THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
July 31, 2019

In the Matter of:	:	
	:	
JINHEE KIM WILDE,	:	
	:	Board Docket No. 14-BD-067
Respondent.	:	Bar Docket No. 2009-D244
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 436659)	:	

REPORT AND RECOMMENDATION OF THE BOARD OF PROFESSIONAL RESPONSIBILITY

Hearing Committee Eleven found that Respondent, Jinhee Kim Wilde, stole $1,100 from another person during an airline flight, dishonestly attempted to cover up the theft, knowingly lied to Disciplinary Counsel[1] and obstructed its investigation, and gave intentionally false testimony during her disciplinary hearing. The Hearing Committee recommended that Respondent be disbarred. Disciplinary Counsel supports the Hearing Committee's disbarment recommendation, and Respondent opposes it. The Board agrees with the Hearing Committee and recommends that the Court disbar Respondent.

---

[1] When this disciplinary proceeding began, D.C. Office of Bar Counsel was the disciplinary authority. The title of that office changed on December 19, 2015, to the Office of Disciplinary Counsel. Although many of the proceedings and filings referred to Bar Counsel, for consistency, we use the current term, Disciplinary Counsel, in our Report.

* 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.

As explained in detail in the well-documented and well-reasoned Hearing Committee Report and Recommendation, this case has a complicated procedural and factual history. In sum, Respondent was accused of stealing money from the purse of a fellow passenger on an airline flight from Washington, D.C. to South Korea on May 28, 2007. FF 18-22.[2] Following an investigation by the South Korean police, Respondent was convicted in absentia on July 25, 2007. FF 40. Because it appeared that Respondent was not aware that the case against her had been going forward after she returned to the United States, she was granted a new trial, which took place between March 2008 and August 2009. At the conclusion of the trial, Respondent was again found guilty of theft. BX 94; *see* FF 41-43, 50, 116. Her conviction was upheld on appeal. FF 128.

Because of the prosecution of Respondent in South Korea, disciplinary authorities in both the District of Columbia and Maryland investigated the charges and instituted disciplinary proceedings. FF 101-02; HC Rpt. at 2-4; *see* RX 1 at 3-4. The charges brought by the Maryland Office of Bar Counsel ("Maryland Bar Counsel") alleged that Respondent had committed a theft, that she had fabricated

---

[2] "ODC" refers to the Office of Disciplinary Counsel (formerly the District of Columbia Office Bar Counsel). FF_", "BX_", "RX _", and "Tr. _" respectively refer to the Hearing Committee's Findings of Fact, Disciplinary Counsel's exhibits, Respondent's exhibits, and the disciplinary hearing transcript. "ODC HC Br.," "Resp. HC Br.," and "ODC HC Reply Br." refer to Disciplinary Counsel's brief, Respondent's brief, and Disciplinary Counsel's reply brief to the Hearing Committee, and "Resp. BPR Br.," "ODC BPR Br.," and "Resp. BPR Reply Br." refer to the parties' briefs to the Board. "HC Rpt." refers to the Hearing Committee Report and Recommendation.

and forged documents after the theft, and that she had provided false testimony and information to Maryland Bar Counsel, in violation of Maryland Rules of Professional Conduct 3.3, 3.4, 8.1, and 8.4(b) and (c). RX 1 at 4, 16; RX 2 at 12 (Mar. 3, 2011 Maryland Transcript). The factfinder in the Maryland case, the Circuit Court for Montgomery County ("the Maryland Court") – held a two-day hearing (March 3-4, 2011) and issued an opinion, in which it found both that Maryland Bar Counsel not proven any disciplinary rule violations and that Respondent had not committed the theft. RX 1 at 16; *see* HC Rpt. at 3-4.

Over Respondent's repeated assertions that the District of Columbia should drop all charges against her because of the Maryland Court decision in her favor, the Office of Disciplinary Counsel ("Disciplinary Counsel") proceeded with its charges in this case. HC Rpt. at 4-6; *see, e.g*., Resp.'s Mot. Preclude Charges Based on Collateral Estoppel; HC Order Apr. 3, 2015. In 2013, the Court of Appeals ruled that Respondent's South Korean conviction was not a "criminal conviction" within the meaning of D.C. Code § 11-2503(a) and D.C. Bar R. XI, § 10, but that the conviction might be given preclusive effect if the Hearing Committee determined it was "fair and reasonable" to do so. *In re Wilde,* 68 A.3d 749, 766 (D.C. 2013). Disciplinary Counsel filed a Specification of Charges in September 2014 (which was later superseded by an amended Specification of Charges), setting forth allegations that Respondent violated eight D.C. Rules of Professional Conduct. HC Rpt. at 4-5.

In competing motions in advance of the hearing, Disciplinary Counsel argued that the doctrine of collateral estoppel prevented Respondent from relitigating the

issue, decided in South Korea, of whether she had committed theft, and Respondent argued that collateral estoppel prevented Disciplinary Counsel from relitigating the issue, decided in Maryland, of whether she had violated any disciplinary rules. HC Rpt. at 5-6. Both motions were denied by the Hearing Committee in April 2015. HC Order Apr. 3, 2015; HC Order Apr. 28, 2015; HC Rpt. at 6.[3]

Hearing Committee Number Eleven held a seven-day hearing between May 11, 2015 and May 4, 2016. HC Rpt. at 6-8. The Hearing Committee later reopened the record to take additional testimony and receive exhibits on a limited issue. *Id.* at 9.

The Hearing Committee found that Respondent (i) stole $1,100 from Ms. Erica Yoon[4], and (ii) engaged in subsequent misconduct to cover up the theft. Specifically, the Committee found that Respondent violated the following Rules:

---

[3] The Hearing Committee followed the procedure for addressing the application of collateral estoppel set forth originally in the Board Report in *In re Fastov*, Board Docket No. 10-BD-096 at 21-23 (BPR July 31, 2013). Disciplinary Counsel argued that the *Fastov* procedures did not require the Hearing Committee to resolve the issue of whether the South Korean conviction was entitled to collateral estoppel treatment in advance of the hearing. ODC's Mot. Recons. HC Chair's Order Denying Collateral Estoppel Effect for Resp.'s South Korean Criminal Conviction at 1-2. Disciplinary Counsel sought to proffer the testimony of its "expert witness" and a reconsideration of the Hearing Committee's decision (*id.)*, but ultimately it went forward by proving the facts of the theft rather than relying on the decision of the South Korean Court.

The Board endorses the procedures set forth in the *Fastov* Board Report. However, that Report was vacated because Mr. Fastov died before the Court issued its opinion. Thus, we here adopt the collateral estoppel procedure that was in the *Fastov* Board Report and include it as an appendix to this report.

