's Failure to Disclose Pending Disciplinary Proceedings

6. In July 2006, Respondent self-reported to the Office of Disciplinary Counsel that the United States Attorney's Office had investigated him for filing false Criminal Justice Act ("CJA") appointed counsel payment vouchers with the District of Columbia Superior Court between 1999 and 2003. Respondent refunded $16,034 in overpayments as a result of his double-billing on 162 occasions over the five-year

period. Stip. ¶ 10; DX 8 at 2 (appended August 30, 2016 Hearing Committee Report). Respondent had previously affirmed under oath that the vouchers were accurate. Tr. 52 (Respondent).

7. In March 2009, Respondent and the Office of Disciplinary Counsel filed a Petition for Negotiated Discipline with the Board on Professional Responsibility in which Respondent admitted that his submission of the false CJA vouchers violated D.C. Rules 1.5, 3.3(a)(1), 8.4(c), and 8.4(d). Stip. ¶ 11; DX 8 at 2 (HC Rpt).

8. In October 2009, while disciplinary proceedings adjudicating the Petition for Negotiated Discipline were ongoing, Respondent filed a motion to recuse the D.C. Superior Court Judge who had reported the false CJA vouchers. In his motion to recuse, Respondent falsely stated that Disciplinary Counsel's investigation of the vouchers had been dismissed without any disciplinary action being instituted against him. Stip. ¶ 12; DX 8 at 3 (HC Rpt).

9. In March 2011, Respondent and the Office of Disciplinary Counsel filed an Amended Petition for Negotiated Discipline in the CJA vouchers case. The Court accepted the hearing committee's recommendation approving the negotiated discipline and imposed an eighteen-month suspension, with six months stayed in favor of one year of probation with conditions. Stip. ¶¶ 14-15; DX 8 at 3 (HC Rpt). Respondent acknowledged in his amended affidavit that his misconduct in that matter violated "Rule 1.5(a) & (f), by charging a fee that was prohibited by law and therefore *per se* unreasonable; Rule 3.3(a)(1), by making a false statement of

material fact or law to a tribunal; Rule 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and Rule 8.4(d), by engaging in conduct that seriously interfered with the administration of justice." *In re Tun*, 26 A.3d 313, 314 n.1 (D.C. 2011) (per curiam).

10. In November 2014, the Office of Disciplinary Counsel filed charges against Respondent based on his false statement in the October 2009 motion to recuse the D.C. Superior Court Judge. The specification of charges alleged violations of Rules 3.3(a)(1), 8.4(c), and 8.4(d). Stip. ¶ 19; DX 8 at 1, 4 (HC Rpt).

11. In May 2015, a hearing was held on those charges, where Respondent testified about the circumstances of the motion to recuse. Respondent admitted that the statement in the motion to recuse was false but claimed that it was a "typographical error" caused by his rushing to file the motion after a heated argument with Judge Canan. Stip. ¶ 20; DX 8 at 10 (HC Rpt); Tr. 43 (Respondent).

12. In August 2016, the hearing committee issued a report and recommendation to the Board in the motion to recuse matter. A majority of the hearing committee found Respondent's statement in the motion to be deliberately false in violation of Rules 3.3(a)(1), 8.4(c), and 8.4(d). A majority of the hearing committee also found that Respondent gave intentionally false testimony at the hearing when he claimed his false statement to the court was made mistakenly. Stip. ¶ 21; DX 8 at 11 (HC Rpt); Tr. 55-56 (Respondent).

13. On July 14, 2017, the Board unanimously adopted the hearing committee's findings of rule violations and false testimony. It further agreed with

the committee in recommending a sanction of a one-year suspension, but parted ways with the committee in recommending a fitness requirement. Stip. ¶ 22; DX 8 at 4-5. Respondent learned of the Board Report when it was issued. Tr. 34 (Respondent).

14. Just over two weeks later, on July 31, 2017, Respondent filed an Attorney Renewal Application with the Maryland District Court. Stip. ¶¶ 23-24; DX 15. The application included the question: "Are there any disciplinary proceedings pending against you?" Stip. ¶ 24; DX 15. Despite knowing that the motion to recuse case was ongoing and the Board had recently issued its report, Respondent falsely answered "NO" and did not disclose the Board Report. Stip. ¶ 24; DX 15; Tr. 34-35 (Respondent). Respondent signed the renewal application, declaring under penalty of perjury that his answers to the questions were true and correct. Stip. ¶ 24; DX 15.

15. David Ciambruschini, Esquire, an Attorney Advisor for the Maryland District Court who worked with its Disciplinary Committee, received the application from Respondent. Tr. 12-14 (Ciambruschini). Mr. Ciambruschini informed Judge Titus, Chair of the Disciplinary Committee, about the application, and Judge Titus asked Mr. Ciambruschini to investigate the accuracy of Respondent's application. Tr. 14-15 (Ciambruschini). Mr. Ciambruschini called the Office of Disciplinary Counsel, which informed him that Respondent had a pending disciplinary proceeding. Tr. 15 (Ciambruschini). Due to the pending proceeding that

Respondent had failed to disclose, the Disciplinary Committee deferred action on Respondent's renewal application. Tr. 16 (Ciambruschini).

16. Mr. Ciambruschini informed the Office of Disciplinary Counsel that Respondent had filed a false renewal application. Tr. 15 (Ciambruschini); Stip. ¶ 25. In response, the Office of Disciplinary Counsel opened an investigation in this matter and notified Respondent. DX 16; Stip. ¶ 25.

