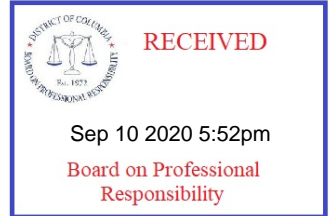


**DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY**



**In the Matter of**

**CHRISTOPHER D. LIBERTELLI,**

**Respondent**

**Member of the Bar of the District  
Of Columbia Court of Appeals**

**(Bar Registration No. 451351)**

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: **Disciplinary Docket No. 2019-D072**  
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**RESPONDENT'S ANSWER TO SPECIFICATION OF CHARGES**

Respondent Christopher D. Libertelli, by his undersigned counsel, hereby responds as follows to the Specification of Charges by the Disciplinary Counsel served by agreement on July 31, 2020:

**PRELIMINARY STATEMENT**

Mr. Libertelli acknowledges that he testified falsely about his drug use, falsified and submitted drug and urine test results, and submitted certain altered bank and financial records, all in connection with his bitterly contested divorce and custody case before Judge Harry Storm of the Montgomery County Circuit Court. Mr. Libertelli takes full responsibility for his actions, as he did before Judge Storm. However, Mr. Libertelli respectfully submits that he is eligible for mitigation pursuant to *In re Kersey*, 520 A.2d 321, 325-27 (D.C. 1987). Mr. Libertelli waives his right to file his *Kersey* mitigation defense under seal pursuant to Board Rule 7.6(b). Mr. Libertelli's Notice of Intent to Raise Disability (or Addiction) in Mitigation is being filed contemporaneously herewith in accordance with Board Rule 7.6(a).

By way of background, Mr. Libertelli is 51 years old. He grew up in Old Tappan, New Jersey, Albuquerque, New Mexico, and Tulsa, Oklahoma, associated with his father's employment. He received his B.A. degree from Boston University in 1991, and his JD degree from there in 1995. Mr. Libertelli was able to put himself through college and law school by working and through student loans. Mr. Libertelli has been a member in good standing of the District of Columbia Bar since 1996. He is a member of no other State Bar. Judge Storm's referral to the Bar is the first grievance ever filed against him.

After graduating from law school, Mr. Libertelli was employed from September 1996 through January 1999 as an associate at Dow, Lohnes and Albertson in the District of Columbia. From January 2001 through January 2005, he served as a Senior Legal Advisor to Chairman Michael K. Powell of the Federal Communications Commission. Following his tenure at the FCC, he served as Senior Director, Government Affairs of Skype Inc. from March 2005 to December 2011, and as Vice President of Global Public Policy at Netflix from December 2011 through June 2017. Until February of this year, Mr. Libertelli was employed as the Head of Global Content Policy for YouTube Inc., where he was primarily based in San Bruno, California. He is currently serving as a consultant in the telecommunications industry through the Venture Policy Group, a consulting company he formed in 2017. Mr. Libertelli left each position described above for personal or professional reasons.

Despite his professional success, between July 2008 and 2017, Mr. Libertelli developed a progressive dependency on prescription painkillers, which ultimately culminated in a diagnosis of opiate use disorder ("OUD"). As is all too common, his OUD evolved from initial prescriptions of opiates (Oxycontin) to address his serious spinal nerve pain, which ultimately required two difficult surgeries. His use of opiates evolved into a poly-substance abuse problem,

which he has sought to address through years of recovery work. In the divorce proceedings, Judge Storm described Respondent's OUD use as "serious," a characterization with which Mr. Libertelli sadly agrees. Mr. Libertelli's opioid use helped him to deal with his back pain, enabling him to be more effective as a parent, and in particular, to deal with his demanding job at Netflix, which required frequent international travel. In 2012, he also began using cocaine to counter the extreme fatigue he experienced as a result of his international travel and his opioid use. He found it extremely difficult to remove himself from this vicious cycle of drug use.