[4] Respondent argues Ms. Yoon has given inconsistent statements about the amount of money she asserts was missing from her wallet and she implies that this should lead the Board to find that Ms. Yoon's assertion that $1,100 was stolen is not credible. Resp. HC Br. at 5, 24; Resp. BPR Br. at 14-16; Resp. BPR Reply Br. at 3. The Hearing Committee rejected this argument and instead

(i) 3.3(a)(1) by making repeated false statements to the South Korean courts;

(ii) 3.3(a)(4) and 3.4(b) by repeatedly submitting false evidence to the South Korean courts;

(iii) 8.1(a) and (b) by knowingly lying to Disciplinary Counsel and obstructing its investigation by withholding documents;

(iv) 8.4(b) by committing multiple criminal acts, including larceny and forgery;

(v) 8.4(c) by engaging in dishonesty, fraud, and misrepresentation in fabricating documents and making false statements to the South Korean authorities about them; and

(vi) 8.4(d) by making false representations to the South Korean court during the criminal trial, submitting fabricated documents to the South Korean court, making false statements to Disciplinary Counsel, and failing to produce documents during the disciplinary investigation.

HC Rpt. at 60-68. The Committee also found that Respondent "lie[d] with impunity under oath during the disciplinary hearing itself." *Id.* at 71. The Committee recommended that Respondent be disbarred. *Id.* at 68-75.

Respondent takes exception to the Hearing Committee's report in many respects. The key argument, woven throughout her brief, is that the Hearing Committee erred in not accepting the Maryland Court's finding that Respondent did not engage in misconduct. Resp. BPR Br. at 8-14. Additionally, she contends that the Hearing Committee's findings that she committed theft, forged and fabricated documents, and completed or mailed checks purporting to be from her former partner, were not supported by substantial evidence. *Id.* at 14-25. She argues that,

found that Ms. Yoon was able to determine that she was missing $1,100 and that she was a credible witness. FF 17 n.6, 19, 27.

in light of the Hearing Committee's failure to accept the Maryland Court's findings and the lack of substantial evidence to support the Committee's factual findings, the Hearing Committee's determinations that she violated the Rules were also in error. *Id.* at 25. Respondent further contends that the Hearing Committee erred in admitting transcripts from the South Korean proceeding because they were unreliable and contained hearsay within hearsay. *Id.* at 25-27. Finally, Respondent argues that because the Hearing Committee erred in its findings of Rule violations, she should not be sanctioned. *Id.* at 27. Alternatively, she argues that, assuming the Board concurs with the Hearing Committee's findings of Rule violations, the Hearing Committee's disbarment recommendation is improper given the existence of mitigating factors, including her lack of disciplinary history, her "distinguished career," and the absence of any relation between her alleged misconduct and her professional responsibilities. *Id.* at 28-29. She argues that the most relevant case law requires only a suspension. *Id.* at 29-30.

Disciplinary Counsel takes exception only to the Committee's determination that there was not clear and convincing evidence that Respondent engaged in criminal fraud in violation of D.C. Code § 22-3221(a). ODC BPR Br. at 29.

We have reviewed the Hearing Committee's Report and the complete record. We address the parties' objections but find that none have merit. Except as set forth below, we incorporate and adopt the Hearing Committee's findings of fact and conclusions of law. Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rules 3.3(a)(1), 3.3(a)(4), and 3.4(b) by making repeated

false statements and repeatedly submitting false statements to the South Korean courts; Rules 8.1(a) and (b) by knowingly lying to Disciplinary Counsel and obstructing its investigation by withholding documents; Rule 8.4(c) by engaging in dishonesty, fraud, and misrepresentation in fabricating documents and making false statements about them to the South Korean authorities; and Rule 8.4(d) by making false representations and submitting fabricated documents to the South Korean court during the criminal trial, and making false statements and failing to produce documents to Disciplinary Counsel during the disciplinary investigation. Respondent also violated Rule 8.4(b), but we base our conclusion on a rationale different from that of the Hearing Committee.[5] We also agree with the Hearing Committee that, despite Respondent's illustrious career and the fact that her violations did not occur in her practice of law, in view of her pervasive dishonesty and theft, the appropriate sanction is disbarment.

I. The Decision of the Maryland Circuit Court in the Maryland Disciplinary Proceedings Does Not Collaterally Estop the Disciplinary Proceedings in the District of Columbia.

Respondent repeatedly argues that collateral estoppel requires the District of Columbia disciplinary authorities and the Court of Appeals to accept the result of the Maryland disciplinary proceeding, rather than to separately examine Respondent's conduct. She contends that because Disciplinary Counsel relies on the

[5] We apply the D.C. Rules even though this event involved conduct in a matter pending before a tribunal – the South Korean court – because Respondent was not acting as *counsel* in those proceedings. Neither party has argued that any other Rules should apply to Respondent's conduct.

decisions in other jurisdictions to impose reciprocal discipline, it must also defer to the Maryland Court's decision finding that Respondent did not violate any Rules. We disagree.

As the D.C. Court of Appeals has repeatedly stated, the doctrine of collateral estoppel

> renders conclusive in the same or a subsequent action determination of an issue of fact or law when (1) the issue is actually litigated and (2) determined by a valid, final judgement on the merits; (3) after a full and fair opportunity for litigation by the parties or their privies; (4) under circumstances where the determination was essential to the judgment, and not merely dictum.

Modiri v. 1342 Rest. Group, Inc., 904 A.2d 391, 394 (D.C. 2006) (quoting *Davis v. Davis*, 663 A.2d 499, 501 (D.C. 1995)).

The Court recently applied these principles in a disciplinary case in which the respondent raised the same arguments as Respondent here. *In re Robbins*, 192 A.3d 558, 565-66 (D.C. 2018) (per curiam). In *Robbins*, a Virginia court, determining whether the respondent violated the Virginia Rules, had considered both the evidentiary record of a proceeding before a District of Columbia hearing committee and that hearing committee's report and recommendation, which concluded that the respondent had engaged in misconduct. The Virginia court then found that there were no Virginia disciplinary violations and dismissed the case. *Id.* at 562-63. In contrast, the Board ultimately adopted the hearing committee's report and recommendation that the respondent be suspended for sixty days. *Id.* The respondent argued that the Board erred and that it could not adopt the hearing

committee report but was obligated to defer to the Virginia court's decision and dismiss the case. *Id.* at 566.

The Court rejected that argument, holding that the District of Columbia was not bound by Virginia's determination. *Id.* First, it noted, "Missing here is privity between Disciplinary Counsel and its Virginia counterpart. Privies are sometimes described as 'those who control an action although not parties to it; those whose interests are represented by a party to an action; and successors in interest.'" *Id.* at 565-66. The respondent argued that the disciplinary counsel in both jurisdictions were members of the National Organization of Bar Counsel and shared a common goal of disciplining attorneys who violate rules central to the conduct of the profession." *Id.* at 566. The Court found that this did not satisfy the collateral estoppel doctrine's privity requirement. *Id.*

The *Robbins* Court also noted that there was "no evidence that [D.C.] Disciplinary Counsel participated in the Virginia proceedings or coordinated with Virginia's Bar Counsel to present consistent arguments." *Id.* Respondent here seeks to distinguish her case by arguing that Disciplinary Counsel participated in the Maryland hearing. She offers that Disciplinary Counsel shared its file with Maryland Bar Counsel. Resp. BPR Reply Br. at 7. But she then baldly asserts, without record citation, that "[i]t is undisputed that Maryland Bar Counsel and D.C. Disciplinary Counsel worked together in this case by sharing evidence, observations and information regarding the charges against Respondent." *Id.* Disciplinary Counsel argues that Maryland Bar Counsel was not acting for it or its interests in the

Maryland proceeding. ODC BPR Br. at 18; ODC's Opp'n Resp.'s Mot. Use Collateral Estoppel Preclude Litigating the Compl. at 2. We agree. There is no evidence in the record that Disciplinary Counsel participated in the Maryland proceedings. And Disciplinary Counsel charged more Rule violations than did Maryland Bar Counsel. ODC BPR Br. at 18-19.