17. Shortly after, Respondent wrote a letter to the Maryland District Court stating that his previously filed application was incorrect and providing a copy of the Board's July 14, 2017 report. Tr. 36-37 (Respondent); DX 17; Stip. ¶ 26. Respondent claimed that he mistakenly thought the question pertained only to disciplinary actions against him before the Maryland District Court. *Id.*

18. In fact, Respondent knew that the question referred to pending disciplinary proceedings in any jurisdiction. In his March 11, 2011 renewal form, in response to the exact same question, Respondent had disclosed the then-pending disciplinary proceedings in the District of Columbia.[6] Tr. 19 (Ciambruschini); Tr. 39-40 (Respondent); DX 14. The Committee finds that Respondent intentionally failed to disclose the pending motion to recuse disciplinary proceeding on the July 31, 2017, Attorney Renewal Application, despite knowing that it was ongoing.

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[6] The Court's decision in *In re Tun*, 26 A.3d 313 (D.C. 2011) (per curiam), was issued on August 11, 2011 and amended on August 18, 2011. "On November 28, 2011, the US District Court of Maryland issued an order imposing reciprocal discipline on Respondent based on the August 11, 2011 order of the District of Columbia Court of Appeals." Stip. ¶ 17. There is no evidence in the record that a disciplinary action was pending against Respondent before the Maryland District Court at the time he filed the March 2011 renewal form with the Court. DX 14.

19. On November 16, 2017, the D.C. Court of Appeals suspended Respondent pending the final disposition of the motion to recuse case. Stip. ¶ 27. Because Respondent no longer had a basis for admission, the Maryland District Court denied Respondent's renewal application without prejudice to refiling at such time that he had a basis for membership. Tr. 16 (Ciambruschini).

20. The Maryland District Court spent time and resources dealing with Respondent's false application, including Disciplinary Committee meetings and debates, information gathering from the D.C. Disciplinary Counsel's Office, and drafting responses to provide to Respondent. Tr. 19-20 (Ciambruschini).

Respondent's Testimony

21. During the hearing, Respondent attempted to justify his actions by providing conflicting explanations or excuses regarding his understanding of whether an informal admonition is discipline and whether an informal admonition issued in the District of Columbia was required to be reported on his Maryland District Court renewal applications. *See* Tr. 36-39, 59-60 (Respondent).

22. The Hearing Committee does not credit Respondent's testimony that he did not understand that an Informal Admonition constituted "a disciplinary action." Respondent knew that he received each Informal Admonition at the time it was issued. FF 3.[7] He knew that he was receiving the Informal Admonition because he had violated the Rules listed in each letter. Tr. 73 (Respondent). For each of the

[7] "FF" refers to the Findings of Fact in this Report and Recommendation of the Ad Hoc Hearing Committee.

five informal admonitions, Respondent accepted the discipline imposed rather than requesting a formal hearing. Tr. 22-30 (Respondent). These uncontested facts support the Hearing Committee's finding that Respondent knew that an Informal Admonition was a form of discipline pursuant to D.C. Bar Rule XI, § 3. The Hearing Committee finds that Respondent's testimony to the contrary is intentionally false because he knew at the time that he made them that the statements to the court were inaccurate.

23. The Hearing Committee also does not credit Respondent's testimony that he did not understand that he was required to disclose each Informal Admonition as "a disciplinary action" on his Maryland renewal applications. Respondent's testimony that he had "convince[d] [him]self" that he did not have to disclose the informal admonitions and that he felt "embarrassed" by his informal admonitions directly undermine his claimed lack of understanding. Based on these inconsistent answers and on Respondent's demeanor at the hearing, the Hearing Committee finds Respondent's testimony that he did not understand that he was required to disclose the five Informal Admonitions on the Maryland renewal applications to be incredible and intentionally false.

24. The Hearing Committee also does not credit Respondent's testimony that he did not understand that he was required to disclose the pending motion to recuse case on his 2017 Maryland renewal application. During the hearing, Respondent provided several explanations for his false response to the 2017 renewal application and failure to disclose the pending motion to recuse case. Respondent

testified that he "convince[d] [him]self" that the question referred only to disciplinary proceedings in the District Court. Tr. 36-39 (Respondent). He further claimed that he was "really embarrassed" and "very ashamed." Tr. 36-37 (Respondent). He also testified that he was "rushing" because he filed the application on the "last day of the expiration date." Tr. 39 (Respondent). *But see* Tr. 43 (Respondent) ("the rushing had nothing to do with this"). He also claimed he did not disclose the pending proceedings because "Judge Titus would have already known about it." Tr. 42 (Respondent). Respondent then admitted that "I committed a false statement . . . I'm not going to go and say I did it because of mistake or inadverten[ce]." Tr. 44 (Respondent). Due to Respondent's inconsistent answers and general demeanor while testifying, the Committee finds Respondent's testimony attempting to excuse his failure to disclose the pending motion to recuse case on his 2017 Maryland renewal application to be incredible and intentionally false.

25. The Hearing Committee also does not credit Respondent's testimony that he has corrected what he characterizes as "mistakes" in his submissions to courts. First, Respondent has made representations that his mistakes would be corrected in prior disciplinary proceedings. Respondent stated during the CJA voucher disciplinary case that his mistaken false statements on court submissions would not be repeated. *See* Tr. 49-50. During the motion to recuse disciplinary case, his counsel represented that Respondent would not make the same type of mistakes on a court submission. *See* Tr. 53-54. Second, Respondent offered only a vague plan to prevent future false statements from being submitted. Respondent testified

that two lawyers in his office will review his filings whenever he has "to swear under perjury or anything like that, or filing a court paper, [and] they will review it" to make sure that he does not make the same mistake. Tr. 71. But there is no evidence in the record identifying the lawyers by name, or the location of the office, or stating that the lawyers have acknowledged their agreement to supervise Respondent's court submissions.