The conduct which gave rise to Judge Storm's referral began with Mr. Libertelli's extraordinarily bitter divorce case with his ex-wife. Mr. Libertelli's repeated efforts to resolve issues with his ex-wife in a collaborative fashion were met head-on by her ever more contentious litigation tactics. That litigation has lasted much longer than their less than 5 year marriage, and engendered a combined cost of around \$2 million in legal fees. The case is still ongoing with disputes over financial issues. Mr. Libertelli and his ex-wife have two boys, Kenzo, age 9, and Kohji, age 8. Mr. Libertelli fully acknowledges that his sons have been poorly served by his own choices, which have resulted in very restricted visitation, among other things. He has spent years seeking to restore a natural and supportive father-son relationship with both of them. His transgressions in the divorce case were intended solely to permit Mr. Libertelli to maintain joint legal custody, and regular, unsupervised visitation with his sons.

In January 2018, Mr. Libertelli was confronted in court with his misrepresentations. He readily acknowledged to Judge Storm that he had provided false information to the Court and to his wife and her counsel in order to facilitate joint custody of with his two young sons. Mr. Libertelli had persuaded himself that doing whatever was necessary to be a present and engaged parent to his boys was justified because of his concern for them, and the extremely difficult and

stressful circumstances he was facing. He fully acknowledges that his choices and rationalizations for those choices were wrong, but submits that he would not have made those choices but for his addiction.

Mr. Libertelli has been abstinent from opiates since November 2017, other than a physician prescribed Buprenorphin (Suboxone) implant from which he weaned himself last year. During that period, he continued to occasionally use cocaine for functional, not recreational purposes, but his limited cocaine use, while wrongful, was not the central focus of the misconduct which led to Judge Storm's referral to the D.C. Bar.

During the divorce case, Respondent worked through the initial, hardest part of his recovery by participating in intensive outpatient programs, psychotherapy, and through sheer will power. In March 2018, Mr. Libertelli also voluntarily reached out for assistance from the District of Columbia Bar's Lawyer Assistance Program. He initially met with Nicki Irish, with whom he shared all the details of his substance abuse issues, as well as the issues before Judge Storm. He saw Ms. Irish on three occasions, and she advised him that as he was doing what he needed to do in his comprehensive outpatient treatment program, he did not need to report back to the Lawyers Assistance Program.

With no relief in sight from his litigation nightmare, and with his OUD having been exacerbated by the contentious litigation, coupled with professional stress, Mr. Libertelli made a desperate and unfortunate decision to falsely represent himself to the court to be drug-free. Drug addiction is pernicious, and denial and deceit are often part and parcel of an addict's approach to problems. As Judge Storm noted, Mr. Libertelli's addiction "h]as very sadly affected his judgment."

Judge Storm filed his referral to Disciplinary Counsel over a year after learning about Mr. Libertelli's transgressions. Significantly, he did not take direct judicial action with respect to the conduct at issue. Judge Storm did not find Mr. Libertelli in contempt, and upon information and belief, he did not refer Mr. Libertelli to the Montgomery County State's Attorneys' Office for criminal investigation or prosecution.

Mr. Libertelli did not act to obtain any financial advantage in his divorce case. His wrongful actions and flawed judgment were the direct result of his disease of addiction, and as Judge Storm put it, the "extreme love Mr. Libertelli unquestionably has for his children." Mr. Libertelli submits that are not a fair reflection of his character, his honesty, or his integrity. Mr. Libertelli is a recovering addict who has spent years going to rehabilitation to overcome his opiate addiction—and he has been successful—finally—in doing so.

### **Responses to Enumerated Charges**

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on June 3, 1996, and assigned Bar number 451351.

**Response No. 1.** Admitted.

2. In October 2014, Yuki Elke Noguchi (then known as Yuki Libertelli), through counsel, filed a complaint against Respondent for divorce and other relief, including the custody of their two minor children. The complaint was filed with the Circuit Court for Montgomery County, Maryland. When the complaint was filed, Ms. Noguchi lived in Montgomery County, Maryland, and Respondent lived in the District of Columbia.

**Response No. 2.** Admitted.

3. For most of the divorce and custody proceedings, Respondent was represented by counsel. During some periods, however, Respondent represented himself in the proceedings.

**Response No. 3.** Admitted.

4. Respondent's use of opioids, cocaine and other drugs was an issue in the proceedings and resulted in the court's placing restrictions and conditions on Respondent's access to his two children.

**Response No. 4.** Respondent admits he was addicted to prescription opioids, and that his addiction, as well as occasional use of cocaine and marijuana led to restrictions on his access to his two sons.