Moreover, Disciplinary Counsel presented more and different evidence than Maryland Bar Counsel presented. The Hearing Committee heard the testimony of approximately 20 witnesses, whereas the Maryland Court heard only nine. HC Rpt. at 7-8; RX 2; RX 3. Perhaps most importantly, Ms. Yoon, the victim of the theft, testified via speakerphone and without the benefit of a translator in Maryland, but testified in person and with the assistance of a translator in the District proceedings. FF 17 n.6. The Maryland Court found her testimony not to be credible, but the Hearing Committee reached the opposite conclusion. *Compare* RX 1 at 10 *with* FF 17 n.6. Ms. Yoon explained that she could not fully hear or comprehend all the questions asked by the Maryland lawyers, whereas she was able to communicate fully in the District. FF 17 n.6; Tr. 139, 147-48; 156-57. Indeed, the transcript of Ms. Yoon's Maryland testimony includes several places where Ms. Yoon's answers are "unintelligible" to the court reporter, or where the telephone connection is insufficient. *See* RX 3 at 3, 5, 32, 34, 36, 40, 66 (unintelligible); RX 3 at 16-17, 58 (connectivity issues). There were no such problems in her testimony in the District of Columbia. The Hearing Committee also had the benefit of many more exhibits in reaching its decision, and unlike in Maryland, the Hearing Committee was

allowed to consider hearsay evidence that corroborated Ms. Yoon's testimony. *See In re Shillaire*, 549 A.2d 336, 343 (D.C. 1988).

As the Court found in *Robbins*, the doctrine of collateral estoppel does not apply here, and the Maryland Circuit Court decision is not entitled to preclusive effect. However, the proceedings of the Maryland disciplinary proceedings – including the Circuit Court's decision – are in evidence, and we have fully considered them in making our findings and recommendations to the Court.

II. There is Substantial Evidence to Support the Hearing Committee's Findings of Fact.

Relying in large part on the existence of evidence contrary to many of the Hearing Committee's findings, Respondent contends that its findings were not supported by substantial evidence in the record and that, consequently, the Board is not required to accept them. *See* Resp. BPR Br. at 14-25. We disagree and find that the Hearing Committee's findings are supported by substantial evidence.

The Hearing Committee's task was "to ensure that each finding is supported by clear and convincing evidence." *Robbins*, 192 A.3d at 564. It is not required "to enumerate every fact that has possible relevance to an issue in its report." *Id.* The Court has made clear that it will uphold the findings of a hearing committee where there is substantial evidence to support the findings "even where evidence may support a contrary view as well." *Id.* Indeed, the Court will not disregard the findings of the hearing committee even where there is substantial evidence pointing in opposite directions. *In re Szymkowicz*, 124 A.3d 1078, 1084 (D.C. 2015) (per curiam); *see also In re Godette*, 919 A.2d 1157, 1163 (D.C. 2007) (the "court must

accept a finding that is supported by substantial evidence in the record as a whole, 'even though there may also be substantial evidence in the record to support a contrary finding'").

A. The South Korean Transcript Exhibits

Respondent contends that the Hearing Committee relied on improper evidence in reaching its decision because it erroneously admitted Disciplinary Counsel Exhibits 31-37 and 41-45, transcripts and records of the South Korean criminal proceeding. She asserts that these transcriptions were unreliable and contain hearsay within hearsay, and thus should be excluded from the Board's consideration of the evidence. Resp. BPR Br. at 25-27.

Respondent asserts that the South Korean transcriptions are "unreliable," because they are "not on par with transcription requirements in the United States." *Id*. at 26. A professor familiar with South Korean criminal procedure, Professor Ann Park, testified about the transcription of the court proceedings and the witnesses' testimony. FF 72 n.17; Tr. 905-12. She agreed that some of the court proceedings were not transcribed verbatim, but the testimony of the witnesses was. FF 42, 72 n.17; Tr. 909-10. Since the Hearing Committee reached its own conclusion as to whether Respondent committed larceny, rather than accepting the verdict of the South Korean court or finding that it was dispositive, the exhibits pertaining to the South Korean court proceedings have less significance here.

Although she has objected generally, Respondent does not identify any instance in which she asserts that the transcription of a witness' testimony is

inaccurate, and the Hearing Committee did not find that any occurred. Thus, we accept the Hearing Committee's finding of fact, as based on substantial evidence, including its consideration of the South Korean transcripts of witness testimony. FF 42.

Turning to Respondent's second objection to the South Korean exhibits, Respondent acknowledges that hearsay is admissible in disciplinary proceedings but contends that double hearsay statements "cannot be considered as meeting any test of reliability." Resp. BPR Br. at 26. Board Rule 11.3 provides that "[e]vidence that is relevant, not privileged, and not merely cumulative shall be received." Respondent does not cite any authority for the exclusion of "double hearsay." She also does not cite any Hearing Committee finding that was based solely on any such "double hearsay" or otherwise not based on substantial evidence.

Thus, we find no reason to disturb the Hearing Committee's findings of fact, which are founded on substantial evidence, despite Respondent's objections.

B. The Hearing Committee's Conclusions That There Is Substantial Evidence to Support Its Findings of Fact Are Correct

Although Respondent outlines facts that are contrary to the findings of the Hearing Committee, the nub of her argument is that the Hearing Committee believed the wrong witnesses, including most of those presented by Disciplinary Counsel, and improperly disbelieved Respondent and her witnesses. *See, e.g.*, Resp. BPR Br. at 2, 12-15, 17-20, 22, 24-25. Respondent does not, however, identify any of the Committee's factual findings that she asserts are not supported by substantial evidence in the record. *See In re Evans*, 902 A.2d 56, 70 (D.C. 2006) (per curiam)

("Substantial evidence means enough evidence for a reasonable mind to find sufficient to support the conclusions [the Hearing Committee] reached.").

The Hearing Committee's well-documented findings of fact are supported by substantial evidence and, as noted above, we adopt its findings.

We need not repeat all the Hearing Committee's findings, because a general description of the evidence supporting the theft and Respondent's falsification of evidence explains our conclusion that Respondent violated the Rules of Professional Conduct and our sanction recommendation.

1. Respondent's Theft

Respondent stole money from Ms. Yoon. The flight attendant who observed Respondent going through Ms. Yoon's purse testified in Korea, and the Hearing Committee considered that testimony. HC Rpt. at 34 n.13; FF 18, 58. Ms. Yoon testified credibly before the Hearing Committee about the money she had when she boarded the plane and how much was missing after Respondent went through her purse. FF 19. After Respondent was observed going through Ms. Yoon's purse, Respondent had $100 bills with serial numbers sequential to the serial number on a bill still in Ms. Yoon's wallet. FF 21, 28. The South Korean police asked Respondent if she could explain her possession of sequentially numbered bills, and she suggested that Ms. Yoon could have withdrawn her bills from Respondent's bank.[6] FF 25. Respondent gave two statements to the South Korean police, but

6 Ms. Yoon did not withdraw any money from Respondent's Bank. FF 27.

never told them that she had a list of the serial numbers on the bills that she had withdrawn from her bank – originally Commerce Bank, but later renamed "TD Bank" ("the Bank") – prior to boarding the plane. FF 25-26, 33-34; HC Rpt. at 7 n.3. The South Korean police made a list of the serial numbers on the bills Respondent and Ms. Yoon each had and made photocopies of the bills.[7] FF 29. The police gave Respondent a copy of these documents before she left South Korea. *Id*. We agree with the Hearing Committee that there is substantial evidence that Respondent committed theft.