III. CONCLUSIONS OF LAW

Disciplinary Counsel contends that Respondent committed all of the charged violations including perjury in violation of 18 U.S.C. § 1621, a crime of moral turpitude, on each of the six renewal applications. Respondent concedes that his failure to report the pending disciplinary proceeding on his 2017 renewal application constituted perjury, and violated Maryland Rule 19-303.3(a)(l), Rule 19-308.4(c), or Rule 19-308.4(d). Respondent's Post Hearing Brief ("R. Br.") at 5. However, Respondent contends that he engaged in a single act of misconduct by failing to report the pending disciplinary proceeding on his 2017 renewal application. *Id.* at 6. Respondent argues that because of his sincere belief that Informal Admonitions did not constitute discipline, his failure to report the five Informal Admonitions on the renewal applications was not perjury and did not violate Maryland Rule 19-303.3(a)(1), Rule 19-308.4(c), or Rule 19-308.4(d), notwithstanding the concession noted above. *Id.* at 4-5.

The parties appear to have agreed that the Maryland Rules apply to the conduct charged. The Hearing Committee concludes that the Maryland Rules are

properly applied pursuant to D.C. Rule 8.5(b)(2)(ii) because Respondent's conduct had a predominant effect before the U.S. District Court for the District of Maryland, which applies "the Rules of Professional Conduct as they have been adopted by the Maryland Court of Appeals." U.S.D.C. District of Maryland Local Rule 704. In addition, the Hearing Committee is aware that Respondent's acts are charged as a violation of more than one of the Maryland Rules, and that the Maryland Rule 19-308.4(b) charge is based on perjury under both the federal and state statutes. However, in this jurisdiction it is not unusual to conclude that the same misconduct violates numerous Rules. *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (appended Board Report); *see also In re Cater*, 887 A.2d 1, 16 n.14 (D.C. 2005) ("There is no preemption"; thus a respondent's misconduct can be found to have violated the more specific Rule and the more general Rule.). The Hearing Committee concludes that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Maryland Rule 19-308.4(b) by committing perjury in violation of both the federal and state statutes (18 U.S.C. § 1621 and Maryland Code, Criminal Law § 9-101), as well as violating Maryland Rules 19-303.3(a)(l), 19-308.4(c), and 19-308.4(d).

A. Disciplinary Counsel Proved a Violation of Maryland Rule 19-303.3(a)(l) (knowingly making a false statement of fact or law to a tribunal).

Maryland Rule 19-303.3 addresses candor to the tribunal, and subsection (a)(1) provides that: "[a]n attorney 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 by the attorney[.]" Comment [1] seems to limit

"[t]his Rule [to] the conduct of an attorney who is representing a client in the proceedings of a tribunal." But Comment [3] explains that "an assertion purporting to be on the attorney's own knowledge, as in an affidavit by the attorney . . . may properly be made only when the attorney knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry." Additionally Comment [3] explains that "[t]here are circumstances where failure to make a disclosure" in an affidavit "is the equivalent of an affirmative misrepresentation."

The Hearing Committee concludes that Maryland Rule 19-303.3(a)(l) applies to Respondent's charged misconduct in his renewal applications, even though Respondent filed the applications with the clerk's office as an administrative matter, and not in his capacity as an advocate in a client matter pending adjudication. The Court of Appeals of Maryland has been clear in sustaining a violation of this Rule, even where the attorney was not representing a client, because "candor by a lawyer, in any capacity, is one of the most important character traits of a member of the Bar." *Attorney Grievance Comm'n v. White*, 731 A.2d 447, 457 (Md. 1999) (false deposition testimony by represented party in lawsuit violated Rule 3.3(a)(1)); *see also Attorney Grievance Comm'n v. Joseph*, 31 A.3d 137, 146, 154-55 (Md. 2011) (misrepresentation of residency status in *pro hac vice* applications violated Rule 3.3(a)(1)); *Attorney Grievance Comm'n v. Butler*, 172 A.3d 486, 493 (Md. 2017) (false testimony at attorney's own, prior disciplinary hearing violated Rule 3.3(a)(1)).

Respondent also concedes that his failure to report the pending disciplinary action violated Maryland Rule 19-303.3(a)(1), but argues that because he held a sincere belief that the Informal Admonitions did not constitute discipline, his failure to disclose did not violate Maryland Rule 19-303.3(a)(1). R. Br. at 5. However, the Hearing Committee finds that Respondent knew at the time that the Informal Admonitions constituted discipline, and that his testimony to the contrary is intentionally false. FF 3-5, 22-23.

The Hearing Committee concludes that Respondent violated Maryland Rule 19-303.3(a)(1) by willfully and knowingly making false statements to the Maryland District Court on the six renewal applications. First, Respondent admits that he falsely stated that he had never been disciplined by any bar authority, even though he knew that the Office of Disciplinary Counsel had issued five Informal Admonitions. FF 22; Tr. 73 (Respondent); *see also* Stip. ¶¶ 5, 6, 7, 9, 13, 23. Second, Respondent falsely stated that he had no pending disciplinary proceedings, even though he knew that the Board Report based on the motion to recuse had been issued and was pending before the D.C. Court of Appeals. FF 14, 18, 24.[8]

[8] We reach the same conclusions under 3.3(a)(1) of the MLRPC, which substantively mirrors that Rule under the MARPC. *See Attorney Grievance Comm'n v. Dore*, 73 A.3d 161, 171-72 (Md. 2013).

B. Disciplinary Counsel Proved a Violation of Maryland Rule 19-308.4(b) (criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer, by committing perjury in violation of 18 U.S.C. § 1621 and Maryland Code, Criminal Law § 9-101).

Maryland Rule 19-308.4(b) provides that "[i]t is professional misconduct for an attorney to . . . commit a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney in other respects[.]"