5. In a hearing in December 2015, Respondent represented to the court, Ms. Noguchi, and counsel that he was in treatment and was no longer using illegal drugs. Respondent, however, continued to use illegal drugs including opioids, cocaine, and marijuana before and after the December 2015 hearing.

**Response No. 5.** Respondent admits that in December 2015 he represented in open court that he was in treatment and was no longer using opioids. Respondent admits that he used marijuana and cocaine thereafter, and that at the time he was continuing to use prescription opioids while he fought to overcome his addiction.

6. In July 2016, the court held an evidentiary hearing concerning custody of the children. Respondent falsely represented that he had complied with the court-mandated drug-testing requirements. He testified falsely about his drug use and claimed that, with few exceptions, he had not used illegal drugs such as cocaine and marijuana.

**Response No. 6.** Admitted

7. On November 1, 2016, the court issued an oral opinion finding that Respondent had been untruthful about his drug use, the source of his drugs, his water loading before urine tests, and his alleged inability to obtain suboxone, which he was using to treat his opiate addiction. The court nevertheless said that it believed, based on Respondent's representations, that he had made progress in getting his addictions under control. To provide a further incentive, the court set out certain conditions that Respondent had to meet to have unsupervised time with his children.

**Response No. 7.** The Respondent admits this is what the Court said, but further states that he was making progress getting his addiction under control, and that he in fact did have difficulty obtaining Suboxone.

8. In the November 9, 2016 custody order, the court granted Respondent joint legal custody of the two children, but granted physical custody to Ms. Noguchi. The court further ruled that Respondent's access to his children would be monitored and supervised until he had four consecutive months of clean urine tests. During this initial four-month phase (phase one), Respondent had to undergo random urine testing once a week, with the tests to occur within 24 hours of notification to Respondent. Respondent was required to provide the test results to his

wife's counsel within 48 hours of their receipt. If Respondent failed a urine test during the four-month period, then phase one would continue until such time as he completed four consecutive months of clean urine tests.<sup>1</sup> After successfully completing phase one, Respondent could have unmonitored access to his child and an additional overnight stay with them during the week.

**Response No. 8.** Admitted.

9. After the July 2016 hearing, Respondent continued to lie to the court, Ms. Noguchi, and counsel about his drug use and the funds he used to pay for drugs. Respondent submitted false evidence to support his lies.

**Response No. 9.** Admitted.

10. In March 2017, the court held a merits trial for the divorce. During the trial, Respondent testified about the progress he had made allowing him to transition from phase one to phase two of the custody order provisions. He falsely testified that he had complied and continued to comply with the conditions of the custody order, including undergoing drug testing. Respondent deliberately concealed from the court, Ms. Noguchi, and counsel that he was continuing to use illegal drugs and had been altering the reports of his drug test reports.

**Response No. 10.** Admitted. Respondent further states that he testified truthfully that he was continuing to make progress in overcoming his addiction, and that at the time he had convinced himself that he was complying with the Court's custody order provisions.

11. Between August 2016 and November 2017, Respondent falsified 62 of his drug tests. Respondent altered the drug tests to eliminate the results reflecting that on 47 occasions he tested positive for cocaine. He also altered the drug test results by switching positive results for oxycodone in 36 tests to negative showings, and switching positive results for oxymorphone in 42 tests to negative showings.

**Response No. 11.** Respondent admits he falsified numerous drug tests as alleged, but is without sufficient information to admit or deny that he did so on the specific number of occasions set forth in this specification.

12. Between November 28, 2017 and January 18, 2018, Respondent did not undergo any testing. Yet, during this time, Respondent submitted what purported to be tests results by changing the dates on other test results, including for those he had altered to remove positive results.

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<sup>1</sup>Pursuant to the court's order, a urine test could be considered failed if (1) there was water loading or other tampering of the tests, (2) Respondent missed a test, or (3) he failed to report for testing within 24 hours after notification.

**Response No. 12.** Admitted.

13. Respondent also fabricated bank and financial records that he offered as evidence in the court proceedings to conceal his use of funds to buy drugs.

**Response No. 13.** Respondent admits that he altered some bank statements solely to conceal his purchases of drugs, but states that these alterations were not made with the intent to portray his financial condition in a false light, and that such alterations did not impact his ability to meet his Court ordered financial obligations.