2. Respondent's Effort to Cover-up the Theft

Respondent created a false paper trail in an attempt to explain her possession of bills with serial numbers sequential to Ms. Yoon's bill. She testified at the disciplinary hearing that after her firm's bookkeeper had withdrawn ten $100 bills from the Bank, Respondent decided she needed a list of the serial numbers on the bills. Respondent conceded that she had never sought to memorialize the serial numbers of her withdrawals on any other occasion, but she did so here because of her "women's intuition." FF 37, 45. The Hearing Committee did not credit

[7] These facts demonstrate a significant difference between the evidence presented to the Hearing Committee and that presented in the Maryland proceedings. The Maryland Court stated that one of the factors that influenced its decision to credit Respondent's version of events was that the South Korean police did not have records of the bills. RX 1 at 7, 10-12. Based on the totality of the evidence, this is clearly incorrect, but the Maryland Court was not aware that there was both documentary and testimonial evidence that these records did in fact exist. The Hearing Committee was aware of these facts (FF 25, 27-29), and it found them to be important to its decision. FF 32-38.

Respondent's testimony. *Id*. Following our *de novo* review of Respondent's credibility, we agree.

Respondent further testified that she took the bills back to the Bank, where Bank employee Brian Vinson provided her a list of the serial numbers on the bills Respondent's bookkeeper had withdrawn. FF 45-46; BX 28/RX 4. She conceded that this list was not on Bank letterhead and was undated. FF 44. Tellingly, it also listed one of the serial numbers that was in Ms. Yoon's wallet after the theft, even though it purported to list bills *Respondent* withdrew before she left for Korea. It also failed to list the serial number of a bill in the same sequence as the other bills seized from Respondent by the South Korean police. FF 45; BX 28/RX 4. *Compare* BX 8, *with* BX 10. Mr. Vinson testified that he did not create this document, and that it was not possible for the Bank to determine, from its records, the serial numbers of bills Respondent had withdrawn. FF 45, 47.

Respondent did not mention the existence of this purportedly exculpatory list to the airline's flight crew or to the South Korean police.[8] FF 21, 24-26, 32-36. When questioned about the serial numbers during a March 26, 2008 hearing in South Korea, Respondent testified that she showed Bank employees the serial number list created by the police and that the Bank verified that the bills had been withdrawn

8 Respondent claims she gave this list to the police the day after the alleged theft, but they deny ever receiving it – and there is no evidence supporting Respondent's claim. *See* RX 1 at 7-8; FF 34, 46. The police testified instead that Respondent provided a "supplemental statement" that included copies of the check she had negotiated at the Bank and a list of other withdrawals that she said evidenced the amount of money she had with her on the plane. FF 32-34. The Hearing Committee found Respondent's assertions not credible on this point. FF 37.

from Respondent's branch. FF 54. Respondent did not tell the South Korean court that *she* had obtained a list of serial numbers before she boarded the plane, and instead asserted that *the Bank* could provide such information based on its own records. FF 56. Respondent ultimately admitted to Bank Manager David Chalker that she had fabricated a list of the serial numbers and submitted it to the South Korean court as a Bank record. FF 88. Based on the foregoing, and as fully described in the Hearing Committee Report, we agree with the Hearing Committee that Mr. Vinson did not provide such a list, that Respondent fabricated the list, and her testimony regarding the list was intentionally false.[9]

The Hearing Committee found that Respondent fabricated or forged ten additional documents purporting to be communications with Bank employees. BX

---

9 The Hearing Committee found these facts "belie[d] Respondent's story" that she obtained a list of serial numbers from the Bank. FF 45.

The Hearing Committee also found that Respondent fabricated a February 15, 2008 Bank letter (BX 48) that contained the same list of serial numbers as on the document purporting to have been given to her by the Bank on May 22, 2007 (RX 4/BX 28). Primarily because of an unresolved question about its notarization, we conclude that there is not clear and convincing evidence supporting that finding.

Respondent claims that she received this document from Mr. Vinson. During most of the hearing, the parties used copies of this document, rather than the original. HC Rpt. at 9 and n.5. Looking at these copies, Mr. Vinson testified that he had not notarized the document, in part because his raised notarial seal was missing. Tr. 433-34. Following the hearing, Respondent reviewed the original in South Korea and submitted a photograph displaying a seal which appeared to be Mr. Vinson's on the document. HC Rpt. at 9; RX 14. The Bank employee who purportedly signed the letter emphatically and credibly denied signing it, but Mr. Vinson did not testify further to address or explain the seal. FF 52. We are thus unable to determine by clear and convincing evidence that the February 15, 2008 letter was fabricated by Respondent.

Our finding has no effect on our conclusions. The primary issue we face is whether – prior to the flight – Respondent had a list of the serial numbers of the bills she had withdrawn from the Bank or if the Bank could – after the fact – accurately determine these serial numbers. The "original" letter Respondent claims she obtained from Mr. Vinson on May 22, 2007 was fabricated. FF 46.

49, 50, 51, 52, 53, 55, 56. Bank employees all denied both that they had received letters Respondent claims to have sent and that they prepared various documents as a result. FF 62-63, 68 (Vinson), 70, 75-76 (Chalker), 105-06, 121 (Tucci), 105, 121-22 (Dietrick); *see also* FF 65 (Gomez, Teras & Wilde employee). In addition, there were serious errors in the documents purporting to come from the Bank that the Bank employees would not have made.[10] FF 68, 70, 74.

Respondent fabricated several of these documents in an attempt to convince the South Korean court that the Bank was able to confirm the serial numbers of the $100 bills she received on May 22, 2007. *See* FF 56, 60-67, 69, 73, 75, 105; BX 49, 55, 56. Bank employees testified that this was not true and that the Bank's records did not allow them to track the serial number of individual bills given to customers as part of regular banking transactions. FF 48, 56, 63, 75.

Several of these fabricated documents also purported to provide additional information that Respondent argued supported her position. *See, e.g.*, FF 59, 63, 70, 75. For example, one of the documents purported to provide information about Ms.

And if the February 15, 2008 letter was based on RX4, it cannot be relied on as an accurate list of serial numbers. Thus, we conclude that whether or not the February 15, 2008 is authentic or was fabricated, it does not prove that Respondent had bills with the serial numbers listed in that document when she boarded the airplane.

[10] For example, the Bank referred to local offices as "stores," but the documents referred to them as "branches." FF 47, 57, 74. The titles under the signature lines of several Bank employees were incorrect. FF 63, 70, 74. The documents purportedly from David Chalker misspelled his last name ("Chaulker"). FF 70, 73, 74. One of the documents "copied" a fictitious Bank employee. FF 70. Finally, another document purported to have been written by Chris Tucci months after he left employment with the Bank. FF 121.

