



DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

Board on Professional Responsibility

In the Matter of:	:	
	:	
JAMES E. TOLIVER, III,	:	
	:	Board Docket No. 25-ND-005
Respondent.	:	Disciplinary Docket No. 2024-D180
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 1619792)	:	

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

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on March 27, 2026, for a limited hearing on an Amended Petition for Negotiated Discipline (“Amended Petition”). The members of the Hearing Committee are Michele Spencer, Esquire, Chair; Lisa Harger, Public Member; and Kathleen Havener, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Traci M. Tait, Esquire. Respondent, James E. Toliver, III, appeared and was represented by William Zapf, Esquire.

The Hearing Committee has carefully considered the Amended Petition signed by Disciplinary Counsel, Respondent, and Respondent’s counsel; the supporting Amended Affidavit submitted by Respondent; and the representations during the limited hearing made by Disciplinary Counsel, Respondent, and

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

Respondent's counsel. The Hearing Committee also has fully considered the Chair's *in camera* review of Disciplinary Counsel's files and records and *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, the Hearing Committee finds that the negotiated discipline of a public censure, with one year of unsupervised probation with conditions, is justified and recommends that it be imposed by the Court.

II. FINDINGS PURSUANT TO D.C. BAR R. XI, § 12.1(c)
AND BOARD RULE 17.5

The Hearing Committee, after full and careful consideration, finds that:

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

2. Respondent is aware that there is currently pending against him an investigation into allegations of misconduct as described in the Amended Petition. Tr. 17;¹ Amended Affidavit ¶ 4.

3. The allegation that was brought to the attention of Disciplinary Counsel is that Respondent engaged in dishonesty in violation of Rule 8.4(c) of the District of Columbia Rules of Professional Conduct ("Rules" or "D.C. Rules"). Amended Petition at 5.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Amended Petition are true. Tr. 17-19, 22-24; Amended Affidavit ¶¶ 3, 5. Specifically, Respondent acknowledges that:

¹ "Tr." refers to the transcript of the limited hearing held on March 27, 2026.

1. Pursuant to D.C. Bar R. XI, §1(a), Disciplinary Counsel has jurisdiction to proceed because Respondent is a member of the Bar of the District of Columbia Court of Appeals assigned Bar number 1619792.

2. In September 2017, Respondent joined Community Legal Aid and Services, Inc., in Youngstown, Ohio, as a volunteer and was later hired in February 2018 as a “Temporary Law Clerk.”

3. Respondent became a member of the D.C. Bar on June 11, 2019. Respondent is a member of no bar other than that of the District of Columbia Court of Appeals. Respondent continued his employment as a Temporary Law Clerk with Ohio Legal Aid after becoming a member of the D.C. Bar until November 2019.

4. In November 2019, Respondent was hired by Maryland Legal Aid’s Montgomery County office as a staff attorney under a special authorization for out-of-state attorneys affiliated with programs providing legal services to low-income individuals. Pursuant to Maryland Rule 19-218, Respondent was permitted to practice in Maryland effective January 2020. This special provision did not confer a Maryland law license on Respondent and, after two years in accordance with the Rule, his Maryland Rule 19-218 status expired in January 2022.

5. Prior to the expiration of the Maryland Rule 19-218 special authorization, Respondent applied to become a member of the Maryland Bar, and an extension was sought of Respondent's Maryland Rule 19-218 status.

6. No extension was granted.

7. Respondent's Maryland application lapsed and it is no longer pending.

8. In January 2022, upon the expiration of Respondent's Maryland Rule 19-218 special status, Respondent's title was changed to "law graduate."² Although his duties did not change materially, he was not permitted to practice law as a law graduate.

9. In April 2022, Respondent applied for a supervising attorney position with Rising for Justice, a public interest legal services provider and clinical education program (formerly, D.C. Law Students in Court) with services limited to the District of Columbia. Respondent applied to supervise law students in its Housing Advocacy and Litigation Clinic.

