

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



In the Matter of :
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 :
MARYLIN JENKINS, : **Disciplinary Docket No. 2022-D094**
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 Respondent :
 :
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An Administratively Suspended :
Member of the Bar of the :
 D.C. Court of Appeals :
 :
 :
Bar Registration No. 390626 :
Date of Admission: August 1, 1985 :
 :

PETITION FOR NEGOTIATED DISCIPLINE

Pursuant to D.C. Bar R. XI § 12.1 and Board Rule 19.2, the Office of Disciplinary Counsel and Respondent Marilyn Jenkins submit this Petition for Negotiated Discipline in the above-captioned matter. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI, § 1(a) because Respondent is a member of the Bar of the District of Columbia Court of Appeals.

I. STATEMENT OF THE NATURE OF THE MATTER BROUGHT TO DISCIPLINARY COUNSEL’S ATTENTION

Disciplinary Counsel received a complaint dated May 6, 2022, alleging that Respondent had given false answers in an employment application about her disciplinary history. Respondent had applied for a position in the San Francisco

office of the law firm, Beveridge & Diamond. She submitted a resume and completed a questionnaire. Although Respondent had been admitted to the D.C. Bar in 1985, she omitted this fact from her resume. She also omitted her employment as an Associate General Counsel for Litigation at Amtrak, but instead said that she had been employed by Gilbarco Veeder-Root at the relevant time. The questionnaire, which the law firm asked her to complete, asked two questions of relevance to this proceeding:

- Have you ever been a party to, or the subject of, a disciplinary complaint or proceeding?
- Have you ever been sanctioned, fined, censored, suspended, or put on probation by a state bar, judicial body, or regulatory agency?

Respondent answered, “no” to both questions.

During its background check, Beveridge & Diamond discovered that Respondent was a member of the D.C. Bar, that in 2005, she was employed as Associate General Counsel for Litigation at the National Railroad Passenger Corporation (Amtrak), and that in 2016 she had been reprimanded by the District of Columbia Board on Professional Responsibility for a violation of Rule 8.4(c) (engaging in conduct involving dishonesty and misrepresentation) arising out of her employment by Amtrak. The firm referred the matter to Disciplinary Counsel.

On May 9, 2022, Disciplinary Counsel sent the Beverage & Diamond letter of complaint to Respondent and asked her to reply. On May 14, 2022, Respondent admitted that she had engaged in the conduct about which Beveridge & Diamond had complained:

I do not dispute the facts of the charge. As you will recall, it was my position that the disciplinary action taken by the DC Bar was ridiculous, and prompted by political considerations by the IG. Both the CA Bar and the MA Bar agreed with my position, when informed of the matter.

II. STIPULATIONS OF FACTS AND RULE VIOLATIONS

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on August 1, 1985, and assigned Bar number 390626. She is administratively suspended for failing to pay her annual dues.

2. On December 5, 2016, she was reprimanded by the Board on Professional Responsibility for violating Rule 8.4(c), conduct involving misrepresentation and dishonesty. While employed by Amtrak, she had included in files produced to the Office of Inspector General three engagement letters that had been backdated by outside counsel at her request. Respondent did not disclose to the Inspector General that the letters, and the date of her signature countersigning each letter, were backdated.

3. In February 2022, Respondent applied for a position in the San Francisco, California office of the law firm Beveridge and Diamond. As part of the

application process, Respondent submitted a resume and a Lateral Shareholder and Of Counsel Questionnaire, a form required by the law firm.

4. On her resume, Respondent included a section labeled “ADMISSIONS.” In that section, she listed her admissions to the Bars of California, New York, and Massachusetts. She did not include her admission to the D.C. Bar.

5. Although she had worked for Amtrak in 2005 in Washington, D.C., this fact was omitted from her resume. Instead, the section labeled “Professional Experience” stated that from May 2002 to April 2008, she had been employed as “Senior Vice President and General Counsel, Gilbarco Veeder-Root, Greensboro, NC.

6. Question 11 on the Beveridge & Diamond Lateral Shareholder and Of Counsel Questionnaire asked, “Have you ever been a party to, or the subject of, a disciplinary complaint or proceeding?” Respondent answered, “No.”

7. Question 12 on the Questionnaire asked, “Have you even [sic] been sanctioned, fined, censored, suspended, or put on probation by a state bar, judicial body, or regulatory agency?” Respondent answered, “No.”