Yoon – which would have been a violation of bank secrecy laws to provide. FF 63; BX 49-50. The same document purported to "confirm" that the May 22, 2007 withdrawal was consistent with Respondent's general practice and that Respondent's $1,000 withdrawal was the only one of that size from the Bank that week. *Id*. Bank employees testified that there was no factual basis for these statements and thus they were false. *See* FF 63, 70, 75.

Other fabricated documents also contained statements in which the Bank appeared to comment negatively about, and to express its unwillingness to cooperate with, the South Korean proceeding. FF 70, 105, 121; BX 55-56, 80. However, the Bank employees who testified were generally unaware of those proceedings, let alone willing to make such statements to a foreign court. *See* FF 70, 106; HC Rpt. at 35 n.15; BX 88. The Hearing Committee found that Respondent created these documents "in an effort to discredit the testimony of the Bank employees and provide corroboration for the statements and information in the fabricated Bank documents she previously submitted as evidence." FF 104. The Hearing Committee's findings were supported by substantial evidence, and we agree with them.

Finally, Respondent forged three checks belonging to Worldwide Personnel, a company owned by Christopher Teras, Respondent's former law partner. FF 2-3, 108. Because of Respondent's criminal charges in South Korea, Mr. Teras severed their partnership and was involved in litigation with Respondent about this dissolution, during the South Korean and these disciplinary proceedings. FF 80-81.

Two of these checks were written to colleagues of Mr. Teras in an attempt to embarrass him, and one was written to Ms. Yoon in an attempt to raise questions about Mr. Teras's ability to influence Ms. Yoon's testimony and about Ms. Yoon's impartiality. *See* FF 108, 111-13, 124-25. The Hearing Committee found, based on substantial evidence, that Respondent forged these checks. FF 115. Based on our review of the Hearing Committee's findings, and our *de novo* review of Respondent's credibility, we agree with the Hearing Committee's determination.

3. False Statements to and Withholding Documents from Disciplinary Counsel

The Hearing Committee made detailed findings of fact, based on clear and convincing evidence, about Respondent's false statements and representations to it, including about the documents the Hearing Committee – and the Board – has found to be fabricated or forged. FF 129. "Whether respondent gave sanctionable false testimony before the Hearing Committee is a question of ultimate legal fact that the Board and [the] court review *de novo*." *In re Bradley*, 70 A.3d 1189, 1194 (D.C. 2013). We also note that Respondent informed the Maryland Court in 2011 that she had not relied – and was not relying – on these documents after Bank employees denied that they were authentic, yet she continued to argue their authenticity throughout the disciplinary proceedings. RX 2 at 38, 48-49 (Mar. 4, 2011 Maryland Transcript); *see, e.g.*, FF 125, 129. We find that Respondent's statements to

Disciplinary Counsel (and to the Hearing Committee) were knowingly false and seriously interfered with the administration of justice.

The Hearing Committee also found that Respondent did not fully and timely respond to Disciplinary Counsel's subpoenas. FF 130-33. Those findings were based on substantial evidence and thus the Board adopts them.

III. Disciplinary Counsel Proved that Respondent Violated Rules 3.3(a)(1), 3.3(a)(4), 3.4(b), 8.1(a), 8.1(b), 8.4(b), 8.4(c), and 8.4(d) by Clear and Convincing Evidence.

After a careful and thorough review of the evidence, the Hearing Committee concluded that Respondent violated eight of the D.C. Rules of Professional Conduct: Rules 3.3(a)(1), 3.3(a)(4), 3.4(b), 8.1(a), 8.1(b), 8.4(b), 8.4(c), and 8.4(d). Disciplinary Counsel proved these violations by clear and convincing evidence, and we adopt the Hearing Committee's Report, with the exception of certain of its findings relating to Rule 8.4(b). We find that Disciplinary Counsel proved a violation of 8.4(b) on fewer grounds than those found by the Hearing Committee.

Disciplinary Counsel alleged that Respondent violated Rule 8.4(b) by committing (i) larceny in violation of Article 329 of the Republic of Korea Criminal Act, (ii) first-degree fraud in violation of D.C. Code § 22-3221(a) or second-degree fraud in violation of D.C. Code, § 22-3221(b), and (iii) forgery and uttering in violation of D.C. Code § 22-3241(b). *See* HC Rpt. at 5. The Hearing Committee found that Respondent committed larceny/theft and forgery, but declined to find she engaged in fraud. HC Rpt. at 64-66. Disciplinary Counsel agrees with the Committee's conclusions that Respondent committed larceny and forgery, but takes

exception to the Committee's finding that Respondent did not engage in criminal fraud. Respondent argues that she did not commit any criminal offense.

Rule 8.4(b) provides that "[i]t is professional misconduct for a lawyer to . . . [c]ommit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." In construing the phrase "criminal act," the disciplinary system "may look to the law of any jurisdiction that could have prosecuted the respondent for the misconduct." *In re Gil*, 656 A.2d 303, 305 (D.C. 1995); *see also In re Mitrano*, 952 A.2d 901, 924 (D.C. 2008); *In re Slattery*, 767 A.2d 203, 212-13 (D.C. 2001) (determining that evidence of respondent's unauthorized withdrawal of funds from a bank in Washington, D.C. constituted theft in violation of D.C. criminal law and Rule 8.4(b)).

Gil requires that Disciplinary Counsel first identify one or more jurisdictions that could have criminally prosecuted a respondent and then prove by clear and convincing evidence that the respondent's conduct satisfied all the elements of a criminal violation in at least one of those jurisdictions. It is not sufficient for Disciplinary Counsel to simply argue that a respondent's conduct violated the laws of *some or many* jurisdictions, without proving both that the respondent could have been prosecuted in a *specific* jurisdiction or jurisdictions and that the respondent's conduct violated the law in *that or those* jurisdictions. It is also not sufficient to assert that there is "no meaningful difference between the criminal offenses at issue from jurisdiction to jurisdiction." ODC HC Br. at 46 n.23.

We concur with the Hearing Committee's determination that Respondent engaged in criminal acts that constitute larceny[11] in violation of South Korean law. Respondent was prosecuted in South Korea for larceny, and Respondent has not challenged that court's jurisdiction. Thus, there is no question as to which jurisdiction's laws we must analyze. Article 329 of the Korean Criminal Act, labelled "Larceny," provides that "[a] person who steals another's property shall be punished by imprisonment . . . or by a fine . . . ."[12] Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Article 329 of the Korean Criminal Act by stealing money from Ms. Yoon during an flight to South Korea in May 2007[13] and thus that Respondent violated Rule 8.4(b).

Disciplinary Counsel also charged Respondent with violating Rule 8.4(b) by committing criminal actions constituting fraud and forgery in violation of *D.C. law*. Thus, to prove a violation of Rule 8.4(b), Disciplinary Counsel is required to prove by clear and convincing evidence that at least one element of the criminal violation

---

11 We note that the criminal act involved in this proceeding has been labelled variously as "theft" and as "larceny." The Korean Criminal Act labels the actions charged here as "larceny," while the D.C. law labels them as "theft." For the purposes of our analysis here, no distinction in the use of the terms is intended, nor are we aware that one exists, so these terms are used interchangeably.