Comment [2] explains that:

> Many kinds of illegal conduct reflect adversely on fitness to practice law . . . . However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." . . . . Although an attorney is personally answerable to the entire criminal law, attorney should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.
>
> [A] criminal conviction is not required in order to find a violation of [Maryland Rule 19-30]8.4[(b)]. All that is required is proof by clear and convincing evidence of conduct that constitutes a commission of the offense. If the evidence presented at the hearing is sufficient to sustain a finding by clear and convincing evidence that the conduct occurred, the fact that a criminal conviction did not result from the conduct . . . does not preclude a finding of misconduct. *Attorney Grievance Comm'n v. White*, 731 A.2d 447, 456-57 (Md. 1999) (citations omitted).

The Hearing Committee concludes that Respondent engaged in the criminal act of perjury in violation of both federal and state law. Federal law states that "[w]hoever . . . in any declaration, certificate, verification, or statement under penalty of perjury . . . willfully subscribes as true any material matter which he does

not believe to be true . . . is guilty of perjury." 18 U.S.C. § 1621(2). Perjury requires "the willful intent to provide false [information], rather than as a result of confusion, mistake, or faulty memory." *United States v. Dunnigan*, 507 U.S. 87, 94 (1993). "An allegedly perjured statement is material if it has a natural tendency to influence, or is capable of influencing, the decision-making body to which it was addressed." *United States v. Savoy*, 38 F. Supp. 2d 406, 413 (D. Md. 1998) (citation and quotation marks omitted).

Respondent certified or declared under penalty of perjury that his statements and answers in response to the background questionnaire were true and accurate, when he knew they were not. FF 4-5. Respondent committed perjury when he falsely stated that he had never been disciplined by any bar authority but knew that the Office of Disciplinary Counsel had issued the Informal Admonitions. Stip. ¶¶ 5, 6, 7, 9, 13, 23. Respondent also committed perjury when he falsely stated he had no pending disciplinary proceedings but knew that the Board Report based on the motion to recuse had been issued and was pending before the D.C. Court of Appeals. FF 14-15. The Hearing Committee does not credit Respondent's testimony that he did not know that the answers were untrue. FF 22-24. In each instance, Respondent acted with the willful intent to provide false information, and not as a result of confusion or mistake.[9]

[9] We reach the same conclusions under 8.4(b) of the MLRPC, which substantively mirrors that under the MARPC. *See Attorney Grievance Comm'n v. McDonald*, 85 A.3d 117, 120 (D.C. 2014).

Disciplinary Counsel also charged Respondent with violating the Maryland perjury statute, Maryland Code, Criminal Law, § 9-101, but "chooses not to pursue the Maryland statute as a basis for a violation of Rule 19-308.4(b)." Disciplinary Counsel's Post Hearing Brief ("ODC Br.") at 11 n.4; Specification ¶ 29(b). Disciplinary Counsel determined that "Respondent's misconduct more closely aligns with the elements of the federal perjury statute" and thus did not argue the violation. ODC Br. at 11 n.4. The Hearing Committee is nonetheless required to address this charge under the Maryland perjury statute as well as the federal statute. *See In re Reilly*, Bar Docket No. 102-94, at 4 (BPR July 17, 2003) (Disciplinary Counsel does not have the authority to dismiss charges approved by a Contact Member).

The Maryland perjury statute provides that:

> a) A person may not willfully and falsely make an oath or affirmation as to a material fact:
> (1) if the false swearing is perjury at common law;
> (2) in an affidavit required by any state, federal, or local law;
> (3) in an affidavit made to induce a court or officer to pass an account or claim;
> (4) in an affidavit required by any state, federal, or local government or governmental official with legal authority to require the issuance of an affidavit; or
> (5) in an affidavit or affirmation made under the Maryland Rules.

Maryland Code, Criminal Law, § 9-101(a).

The Hearing Committee concludes that the same actions that violated 18 U.S.C. § 1621(2), when Respondent, in a "declaration, certificate, verification, or statement under penalty of perjury . . . willfully subscribe[d] as true any material

matter which he does not believe to be true" also violate Maryland Code, Criminal Law § 9-101.

C. Disciplinary Counsel Proved a Violation of Maryland Rule 19-308.4(c) (engaging in conduct involving dishonesty).

Maryland Rule 19-308.4(c) states that "[i]t is professional misconduct for an attorney to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]" Maryland does not have a reckless dishonesty standard, only intentional or negligent dishonesty. In *Attorney Grievance Comm'n v. Moore*, 152 A.3d 639 (Md. 2017), the Maryland Court explained:

> We have previously established through our case law that a violation of 8.4(c) must be the result of *intentional* misconduct. *Attorney Grievance Comm'n v. Mungin*, 439 Md. 290, 310, 96 A.3d 122, 133 (2014) ("It is well settled that this Court will not find a violation of M[L]RPC 8.4(c) when the attorney's misconduct is the product of negligent rather than intentional misconduct.") (quoting *Attorney Grievance Comm'n v. DiCicco*, 369 Md. 662, 684, 802 A.2d 1014, 1026 (2002)).

152 A.3d at 657 (emphasis and alteration in original). Thus, proof of a negligent misrepresentation under Maryland Rule 19-308.4(c) does not meet the clear and convincing standard required to prove a violation. *Id.*[10]

The Hearing Committee concludes Respondent violated Maryland Rule 19-308.4(c) by knowingly making false statements to the Maryland District Court on the six renewal applications regarding the five Informal Admonitions and the pending disciplinary proceeding based on the motion to recuse. FF 4, 14. The

[10] The MLRPC also required intentional conduct. We thus reach the same conclusions under either Rule.