14. For example, Respondent produced as evidence bank statements that he had altered to conceal his withdrawals of cash that he used to buy drugs. Respondent provided the altered bank statements, knowing that they falsely represented the transactions shown in the actual statements.

**Response No. 14.** See response to number 13.

15. Respondent also produced as evidence credit card statements that he had altered to conceal his purchase and receipt of marijuana. Respondent provided the altered credit card statements, knowing that they falsely represented the transactions shown in the actual statements.

**Response No. 15.** Respondent admits that he altered credit card statements on two occasions solely to conceal the purchase of marijuana for a friend who was getting married, but states that those alterations did not impact his ability to meet his court ordered financial obligations, and that he testified truthfully before Judge Storm that he had made image alterations and why he had done so.

16. By January 2018, counsel for Ms. Noguchi had learned that Respondent had been falsifying his drug tests. Ms. Noguchi, through counsel, filed an emergency motion with the court which she supplemented with evidence of Respondent's alteration of drug-testing reports and financial records.

**Response No. 16.** Respondent is unaware of the dates his ex-wife's counsel or his ex-wife learned he had been falsifying his drug test results, but otherwise admits the remainder of this specification.



17. Respondent continued to deceive the court, Ms. Noguchi, and opposing counsel after the emergency motion was filed. At a February 2018 hearing, Respondent falsely represented to the court that he had made enormous strides in dealing with his drug addiction. Yet, days later, he missed a saliva test and then testified positive for cocaine. Respondent continued to use cocaine after getting an implant for buprenorphine to eliminate the need for suboxone.

**Response No. 17.** Admitted, except (1) Respondent states that his representation to the Court that he had made enormous strides in dealing with his drug addiction was true, and (2) that the implant he received for buprenorphine (“suboxone”) was to eliminate his need to take suboxone by daily pill.

18. Respondent missed seven more drug tests between June 14 and November 15, 2018.

**Response No. 18.** Admitted.

19. At his deposition in October 2018 and at another court hearing in late November 2018, Respondent testified falsely about when he last used cocaine. In October 2018, Respondent testified he had not used cocaine since May or June 2018. In November 2018, he testified that he last used cocaine in August 2018. Yet, the test results for the week of the November hearing showed that Respondent tested positive for cocaine based on a specimen on November 20, 2018.

**Response No. 19.** Respondent admits that in November 2018 he tested positive for cocaine based on a hair follicle test, which he had voluntarily offered to take. A hair follicle test can ascertain whether a person used cocaine within the past three months, or in Respondent’s case, since August 2018. Respondent states that his testimony that he last used cocaine in August 2018, was true to the best of his knowledge.

20. In February 2019, the court issued an oral opinion in which it found that Respondent had “lied, manipulated, and deceived” the court, his former wife and her counsel.

**Response No. 20.** Admitted.

21. In March 2019, after issuing an order further restricting Respondent’s access to his children, the Maryland court referred Respondent’s conduct to Disciplinary Counsel.

**Response No. 21.** Admitted.

22. Respondent's conduct violated the following Rules of the District of Columbia Rules of Professional Conduct and/or the Maryland Rules of Professional Conduct as made applicable under Rule 8.5(b):

a. Rule 3.3(a)(1), in that Respondent made false statements of fact to a tribunal and failed to correct false statements of material facts;

b. Rule 3.3(a)(4), in that Respondent offered evidence that he knew to be false;

c. Rule 3.4(a), in that Respondent unlawfully altered evidence;

d. Rule 3.4(b), in that Respondent falsified evidence;

e. Rule 8.4(b), in that Respondent engaged in criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects, including perjury (in violation of Maryland Code § 9-101), when he willfully and falsely testified while under oath to material facts including, but not limited to, on October 18, 2018, when he testified falsely that he had three months of continuous negative drug tests and had last used cocaine in May or June 2018, and when he testified on November 28, 2018, that he had not used cocaine for the last three and a half months;

f. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, and/or misrepresentation; and

g. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice.

**Response No. 22.** Admitted, with the exception that Respondent denies that he violated Rule 8-4(b).

Respectfully submitted,

**LERCH, EARLY & BREWER, CHTD.**



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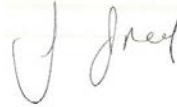
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was sent via email September 10,

2020 to:

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Stanley J. Reed