10. In a cover letter dated April 18, 2022, Respondent stated that he was then a staff attorney with Maryland Legal Aid's

² Respondent received a Certificate of Appreciation from Maryland Legal Aid stating his position as "Staff Attorney" and reflecting dates November 2019 through June 2022.

Montgomery County office and had occupied that position from November 2019.

11. By the time Respondent applied to work in D.C. for Rising for Justice in 2022, his title had been changed from “staff attorney” to “law graduate” at Montgomery County’s Maryland Legal Aid office due to the expiration of Respondent’s Maryland Rule 19-218 special status.

12. Respondent has never become a member of the Maryland Bar.

13. In the résumé Respondent submitted in connection with his application to work for Rising for Justice in April 2022, he stated that he was [a] “Member, Maryland Bar.”

14. Respondent avers that he misunderstood when he could use the title of attorney when working outside of the District of Columbia, and when his official title changed following the expiration of the Rule 19-218 status in Maryland.

15. Respondent avers that he mistook Rule 19-218 to be a type of bar membership.

16. In the résumé Respondent submitted in connection with his application to work for Rising for Justice in April 2022, he stated that, from September 2016 to November 2019, he worked as an “attorney” at Ohio Legal Aid, where he “[c]o-counseled complex litigation

involving predatory consumer and residential rental practices under state and local landlord tenant laws, and federal Racketeer Influenced and Corrupt Organizations law.” Respondent listed two Ohio Legal Aid supervisors as references; Rising for Justice did not contact them during the interview process.

17. Respondent has never been licensed to practice law in Ohio, and he did not hold the title of attorney at Ohio Legal Aid.

18. Neither of Respondent’s Ohio Legal Aid supervisors had characterized his role as that of an attorney, although Ohio Legal Aid’s online promotional material erroneously identified Respondent as a “Former Staff Attorney” until later being contacted by Rising for Justice. The website now shows Respondent’s correct title of “Temporary Law Clerk.”

19. Respondent accepted an offer to work at Rising for Justice in May 2022 and began working there in mid-June 2022. In July 2024, the misrepresentations on Respondent’s résumé were noted by Rising for Justice administrators when they were updating the organization’s malpractice insurance coverage. Rising for Justice accepted his immediate resignation in August 2024.

20. Respondent violated District of Columbia Rule of Professional Conduct 8.4(c) because he engaged in dishonesty. Amended Petition at 2-5.

5. Respondent agrees to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 16-17; Amended Affidavit ¶ 6.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Amended Petition. Amended Affidavit ¶ 3. Those promises are that Disciplinary Counsel agreed not to pursue any charges arising out of the conduct described in the stipulated facts other than the Rule 8.4(c) violation, or any sanction other than that agreed upon. Amended Petition at 5-6. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Amended Petition. Tr. 22.

7. Respondent has counsel and is aware of his right to confer with counsel. Tr. 4, 9; Amended Affidavit ¶ 2.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 17-19, 22-24; Amended Affidavit ¶¶ 3, 5.

9. Respondent is not being subjected to coercion or duress. Tr. 22; Amended Affidavit ¶ 3.

10. Respondent is competent and was not under the influence of any substance or medication that would affect his ability to make informed decisions at the limited hearing. Tr. 9-11.

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

- a) he has the right to consult with counsel prior to entering this negotiated disposition;
- b) he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;
- c) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;
- d) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;
- e) the negotiated disposition, if approved, may affect his present and future ability to practice law;
- f) the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and
- g) any sworn statement by Respondent in his affidavit or any statements made by Respondent during the proceeding may be used to impeach his testimony if there is a subsequent hearing on the merits.

Tr. 11-16; Amended Affidavit ¶¶ 2, 9-12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a public censure with one year of unsupervised probation to begin on the date the Court issues its order. Amended Petition at 6; Tr. 19.