Hearing Committee does not credit Respondent's testimony that he sincerely believed that the Informal Admonitions did not constitute discipline. The Hearing Committee also does not credit Respondent's testimony that he did not understand that he was required to disclose the pending motion to recuse case on his 2017 Maryland Attorney Renewal Application. FF 22-24. Because the Hearing Committee finds that Respondent knew his statements were false at the time he made them to the court, his failure to disclose the five Informal Admonitions and the pending motion to recuse disciplinary proceeding on his renewal application forms was intentionally dishonest in violation of Maryland Rule 19-308.4(c). FF 22-24.

D. Disciplinary Counsel Proved a Violation of Maryland Rule 19-308.4(d) (engaging in conduct that is prejudicial to the administration of justice).

Maryland Rule 19-308.4(d) provides that "[i]t is professional misconduct for an attorney to . . . engage in conduct that is prejudicial to the administration of justice[.]" '"Generally, a lawyer violates [Maryland Rule 19-308.4(d)] where the lawyer's conduct would negatively impact the perception of the legal profession of a reasonable member of the public."' *Attorney Grievance Comm'n v. Chanthunya*, 133 A.3d 1034, 1049 (Md. 2016) (quoting *Attorney Grievance Comm'n v. Shuler*, 117 A.3d 38, 45 (Md. 2015)).

> In determining whether a lawyer violated [Maryland Rule 19-308.4(d)] by engaging in conduct that negatively impacted the public's perception of the legal profession, "[the Maryland] Court applie[s] the 'objective' standard of whether" the lawyer's conduct would negatively impact the perception of the legal profession of "a reasonable member of the public . . . , not the subjective standard of whether the lawyer's conduct actually impacted the public and/or a particular person (*e.g.,* a complainant) who is involved with the attorney discipline

> proceeding." *Attorney Grievance Comm'n v. Carl Stephen Basinger*, 441 Md. 703, 716, 109 A.3d 1165 (2015) (quoting *Attorney Grievance Comm'n v. Saridakis*, 402 Md. 413, 430 n. 10, 430, 936 A.2d 886, 896 n. 10, 896 (2007)) (some brackets and internal quotation marks omitted).

Attorney Grievance Comm'n v. Marcalus, 112 A.3d 375, 379 (Md. 2015).

The Hearing Committee concludes that Respondent violated Rule 19-308.4(d) by committing perjury and willfully and knowingly making false statements to the District Court.[11] The Hearing Committee also found that the District Court expended time and resources in dealing with Respondent's July 2017 false renewal application, demonstrating the prejudice to the administration of justice caused by Respondent's misconduct. FF 15, 20. Mr. Ciambruschini's testimony regarding the efforts both the staff and the judges appointed to the Maryland District Court Disciplinary Committee expended on reviewing Respondent's renewal application is uncontested, and the Hearing Committee finds his testimony credible. *See* Tr. 20 (Respondent's counsel declining to cross-examine witness). The Hearing Committee also does not credit Respondent's testimony that he sincerely believed that the Informal Admonitions did not constitute discipline. FF 22-23. Thus, Respondent's failure to disclose the five Informal Admonitions and the pending motion to recuse disciplinary proceeding on his renewal application forms negatively affected the Maryland Court in violation of Maryland Rule 19-308.4(d).

[11] We reach the same conclusions under 8.4(d) of the MLRPC, which substantively mirrors that Rule under the MARPC. *See Attorney Grievance Comm'n v. Chanthunya*, 133 A.3d at 1049.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of disbarment, arguing that Respondent's admitted act of perjury is a crime moral turpitude that requires disbarment, and that his disturbing pattern of dishonesty over a lengthy period of time warrants disbarment. ODC Br. at 15-17. Respondent has requested that the Hearing Committee recommend a one-year suspension as comparable discipline for making untrue statements in court pleadings and other documents. R. Br. at 6-7. For the reasons described below, we recommend the sanction of a three-year suspension.

A. Standard of Review

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

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C.

2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent concedes that his failure to report the pending motion to recuse disciplinary proceeding on his 2017 renewal application constituted perjury, which is a violation of Maryland Rule 308.4(b), and violated Maryland Rule 19-303.3(a)(l), Rule 19-308.4(c), and Rule 19-308.4(d). R. Br. at 5. The Hearing Committee finds his failure to report the Informal Admonitions on all six applications also violated the Maryland Rules. The Court has long held that perjury is a crime of moral turpitude, requiring disbarment in the event of a felony conviction. *In re Meisnere*, 471 A.2d 269, 269-70 (D.C. 1984) (per curiam); *see also In re Gormley*, 793 A.2d 469, 470 (D.C. 2002) (per curiam); *In re Daum*, 69 A.3d 400, 400-01 (D.C. 2013)

(per curiam). "A lawyer need not actually be convicted of a crime of moral turpitude in order to be disbarred on the basis of the underlying conduct." *In re Corizzi*, 803 A.2d 438, 442 (D.C. 2002) (citing *In re Slattery*, 767 A.2d 203, 207 (D.C. 2001)).

2. Prejudice to the Client

There was no prejudice to a client because Respondent's misconduct did not occur in the course of a representation.

3. Dishonesty

Respondent's misconduct violated a number of rules related to his duties of candor to the tribunal, to abide by the law, to facilitate the administration of justice, and to act honestly. Respondent acknowledges "that making false statements to court" involves dishonesty "whether the false statement is made as a result of carelessness or recklessness, or an intentional falsehood." R. Br. at 5.

> Lawyers have a greater duty than ordinary citizens to be scrupulously honest *at all times*, for honesty is "basic" to the practice of law. . . . Every lawyer has a duty to foster respect for the law, and *any* act by a lawyer which shows disrespect for the law tarnishes the entire profession.