8. Respondent’s conduct violated Rule 8.4(c) of the District of Columbia Rules of Professional Conduct, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and Rule 8.4(c) of the California Rules of Professional

Conduct, engaging in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

Disciplinary Counsel has made no promises to Respondent other than to ask for a 30-day suspension.

IV. AGREED-UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed in this matter is a 30-day suspension. Respondent and Disciplinary Counsel have agreed that there are no additional conditions attached to this negotiated disposition that are not expressly agreed to in writing this petition.

RELEVANT PRECEDENT

Under Board Rule 17.5(a)(iii), the agreed-upon sanction in a negotiated discipline case must be “justified, and not unduly lenient, taking into consideration the record as a whole.” A justified sanction “does not have to comply with the sanction appropriate under the comparability standard set forth in D.C. Bar Rule XI, § 9(h) and Board Rule R. 17.5(a)(iii). However, the typical sanction the Court imposes for similar misconduct is an important tool for beginning the analysis of whether a negotiated sanction is justified and not unduly lenient.

Rule 8.4(c) sanctions stretch from informal admonition to disbarment. *See In re Baber*, 106 A.3d 1072 (D.C. 2015) (disbarment for flagrant dishonesty at expense

of client's interest plus other violations); *In re Hutchinson*, 534 A.2d 919 (D.C. 1987) (one year suspension for lying to SEC); *In re Chisholm*, 679 A.2d 495 (D.C. 1996) (six-months suspension, plus fitness, for persistent and extensive dishonesty plus neglect); *In re Schoeneman*, 891 A.2d 279 (D.C. 2006) (four-month suspension for lying to clients about status of their case plus other violations); *In re Schneider*, 553 A.2d 206 (D.C. 1989) (30-day suspension for false expense vouchers); *In re Heiser*, Bar Docket No. 2012-D110 (ODC Nov. 8, 2013) (informal admonition for false certification by lapsed bar member that she was still active member).

In re Hawn, 917 A.2d 693 (D.C. 2007), may be the closest case to this one. Hawn falsified a resume and altered his law school transcript to obtain legal employment in California. He was suspended for 30 days. Respondent's case is similar to *Hawn* in that both involved false employment applications. Hawn actually altered and added false information on his resume, whereas Respondent failed to disclose her reprimand, and omitted information about her employment and admission to the D.C. Bar.

MITIGATING FACTORS

Respondent is at the end of her legal career. She has changed her status with the California Bar to "inactive" on June 3, 2022, and California is where she resides and has practiced for the past seven years. She readily accepted

responsibility for her conduct and did so less than a week after receiving Disciplinary Counsel's letter of inquiry.

Respondent has been suffering from "long covid" since her initial recovery from the Covid-19 virus in September of 2021. She has experienced extreme fatigue and some "fuzziness" of her mental processes. At the time she submitted her application to Beveridge & Diamond, she believed that the excitement of a new position would help her to recover from her symptoms, but she subsequently has been diagnosed with worsening pulmonary and cardiac symptoms which resulted in her decision to retire from the practice of law entirely.

JUSTIFICATION OF RECOMMENDED SANCTION

Respondent has, in effect, severed ties with the District of Columbia. She has lived in California since 2015, with only brief interludes elsewhere, and has been a member of the California Bar, in good standing, since 1979. She has stopped paying dues in the District of Columbia and has not used her D.C. license for many years. She has now retired completely from the practice of law, having already changed her status with the California Bar to "inactive.". She also admitted immediately her misconduct and accepted responsibility

On the other hand, this is the second time that she has engaged in conduct involving dishonesty. Deterrence of others requires that a suspensory sanction be imposed and that it not be stayed. While there were many mitigating factors for her

first Rule 8.4(c) violation, she has no excuse for this second violation. Commendably, she admits as much.

V. RESPONDENT'S AFFIDAVIT

In further support of this Petition for Negotiated Discipline, attached is Respondent's Affidavit pursuant to D.C. Bar. R. XI, § 12.1(b)(2).


CONCLUSION

Wherefore, Respondent and Disciplinary Counsel request that the Executive Attorney assign a hearing committee to review the Petition for Negotiated Discipline pursuant to D.C. Bar. R. XI, § 12.1(c).

Dated: June 30, 2022

Hamilton P. Fox, III

Hamilton P. Fox, III
Disciplinary Counsel



Marilyn Jenkins
Respondent

Signature: Hamilton P. Fox, III
Hamilton P. Fox, III (Jul 1, 2022 13:06 EDT)

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