Respondent understands that the conditions of this negotiated disposition are that:

- (a) Respondent shall not be the subject of a disciplinary complaint that results in a finding that he violated the disciplinary rules of any jurisdiction in which he is licensed to practice during the probationary period.
- (b) Before his probation term ends, Respondent will take two continuing legal education (CLE) courses approved by Disciplinary Counsel: Ethics and Lawyer Trust Accounts and

Mandatory Course on the D.C. Rules of Professional Conduct and D.C. Practice.

- (c) Before his probation term ends, Respondent will provide proof of attendance at each CLE within 10 days of completion, waiving confidentiality regarding any consultations associated with training advice and materials, including the material themselves.
- (d) During his probation, Respondent will notify Disciplinary Counsel promptly of any ethics complaint filed against him and its disposition.
- (e) Within 30 days of the Court's order publicly censuring Respondent, he will inform Disciplinary Counsel in writing if he has pending applications to practice law in any other jurisdiction.
- (f) During his probation, Respondent will inform Disciplinary Counsel in writing if/when he applies for any additional bar membership(s).
- (g) Within 30 days of the Court's order publicly censuring Respondent, he will provide a list to Disciplinary Counsel of all organizations to which Respondent has provided legal services in any capacity (e.g., attorney, law clerk, paralegal, etc.), and confirm that he has verified none have described his tenure with them inaccurately.
- (h) Within 30 days of the Court's order publicly censuring Respondent, he will provide a list to Disciplinary Counsel of all his social media accounts and other locations that set forth his work history, and confirm that he has verified that they are accurate.
- (i) Respondent is not required to notify his clients of his probation.
- (j) If Respondent fails to meet any of the conditions set forth above he (1) understands that Disciplinary Counsel may bring formal charges seeking suspension for his breach of probation, and, if proved, (2) agrees to demonstrate his fitness to practice law before he can be reinstated.

Amended Petition at 6-8, Amended Affidavit ¶¶ 13-14.

13. The parties agree that there are no aggravating factors beyond the violation itself. Amended Petition at 9; Tr. 24.

14. Disciplinary Counsel and Respondent have provided the following circumstances in mitigation, which the Hearing Committee has taken into consideration: (a) he has taken responsibility for his misconduct in that he acknowledges that he violated D.C. Rule 8.4(c), (b) he has cooperated fully with Disciplinary Counsel's investigation, (c) he did not involve clients in the misconduct, and (d) he has not been the subject of disciplinary inquiries, here or elsewhere. Amended Petition at 9; *see also* Amended Affidavit ¶ 15.

III. DISCUSSION

The Hearing Committee shall recommend approval of a petition for negotiated discipline if it finds:

- (1) The attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition and agreed to the sanction set forth therein;
- (2) The facts set forth in the petition or as shown at the hearing support the admission of misconduct and the agreed upon sanction; and
- (3) The sanction agreed upon is justified. . . .

D.C. Bar R. XI, § 12.1(c)(1)-(3); *see also* Board Rule 17.5(a)(i)-(iii).

A. Respondent Has Knowingly and Voluntarily Acknowledged the Facts and Misconduct and Agreed to the Stipulated Sanction.

The Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Amended Petition and agreed to the sanction therein. Respondent, after being placed under oath, admitted

the stipulated facts and charges set forth in the Amended Petition, and denied that he is under duress or has been coerced into entering into this disposition. *See supra* Paragraphs 8-9. Respondent understands the implications and consequences of entering into this negotiated discipline. *See supra* Paragraph 11.

Respondent has acknowledged that any and all promises that have been made to him by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the Amended Petition and that there are no other promises or inducements that have been made to him. *See supra* Paragraph 6.

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

The Hearing Committee has carefully reviewed the facts set forth in the Amended Petition and established during the hearing and concludes that they support the admission of misconduct and the agreed-upon sanction. Moreover, Respondent agrees to this negotiated discipline because he believes that he could not successfully defend against the misconduct described in the Amended Petition. *See supra* Paragraph 5.