In re Cleaver-Bascombe, 986 A.2d 1191, 1200 (D.C. 2010) (per curiam) ("*Cleaver-Bascombe II*") (quoting *In re Mason*, 736 A.2d 1019, 1024-25 (D.C.1999) (emphasis in original)). "The nature of a case is made more egregious by repeated violation of a rule prohibiting dishonest conduct, as [t]here is nothing more antithetical to the practice of law than dishonesty." *In re Howes*, 39 A.3d 1, 16 (D.C. 2012) (alteration in original, internal quotation marks omitted) (quoting *In re Daniel*, 11 A.3d 291,

300 D.C. 2011), *as amended nunc pro tunc*, 52 A.3d 1 (D.C. 2012), *and reinstatement granted*, Order, 160 A.3d 509 (D.C. 2017) (per curiam).

Here, Respondent engaged in intentional and repeated dishonesty to a court, including certifying the veracity of his knowingly false statements under penalty of perjury on his six renewal application forms submitted over the course of ten years.

4. Violations of Other Disciplinary Rules

Respondent's misconduct violated a number of rules related to his duties of candor to the tribunal, to abide by the law, to facilitate the administration of justice, and to act honestly.

5. Previous Disciplinary History

"An attorney's disciplinary history is an important factor because it 'sheds considerable light on continued fitness.'" *In re Bettis*, 855 A.2d 282, 289 (D.C. 2004) (quoting *In re Rosen*, 481 A.2d 451, 455 (D.C. 1984)). Prior discipline is particularly relevant where an attorney previously engaged in the same or similar misconduct as that found in the instant matter. *See In re Evans*, 902 A.2d 56, 75 (D.C. 2006) (per curiam) (appended Board Report); *In re Douglass*, 859 A.2d 1069, 1086 (D.C. 2004) (per curiam) (appended Board Report).

Here, Respondent's disciplinary history includes five Informal Admonitions issued over the span of twenty years, and two one-year suspensions in other matters. Respondent acknowledges that his two previous suspensions were for misconduct that included dishonesty and knowing false statements to the court. R. Br. at 6; *see In re Tun*, 195 A.3d 65 (D.C. 2018) (one-year suspension for violation of D.C. Rules

3.3 (a)(1) and 8.4 (c) in a motion to recuse); *In re Tun*, 26 A.3d 313 (D.C. 2011) (per curiam) (approving negotiated discipline of an eighteen-month suspension with six months stayed, followed by one year of probation subject to conditions for double-billing on CJA vouchers due to poor recordkeeping in violation of D.C. Rules 1.5(a) and (f), 3.3(a)(1), 8.4(c), and 8.4(d)).

6. Acknowledgement of Wrongful Conduct

Respondent acknowledges that his misconduct "includes making a series of untrue statements on the renewal applications under penalty of perjury[,]" but asserts that he now recognizes the seriousness of failing to report the informal admonitions and that he has taken steps to prevent a recurrence of this behavior. R. Br. at 5 (¶ 1), 6-7.

Disciplinary Counsel concedes that "Respondent deserves a modicum of credit for acknowledging that he engaged in criminal conduct," but argues that "it is far outweighed by the seriousness and pervasiveness of the misconduct and Respondent's lengthy disciplinary history, which includes two previous instances of knowing false statements to the court" and that "his misconduct has only gotten more severe over time." ODC Reply Br. at 2 (citing *In re Goffe*, 641 A.2d 458, 465, 468 (D.C. 1994) ("disbarment where attorney engaged in 'disturbing pattern of dishonesty' over a number of years")).

The Hearing Committee agrees with Disciplinary Counsel that Respondent's newfound recognition that his behavior was problematic is outweighed by the

intentional and repetitious misconduct and Respondent's lengthy disciplinary history. FF 25.

7. Other Circumstances in Aggravation and Mitigation

a) Aggravation

Intentional false testimony to the Hearing Committee is a "significant aggravating factor." *In re Bradley*, 70 A.3d 1189, 1195-96 (D.C. 2013) (per curiam) (aggravating sanction from 90 days to two years with fitness); *see also In re Cleaver-Bascombe*, 892 A.2d 396, 412-13 (D.C. 2006) ("*Cleaver-Bascombe I*") and *Cleaver-Bascombe II*, 986 A.2d at 1200-01 (increasing Board's recommendation of two-year suspension with fitness to disbarment). Here, Respondent gave intentionally false testimony to the Hearing Committee when he claimed that he merely made mistakes when he failed to disclose his Informal Admonitions and the ongoing disciplinary proceedings in his renewal applications. FF 22-24.

The Hearing Committee is also concerned by the extent of Respondent's intentional and repetitious dishonesty. Over the course of twenty years Respondent was presented with the same question on his renewal application form. FF 4. Six times during that twenty-year period Respondent chose the path of dishonesty when he was faced with a disclosure question that he knew to be subject to penalty for perjury. *Id.* Yet each time Respondent intentionally failed to disclose his history of Informal Admonitions.

b) Mitigation

Respondent asserts as mitigating factors that he acknowledges (1) that this matter involves "the third occasion in which he faced discipline for making untrue statements to a court[,]" (2) "that the seriousness of his behavior deserves sanction[,]" and (3) the steps he has taken to prevent a reoccurrence of this behavior should be considered in mitigation of sanction. R. Br. at 6-7.

In light of the ongoing nature of Respondent's dishonest conduct, the Hearing Committee concludes that the aggravating factors outweigh the mitigating factors.

C. Sanctions Imposed for Comparable Misconduct

Although Respondent's misconduct involves violations of the Maryland Rules, we look to D.C. cases in determining our recommended sanction. *See, e.g.*, *In re Ponds*, 888 A.2d 234, 245-47 (analyzing D.C. caselaw to determine sanction where the respondent violated two Rules under the MLRPC).