12 An English translation of this section is found at https://www.wipo.int/edocs/lexdocs/laws/en/kr/kr033en.pdf.

13 In the Amended Specification of Charges, Disciplinary Counsel asserted that Respondent's theft also violated D.C. Code § 22-3211. Disciplinary Counsel did not present any evidence on this point, and during the hearing, Disciplinary Counsel appeared to partially concede that "no jurisdiction in the United States could have prosecuted Respondent for the crime of theft." Tr. 7. Because we find that Respondent's actions constituted larceny under South Korean law, it is not necessary to conduct further analysis. Further, as explained in more detail below, we question whether any of the actions involved in this criminal act occurred in the District of Columbia.

occurred "within the geographic boundaries of the District of Columbia." *Dobyns v. United States*, 30 A.3d 155, 157-58 (D.C. 2011).

The substance of Disciplinary Counsel's fraud allegation is that Respondent "engaged in fraud through a systematic course of conduct intended to defraud the Korean court as well as the disciplinary system concerning her actions and those of others (including the Bank employees, the flight crew, Ms. Yoon and Mr. Teras)." ODC BPR Br. at 30. Disciplinary Counsel relies on D.C. Code § 22-3221(b) (second-degree fraud) to assert that Respondent's actions were intended "to protect her reputation," not for financial gain. ODC HC Br. at 47. *Cf. In re Silva*, 29 A.3d 924, 940 (D.C. 2011) (appended Board Report) ("[T]he benefit required to demonstrate fraudulent intent need not be monetary or material, the intent to preserve [respondent's] reputation or image is sufficient to support the finding that he committed a criminal act proscribed by D.C. Code § 22-3241(b).").

There is overwhelming evidence that Respondent created false and fraudulent documents and used those documents to attempt to defeat the South Korean prosecution. But Disciplinary Counsel did not charge Respondent with a violation of South Korean law, and Disciplinary Counsel did not prove that Respondent's actions occurred in the District of Columbia. Although the falsified documents purported to come from banks located in the District of Columbia, Disciplinary Counsel did not offer proof as to where these documents were actually created. They were offered by Respondent's counsel in South Korea, *see, e.g.*, FF 53, 66, but there was no proof presented that these emanated from a location *in* the District of

Columbia. Disciplinary Counsel has argued that "[w]hen Respondent engaged in criminal acts of fraud and forgery, she was a D.C. lawyer, dealing with a D.C. bank, and providing documents purportedly from the Bank and its employees." ODC HC Br. at 46 n.23. It now asserts that Respondent "engag[ed] in . . . a systematic course of conduct intended to defraud the Korean court . . . concerning her actions and those of others (including the [B]ank employees, the flight crew, Ms. Yoon and Mr. Teras)." ODC BPR Br. at 30.

We agree that the evidence of Respondent's conduct in falsifying and forging documents and lying to the South Korean court is strong, but Disciplinary Counsel did not offer proof as to whether any of the actions constituting "the course of conduct" intended to defraud the South Korean court occurred *within the District's boundaries*.

Disciplinary Counsel also asserts that Respondent violated Rule 8.4(b) because her actions constituted an intent to defraud the Maryland and District of Columbia "disciplinary systems." ODC BPR Br. at 30. Disciplinary Counsel's argument appears to be that Respondent had the intent to defraud the disciplinary systems by creating these documents and lying about them.[14] The fabricated

---

[14] D.C. Code § 22-3221(a) provides that a person commits first-degree fraud if she "engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise and thereby obtains property of another or causes another to lose property." Second-degree fraud is a lesser included offense, with the same elements except the requirement that the person actually "obtain[] property of another or cause[] another to lose property." D.C. Code § 22-3221(b).

Disciplinary Counsel asserted that Respondent violated both first- and second-degree fraud, but the Hearing Committee focused only on first-degree fraud (§ 22-3221(a)). It found that because Respondent's actions did not involve "a false promise or representation," she did not commit this

documents were presented to the Korean court and were intended to affect the court's decision there. Some of those documents were part of the Maryland proceeding and all of them were submitted in evidence in the current case, but they were not created to affect these proceedings. *See, e.g.*, RX 1 at 12-16; BX 28; BX 48; BX 54. Disciplinary Counsel did not cite any authority for the application of the fraud statute to a Respondent's presentation of her defense in a disciplinary case. We are loathe to extend the law as Disciplinary Counsel urges, because it creates the possibility that every disciplinary case could engender a fraud charge if Disciplinary Counsel asserted that a respondent testified untruthfully or offered fraudulent evidence more than once. Thus, we do not find that Disciplinary Counsel has proven by clear and convincing evidence that Respondent committed second-degree fraud under D.C. law.

The same can be said of contentions that Respondent violated D.C. forgery statutes.[15] Disciplinary Counsel charged that "Respondent violated the criminal forgery and uttering statute when she created the letters and documents, affixed forged signatures and partial notarizations, and submitted them to the Korean court

crime. HC Rpt. at 65. This analysis focused on the wrong conduct and the wrong standard. However, since we do not find that Disciplinary Counsel proved a fraud that could be prosecuted in the District of Columbia, we need not address this issue now.

15 In the District, a person commits the crime of forgery if she "makes, draws or utters a forged written instrument with the intent to defraud or injure another and the instrument is capable of effecting the fraud." *In re Slaughter*, 929 A.2d 433, 444 (D.C. 2007); *see* D.C. Code § 22-3241(b); *see* D.C. Code § 22-3241(a)(1)(A) (A forged written instrument includes "any written instrument that purports to be genuine, but is not because it . . . [h]as been falsely made, altered, signed or endorsed."); D.C. Code § 22-3241(a)(2) (uttering means "to issue, authenticate, transfer, publish, sell, deliver, transmit, present, display, use, or certify.").

and disciplinary system as authentic." ODC HC Br. at 48. However, Disciplinary Counsel did not argue to the Hearing Committee – and the Hearing Committee did not find – that any acts that satisfied any element of D.C. Code § 22-3241(b) occurred in Washington, D.C. Respondent forged the signatures of several Bank employees and made false additions to the blank Worldwide Personnel checks, but there is no evidence that any of these actions occurred in the District of Columbia, rather than in Virginia (where the Worldwide Personnel checks were received), in Maryland (where Respondent lived and worked at the time of the hearing), or in Korea (where Respondent spent a substantial amount of time), or someplace else.[16]

Respondent submitted forged instruments in the criminal matter in South Korea and in the disciplinary proceedings in Maryland, but this does not give the D.C. Superior Court jurisdiction over a forgery prosecution. There was no evidence presented that Respondent provided those documents to Disciplinary Counsel with the intent to defraud it. *See* ODC HC Br. at 54; *see Slaughter*, 929 A.2d at 444. Disciplinary Counsel cannot demand all documents Respondent submitted in the South Korea proceeding, and then argue that she could be prosecuted for forgery in D.C. because she complied with the subpoena by giving Disciplinary Counsel a copy of those forged documents which are used in the hearing.

Disciplinary Counsel did not prove that actions constituting at least one element of the D.C. fraud or forgery statutes occurred in the District of Columbia,

16 Respondent was not charged with forgery under Virginia, Maryland or South Korean statutes.

but because it proved by clear and convincing evidence that Respondent committed larceny in South Korea, we find that Respondent violated Rule 8.4(b).