With regard to the second factor, the Amended Petition states that Respondent violated D.C. Rule 8.4(c) (dishonesty). The evidence supports Respondent's admission that he violated Rule 8.4(c) by submitting a cover letter dated April 18, 2022, that included a false statement that he was a staff attorney with Maryland Legal Aid's Montgomery County office. Although he had been hired by Maryland Legal Aid as a staff attorney, that status was under a special authorization for out-of-state attorneys pursuant to Maryland Rule 19-218 which had expired by January 2022.

Accordingly, by January 2022, his title had changed from staff attorney to “law graduate.” The resume he submitted when applying for a position at Rising Justice also falsely stated that (1) he was a member of the Maryland Bar and (2) he had served as an attorney with Ohio Legal Aid when he was a temporary law clerk. While it appears that both Maryland Legal Aid and Ohio Legal Aid also at times made errors in describing his title and status as “attorney,” Respondent acknowledged his responsibility in failing to understand that he could not use the title of attorney when working outside of the District of Columbia.

C. The Agreed-Upon Sanction Is Justified.

The third factor the Hearing Committee must consider is whether the sanction agreed upon is justified. *See* D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(iii) (explaining that hearing committees should consider “the record as a whole, including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel’s evidence, any circumstances in aggravation and mitigation (including respondent’s cooperation with Disciplinary Counsel and acceptance of responsibility), and relevant precedent”); *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam) (providing that a negotiated sanction may not be “unduly lenient”). Based on the record as a whole, including the stipulated circumstances in mitigation, the Hearing Committee Chair’s *in camera* review of Disciplinary Counsel’s investigative file and *ex parte* discussion with Disciplinary Counsel, and the Committee’s review of relevant precedent, the Hearing Committee concludes

that the agreed-upon sanction is justified and not unduly lenient, for the following reasons:

After careful consideration and discussion, we believe a public censure with one year of unsupervised probation is not unduly lenient in consideration of the nature of Respondent's misconduct and the range of sanctions imposed in comparable cases. In a case involving resume puffery where the respondent had no prior discipline history, the Court imposed the sanction of a public censure. In *In re Hadzi-Antich*, 497 A.2d 1062 (D.C. 1985), the Court adopted the Board's recommendation of a public censure where the respondent made three false statements in his resume that inflated his class rank, grades, and law review involvement. *Id.* at 1062-64 (appended Board Report). The false statements—that the respondent was valedictorian of his law school class, that he had *summa cum laude* honors at his undergraduate college, and that he was “Editor-in-Chief of the Oklahoma Law Review”—were complete fabrications and without any plausible explanation as to why he may have mistakenly thought they were true. *Id.* By comparison, here, Respondent's false statements in his cover letter and resume were based on his mistaken understanding, and, therefore, are more akin to reckless than intentional dishonesty. At the same time, however, we recognize that Respondent's misconduct could be considered more serious because he falsely stated that he was a member of the Maryland Bar and that he was acting as an attorney at Ohio Legal Aid.

We ultimately agree with Disciplinary Counsel that the Court's case law indicates that a sanction more severe than a public censure is not warranted, absent the showing of aggravating circumstances such as the falsification of an official transcript. *See, e.g., In re Hawn*, 917 A.2d 693 (D.C. 2007) (per curiam) (30-day suspension for falsified resume and altered law school transcripts sent to prospective employer).

Here, instead of such aggravating circumstances, several mitigating circumstances are present, including:

1. Respondent's misconduct is limited to this single matter and is not a part of a pattern of misconduct.
2. Respondent's misconduct does not appear to be willful or intentional.
3. Respondent has no prior discipline, and he cooperated fully in this investigation and has accepted responsibility for his misconduct.

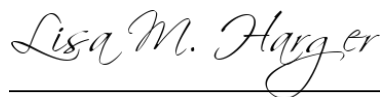
IV. CONCLUSION AND RECOMMENDATION

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court find that Respondent violated Rule 8.4(c) (dishonesty) and impose the sanction of a public censure and one year of unsupervised probation with conditions, as noted in Paragraph 12.

AD HOC HEARING COMMITTEE



Michele Spencer
Chair



Lisa Harger
Public Member



Kathleen Havener
Attorney Member