In the District of Columbia, "[a] lawyer need not actually be convicted of a crime of moral turpitude in order to be disbarred on the basis of the underlying conduct." *In re Corizzi*, 803 A.2d 438, 442 (D.C. 2002) (citing *In re Slattery*, 767 A.2d 203, 207 (D.C. 2001)). Here, Respondent concedes that his failure to report the pending disciplinary proceeding based on the motion to recuse on his 2017 renewal application constitutes perjury (R. Br. at 5) and we have found that his perjury violates both the federal statute (18 U.S.C. § 1621) and Maryland state statute (Maryland Code, Criminal Law § 9-101). The parties have not referenced a case where the Court has held that a violation of either of these statutes has been

determined to be moral turpitude *per se* requiring disbarment pursuant to D.C. Code § 11-2503. However, the Court has held that violations of other sections of 18 U.S. Code Chap. 79 (Perjury) are crimes of moral turpitude requiring disbarment when a respondent is convicted of the felony.

In *In re Meisner*e, 471 A.2d 269, 270 (D.C. 1984) (per curiam) (appended Board Report), "[the r]espondent pleaded guilty to an indictment returned in the United States District Court for the Eastern District of Virginia charging a violation of 18 U.S.C. § 1623 and to an information charging conspiracy to defraud the Internal Revenue Service in violation of 18 U.S.C. 371." 18 U.S.C. § 1623 addresses "the making of a false statement under oath before a grand jury with respect to a matter material to the grand jury's investigation." *Id.* at 270. The Board reasoned that this section was "essentially a perjury statute" because it "was designed to facilitate perjury prosecutions without the technical problems of proof engrafted into the federal perjury statute from common law." *Id.* (citing *Dunn v. United States*, 422 U.S. 100 (1979)).

In re Gormley, 793 A.2d 469, 470 (D.C. 2002) (per curiam) also involved a false declaration before a court in violation of 18 U.S.C. § 1623. The Board relied on the Court's holding in *Meisnere* in concluding that a conviction under § 1623 is a crime of moral turpitude *per se*. *In re Gormley*, Bar Docket No. 34-00, at 1, 3 (BPR July 27, 2001).

In re Daum, 69 A.3d 400 (D.C. 2013) (per curiam) involved the subornation of perjury in violation of 18 U.S.C. § 1622. The Court noted that is has previously

"held that perjury and perjury-related offenses, such as subornation of perjury, involve moral turpitude *per se*" warranting mandatory disbarment under D.C. Code § 11-2503(a). *Id.* at 401 (citing *In re Corizzi*, 803 A.2d 438, 442 (D.C. 2002)).

Similar state perjury-related offenses were addressed in *In re Corizzi*, where the Court reasoned that subordination of perjury in violation of D.C. Code § 22-2403 or Virginia Code § 18.2-436 involved moral turpitude *per se.* *Corizzi* involved the respondent's pattern of dishonesty in two separate matters resulting in multiple Rule violations. Although the respondent "was found to have committed a telling number of ethical violations," the Court focused "most particularly" on the fact that he "counseled two clients, in separate cases, to commit perjury in their depositions, which they did to the virtual destruction of their causes[,]" when accepting the Board's recommendation for disbarment. 803 A.2d 439, 442. Corizzi "suborned the perjury of his clients by instructing them to lie at their depositions about the referral relationship that existed between himself and . . . a chiropractor, to whom respondent had a regular practice of referring personal injury clients and who in turn referred patients to respondent for legal representation . . . and made false statements to Bar Counsel denying that he counseled his clients to lie at their depositions." *Id.* at 440. "These actions by respondent manifestly violated Rules 3.3(a) (knowingly counseling or assisting clients to engage in criminal or fraudulent conduct); 3.4(b) (counseling clients to testify falsely); and 8.4(c) (engaging in conduct involving fraud, dishonesty or deceit and/or misrepresentation)." *Id.* By "[i]nstructing his clients to testify falsely" Corizzi also intentionally prejudiced or damaged his clients

in violation of D.C. Rule 1.3(b)(2), "because the instruction virtually destroyed their prospects for recovery in their personal injury claims[.]" *Id.* More importantly, the respondent's instructions "exposed [the clients] to criminal prosecution for perjury," and respondent himself could have be prosecuted for "subordination of perjury pursuant to D.C. Code § 22-2403 or Va. Code § 18.2-436." *Id.* at 442. Because "perjury-related offenses involve moral turpitude per se," the Court reasoned that disbarment was the appropriate sanction. *Id.*

However, Disciplinary Counsel does not argue for disbarment based on a theory of moral turpitude. Rather, Disciplinary Counsel's argument for disbarment is based on Respondent's repeated pattern of dishonesty to the Maryland District Court in violation of Maryland Rules 19-303.3(a)(1), 19-308.4(b), 19-308.4(c), and 19-308.4(d), his extensive disciplinary history including two previous suspensions for similar acts of dishonesty and knowingly false statements to a court, and the aggravating factor of his intentionally false testimony before this Hearing Committee. ODC Br. at 17-20; ODC Reply Br. at 2.

The Hearing Committee is required to recommend a sanction that is consistent with the sanctions imposed in other cases of comparable misconduct that is not otherwise unwarranted. *See* D.C. Bar R. XI, § 9(h). The Hearing Committee also considers cases where the acts of misconduct involving court applications are similar to Respondent's, but the Rules were differently charged.

In *In re Adkins*, 219 A.3d 524 (D.C. 2019) (per curiam), the Court suspended the respondent for three years with proof of fitness for similar misconduct involving the respondent's application for admission to the Bar. Adkins

> submitted an application for admission to this court's bar by motion and a 2008 Supplemental Questionnaire that omitted required information. The omitted information included civil lawsuits filed by or against him, his criminal convictions, and his past overdue debts. . . . [and] his filings contained specific misrepresentations concerning his criminal conviction arising from an alcohol-related hit-and-run accident.