SANCTION

The sanction imposed in an attorney disciplinary matter must protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2014); *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) (citation omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam). The sanction must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *Martin*, 67 A.3d at 1053; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

In determining an 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 her wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67

A.3d at 1053. 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)).

The Hearing Committee recommended that Respondent be disbarred. It found, not only did Respondent engage in the criminal acts of theft and forgery, but she displayed "repeated dishonesty followed by more dishonesty and a lack of remorse" and "disgraced her profession in two countries." HC Rpt. at 75.

Respondent argues that the recommended sanction is "improper and inappropriate." Resp. BPR Br. at 27. She contends that the Hearing Committee failed to consider her lack of prior discipline, her distinguished 33-year career, the Maryland Court's finding that no violations occurred, and the fact that the Rule violations at issue had nothing to do with clients or the practice of law. *Id.* at 27-29. Disciplinary Counsel supports the Hearing Committee's recommendation and argues that "anything less than disbarment would be 'improper and inappropriate,'" because the theft alone would warrant disbarment, as would Respondent's dishonesty. ODC BPR Br. at 30.

We agree with the Hearing Committee's recommendation. As discussed in detail above, we find that Respondent stole $1,100, which alone mandates disbarment.[17] But she did not stop there. Instead, she concocted an extensive

[17] We note that if Respondent had been convicted of felony theft in the United States, disbarment "would be statutorily mandated." *Slaughter,* 929 A.2d at 447 (citing D.C. Code § 11-2503(a); *In re Lee,* 706 A.2d 1032 (D.C. 1998) (per curiam) (forgery conviction was crime of moral turpitude

scheme to cover up her crime, which continued to unfold before the Hearing Committee in this case. *See* HC Rpt. at 71. (The Hearing Committee "was particularly concerned by Respondent's willingness to lie with impunity under oath during the disciplinary hearing itself.") Neither Respondent's lack of disciplinary history, nor her distinguished career, nor the fact that the violations at issue are unrelated to her legal practice can mitigate against the very serious misconduct at issue in this case. In the Board's view, consistent with comparable sanctions in the District of Columbia, the only appropriate sanction is disbarment, and we so recommend.

Over the course of many years, the Court has defined the circumstances when disbarment is appropriate and when other sanctions are more appropriate. We are aware that comparing cases is an inherently imprecise process. *See In re Haupt*, 422 A.2d 768, 771 (D.C. 1980) (per curiam). We recognize that there are often differences between past precedent and an individual case but nonetheless find the comparison important here. To ensure consistency, as discussed below, we compare the "gravity and frequency of the misconduct, any prior discipline, and any mitigating factors such as cooperation with Bar Counsel, remorse, illness, or stress." *In re Steele*, 630 A.2d 196, 199 (D.C. 1993).

---

per se mandating statutory disbarment)). However, the Court ruled that Respondent's South Korean conviction could not be considered a criminal conviction "within the meaning of D.C. Code § 11-2503(a) and D.C. Bar R. XI, § 10." *Wilde*, 68 A.3d at 766. Thus, our Report and Recommendation is not based on the South Korean court's verdict, but on the Board's own analysis of the facts.

In *In re Mardis*, 174 A.3d 868, 869 (D.C. 2017) (per curiam), the Court ordered the respondent disbarred after she engaged in fraud, committed theft, and then presented perjured testimony. Like Respondent, the respondent there also had no record of prior discipline. Mardis also unsuccessfully attempted to proffer mitigating evidence pursuant to *In re Kersey*, 520 A.2d 321 (D.C. 1987). *In re Mardis*, Board Docket No. 14-BD-085 (BPR July 13, 2017), appended Hearing Committee Report at 110, 122.

In *In re Baber*, 106 A.3d 1072, 1077-78 (D.C. 2015) (per curiam), the Court ordered the respondent disbarred after it found that he made a series of false statements not only to his client, but also to the court and to Disciplinary Counsel over a "protracted" two-year period, and he repeated some of his false statements in the disciplinary proceedings. Admittedly unlike Respondent, the matter involved harm to the respondent's client's interests, but like Respondent, Baber did not have a disciplinary record, showed no remorse, and did not accept responsibility for his actions. *Id.* Most importantly, the Court noted, the respondent's conduct violated the Court's longstanding position that "honesty is basic to the practice of law, and that lawyers have a greater duty then ordinary citizens to be scrupulously honest at all times." *Id.* at 1077 (citation omitted). That describes Respondent's conduct here.

In *Howes*, 52 A.3d at 4-5, the Court ordered disbarment of a respondent who, as a prosecutor, had improperly used witness vouchers to pay individuals who did not qualify for payments and then misrepresented his actions to the court. The allegations of misconduct are different from those here, but the sanction analysis is

relevant because the Court rejected the respondent's arguments that his "good character," as well as "his cooperation with [Disciplinary Counsel], the absence of prior discipline, the absence of personal financial gain, [and] the delay in the proceedings [were] mitigating factors which should preclude the imposition of [disbarment]." *Id.* at 5, 18-25. The Court determined that the respondent's misconduct was flagrant and pervasive, and that in such circumstances, "disbarment has been the appropriate sanction where, despite repeated misconduct, an attorney remains unwilling to show contrition or responsibility for his actions, . . . [even when] respondent did not gain a direct financial benefit from his misconduct." *Id.* at 24-25.

In *In re Pelkey*, 962 A.2d 268, 280-82 (D.C. 2008), the Court ordered disbarment for a respondent whose conduct in a business deal was tantamount to theft and who then lied about his conduct and engaged in other dishonest conduct. Like Respondent here, the respondent did not have a disciplinary history and showed no remorse for his actions. The Court noted that it has imposed disbarment in two types of "dishonesty cases," one of which is when the respondent has been flagrantly dishonest, due to violations of Rules 8.4(b) and (c), and when the respondent has engaged in criminal conduct and extremely serious acts of dishonesty, which describes Respondent's conduct here. The Court held that a lack of prior discipline does not "materially impact the sanction appropriate for the course of misconduct engaged in by [respondent] over several years." *Id.* at 282 (quoting and adopting the Board Report).

In *Slattery*, 767 A.2d at 215-19, where the respondent committed theft and engaged in dishonesty, the Court declined to adopt the Board's recommended sanction of three years with fitness and instead ordered disbarment. The Court rejected the arguments that the sanction should be "substantially mitigated" because the respondent's misconduct was not related to the practice of law, no client funds were involved, and there was a "controversy among the witnesses . . . as to who owned the funds and whether [the respondent] was entitled to them." *Id.* at 215-18. While the respondent had two prior informal admonitions, the Court did not regard them as "egregious aggravating factors . . . but [did not] discount them completely from [the] calculus." *Id.* at 218. More significantly, the Court found that the respondent's misconduct was "deliberate and deceitful" and that any "sanction short of disbarment in this case would foster a tendency toward inconsistent dispositions for comparable conduct." *Id.* at 218-19. Other than Slattery's brief disciplinary history, the factors the Court found important to its decision are also present here.