Id. at 524. Adkins' misconduct violated D.C. Rules 8.1(a) (knowing false statement of material facts on admission application), 8.1(b) (failure to disclose a fact necessary to correct a misapprehension known by the applicant to have arisen), 8.4(b) (criminal act that reflects adversely on the honesty, trustworthiness, or fitness as a lawyer), 8.4(c) (dishonesty, fraud, deceit, or misrepresentation) and 8.4(d) (serious interference with the administration of justice). "[Adkins'] omissions and false statements precluded the Committee on Admissions from properly scrutinizing his fitness, resulting in his admission to the bar[.]" *Id.* Finally, Adkins "provided false testimony at the hearing" that the hearing committee found was false in several material ways. *Id.*

In *In re Small*, 760 A.2d 612 (D.C. 2000) (per curiam), the Court suspended the respondent for three years with proof of fitness for misconduct involving the respondent's application for admission to the Bar in violation of D.C. Rules 8.4(b) (commission of a criminal act reflecting adversely on lawyer's honesty, trustworthiness or fitness to practice law) and 8.1(b) (failure to disclose a necessary fact to correct misapprehension known by lawyer or failure to respond reasonably to

lawful demand for information from admissions or disciplinary authority). Small was convicted of felony vehicular homicide for driving while impaired in New York after he had submitted his D.C. Bar application. Small failed to update his pending D.C. Bar application to reflect his criminal matter, and also made a false statement on his supplemental questionnaire by failing to disclose the criminal matter prior to his swearing-in. *Id.* at 612-13.

Similarly, in *In re Thomas Edwards*, Board Docket No. 15-BD-030 (BPR July 25, 2019), *review pending*, D.C. App. No. 19-BG-659, the Board recommended a two-year suspension with fitness for the respondent's pattern of reckless misconduct that included dishonesty in making a misstatement on her renewal application for the D.C. District Court. In addition to her pattern of commingling and recordkeeping violations, the Board concluded that the respondent was recklessly dishonest in failing to report a prior public censure on her attorney renewal form, and in failing to correct the misstatement, both of which violated D.C. Rule 8.4(c).

In *In re Rohde*, 234 A.3d 1203 (D.C. 2020) (per curiam), the Court publicly censured the respondent for similar misconduct for a false statement on court application in violation of Virginia Rules 3.3(a)(1) and 8.4(c). Rohde

> knowingly made a false statement to the United States District Court for the Eastern District of Virginia in connection with an application to be admitted to that court pro hac vice, by representing that there had not been any action in any court pertaining to his conduct or fitness as a member of the bar, even though [he] knew that . . . his criminal felony conviction [had been referred to the Board].

Id. at 1203. Rohde also "misled the attorney sponsoring his pro hac vice application, by failing to disclose to her the prior conviction and the related disciplinary

proceedings." *Id.* The Board reasoned that while Rohde's conduct involved dishonesty, he had consulted in good faith with another attorney regarding whether the pending referral should be disclosed on the pro hac vice application, and that there were no aggravating factors. *In re Rohde*, Board Docket No. 15-BD-107, at 20, 24 (BPR Mar. 11, 2020).

Here, Respondent submitted six renewal applications to the District Court that intentionally omitted required information regarding his D.C. disciplinary history, violating the Maryland Rules related to dishonesty, false statements to the court, and conduct prejudicial to the administration of justice. Respondent's omissions and false statements prevented the Disciplinary Commission from properly assessing his fitness in determining whether his renewal applications should be approved. Respondent's intentionally false testimony during the hearing is a factor in aggravation of sanction. In addition, Respondent's disciplinary history includes five Informal Admonitions, as well as two one-year suspensions for prior misconduct involving dishonesty. Based on the cases involving comparable misconduct involving court applications, the Hearing Committee feels bound to recommend a three-year suspension as the appropriate sanction.

The Hearing Committee has concerns about Respondent's ability to change his pattern of intentional dishonest conduct with respect to representations he makes to courts. Respondent has "a lengthy series of ethical violations spanning two decades, one in which the misconduct grew more serious as time went on. Warnings and chastisements failed to impress [R]espondent with the need to conform to ethical

standards of practice." *Tun*, 195 A.3d at 80 (J. Glickman, concurring in part, dissenting in part regarding fitness in light of this disciplinary history). Respondent recognizes this is now his third disciplinary proceeding involving dishonest conduct. R. Br. at 6. It is also the second disciplinary case in which he gave false testimony to a hearing committee. Unfortunately, the Hearing Committee has no framework to address this pattern of dishonesty.

During the hearing, Respondent offered a vague plan to have two unnamed lawyers review his filings whenever he has "to swear under perjury or anything like that" to make sure that Respondent does not make the same mistake. Tr. 71. Given Respondent's intentionally false testimony with respect to the Rule violations, we cannot conclude that Respondent's testimony regarding implementation of a review plan is credible. FF 22-25. We can envisage no fitness requirements, probation conditions, or CLE courses that will correct Respondent's disregard for the truth when he is confronted with a court submission in the future.

V. CONCLUSION

For the foregoing reasons, the Hearing Committee finds by clear and convincing evidence that Respondent violated Maryland Rule 19-308.4(b) by committing perjury in violation of both the federal and state statutes, as well as 19-303.3(a)(l), 19-308.4(c), and 19-308.4(d), and should receive the sanction of a three-year suspension. We further recommend that Respondent's attention be directed to

the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Julie Abbate, Chair

Trevor Mitchell, Public Member

Eric L. Hirschhorn, Attorney Member