In *In re Cleaver-Bascombe*, 892 A.2d 396, 412 (D.C. 2006), although the facts are quite different from the instant case, the Court noted that "lying under oath on the part of an attorney for the purpose of attempting to cover-up previous dishonest conduct is absolutely intolerable," and that "an attorney who presents false testimony during disciplinary proceedings clearly does not appreciate the impropriety of his or her conduct." Both of these are significant aggravating factors in imposing discipline and are present here.

In possibly the closest case to Respondent's, in *In re Gil*, 656 A.2d 303 (D.C.

1995), the Court disbarred the respondent following a finding that he committed larceny and engaged in other acts of dishonesty unrelated to the practice of law or the representation of a client. There, the respondent stole funds from a friend, but thereafter confessed to the friend and repaid what he had stolen. *Id.* at 304. The Court noted that the respondent was not prosecuted but would have been automatically disbarred if he had been charged and convicted of the theft. *Id.* at 306. In accepting the Board's disbarment recommendation, the Court found that the respondent's actions "show[ed] him to be so wanting in his fundamental awareness of right and wrong that his continued membership in the Bar undermines its integrity and poses a threat to future clients." *Id.* (internal citation and quotations omitted).

Finally, in *Goffe*, 641 A.2d at 465, the Court disbarred the respondent for fabricating and presenting documents in two matters over several years, and for then falsely testifying about his actions. Like Respondent, Goffe did not have a disciplinary history, and he did not show any remorse. *Id.* at 466. Of particular note, the Court held that the manufacture and use of false documents was a significant factor that distinguished this case from others in which lesser sanctions had been imposed. The Court emphasized, "[d]ocuments are an attorney's stock in trade, and should be tendered and accepted at face value in the course of professional activity." *Id.* at 464-65 (quoting *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989)).

Respondent cites *In re Slaughter*, 929 A.2d 433 (D.C. 2007), as her sole authority in support of her contention that she should not be disbarred. Resp. BPR Br. at 29-30. In *Slaughter*, the Board found that the respondent had engaged in

criminal forgery and engaged in numerous acts of dishonesty, but nonetheless recommended a three-year suspension with a fitness requirement. *Id*. at 445–46. In doing so, the Board noted that Hearing Committee had made this recommendation and Disciplinary Counsel had not opposed it. *Id.* at 447. The Board determined that the three-year suspension was the least severe sanction it could recommend and also determined that a fitness requirement was appropriate. *Id.* The Court approved the sanction because it was recommended by the Board and Disciplinary Counsel did not object. *Id.* Notably, the Court observed that the sanction otherwise would have been too lenient for the misconduct:

> Respondent's misconduct was criminal and extreme, and it continued over an extended period of time. Were it not for our deferential standard of review with respect to the Board's recommendation, we would have no hesitation in ordering disbarment. We note, however, that Bar Counsel has filed no exception to the Board's report and recommendation and characterizes the Board's proposed sanction as "warranted and not inconsistent with dispositions in comparable cases." We have recently recognized that disciplinary proceedings in this jurisdiction are adversarial in nature, and that imposition of a sanction more severe than that recommended by Bar Counsel should be the infrequent exception rather than the rule. *See In re Ukw*u, No. 05-BG-788, 926 A.2d 1106, 1117 (D.C. 2007); *In re Cleaver-Bascombe*, 892 A.2d 396, 412 (D.C. 2006). We, therefore, have decided to adopt the Board's recommendation, which falls within, though on the lenient side of, the appropriate range in this area. We also note that respondent's reinstatement is conditioned upon proof of fitness to practice, and that on this record, respondent's burden, should he seek to rejoin our Bar, will be a very heavy one indeed.

Id. at 447 n.9. Thus, we do not find that *Slaughter* dictates – or even suggests – that the imposition of a suspension, rather than disbarment, would be appropriate here.

Rather, the comparable cases mandate a sanction of disbarment. Despite

Respondent's lack of disciplinary history and her distinguished career, her Rule violations are extremely serious, and her dishonesty was rampant.

Respondent engaged in an extensive cover-up scheme to hide her theft from another passenger, and she continued to lie in these disciplinary proceedings, thus violating D.C. Rules 3.3(a)(1), 3.3(a)(4), 3.4(b), 8.1(a), 8.1(b), 8.4(b), 8.4(c), and 8.4(d). She has never acknowledged her wrongful conduct, let alone indicated any remorse. These factors far outweigh the mitigating factors Respondent presented.

Thus, in order to maintain consistency in the sanctions imposed for disciplinary violations in the District of Columbia, for the reasons set forth in its Report and for the further reasons discussed herein, the Board is compelled to adopt the recommendation of the Hearing Committee, that Respondent be disbarred.

CONCLUSION

For the reasons discussed herein, we recommend that Respondent be disbarred from the practice of law. We further recommend that the period of disbarment run for purposes of reinstatement from the filing of the affidavit required by D.C. Bar R. XI, § 14(g). *See In re Slosberg*, 650 A.2d 1329, 1331-33 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: _____
Mary Lou Soller

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

Appendix – Collateral Estoppel in Disciplinary Proceedings

Where a party seeks to invoke collateral estoppel, the moving party should provide notice to the Chair of the Hearing Committee of its intent to invoke the doctrine at the initial pre-hearing conference. The moving party's notice should describe the final order or judgment on which it relies, the issues before the Hearing Committee that the moving party contends were resolved in the prior proceeding, and a showing that the findings or holdings were based on at least clear and convincing evidence or that the Court of Appeals has approved the use of collateral estopped where a different burden of proof applied. The Chair shall establish a date for the filing of a motion formally invoking the doctrine of collateral estoppel and explaining the basis for precluding relitigation of issues decided in the prior, underlying case.

The motion should specify with particularity the factual or legal issues, or both, that the moving party believes were resolved in the prior proceeding. The movant should demonstrate that such factual findings and/or the legal conclusions satisfy the criteria for invoking collateral estoppel on the factual and/or legal requirements relevant to establishing a violation of the rule(s) allegedly violated. Specifically, the moving party should demonstrate that: (1) the issue was actually litigated in the prior proceeding; (2) the issue was determined by a valid, final judgment on the merits; (3) the non-moving party had a full and fair opportunity to litigate the issue in the prior proceeding; and (4) the determination of the issue was essential to the judgment, not merely dictum. *In re Wilde*, 68 A.3d 749, 759 (D.C.

2013). The moving party must also establish that application of collateral estoppel is fair, and that none of the factors the Court of Appeals has found to preclude application of offensive collateral estoppel apply. *Id.* at 760-61. The failure to file the motion in a timely manner shall constitute a waiver of the argument.

Once the moving party has filed the motion seeking collateral estoppel, the other party shall be given the opportunity, in accordance with Board Rules, to oppose the application of collateral estoppel by demonstrating that the doctrine does not or should not apply. The moving party may be allowed to file a reply.

These procedures are intended to give the Hearing Committee a sound basis on which to address the issues, to decide which factual and legal issues have been resolved in the prior proceeding, and to determine the proper scope of the disciplinary hearing. The Chair of the Hearing Committee shall issue an order granting or denying, in whole or in part, the collateral estoppel motion sufficiently in advance of the first day of the testimonial hearing to permit the parties to prepare. The order shall contain a concise statement of the basis for the Chair's conclusions.