

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



FILED

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Board on Professional Responsibility

In the Matter of: :
: :
JEHAN A. CARTER, :
: :
Respondent. : Board Docket No. 22-ND-002
: Disciplinary Docket Nos.
: 2018-D215 & 2019-D112
A Member of the Bar of the :
District of Columbia Court of Appeals :
(Bar Registration No. 1018067) :

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

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on June 13, 2022, for a limited hearing on an Amended Petition for Negotiated Discipline (the "Petition"). The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Caroll Donayre Somoza. Respondent, Jehan A. Carter, was represented by George R. Clark, Esquire.

The Hearing Committee has carefully considered the Petition signed by Disciplinary Counsel, Respondent, and Respondent's counsel, the supporting amended affidavit submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent, Respondent's counsel, and Disciplinary Counsel. The Hearing Committee also has fully considered the written statements submitted by the complainants, as discussed below, the Hearing Committee's *in camera* review of Disciplinary Counsel's files

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\* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website ([www.dcattorneydiscipline.org](http://www.dcattorneydiscipline.org)) to view any subsequent decisions in this case.

and records, and its *ex parte* communications with Disciplinary Counsel. For the reasons set forth below and in the confidential supplemental report submitted pursuant to Board Rule 17.6, we approve the Petition, find the negotiated discipline of a six-month suspension with 90-days stayed, with the conditions that Respondent: (1) take three hours of pre-approved legal education related to online and website policies and practices and ethically networking and advertising online (and certifies and provides proof to Disciplinary Counsel that she has done so within six months of the date of the Court's final order); and (2) not engage in any misconduct in this or any other jurisdiction within a year from her reinstatement, is justified and we recommend that it be imposed by the Court.

In making this recommendation, we emphasize - as we did during the limited hearing - that the Hearing Committee's role is limited to determining whether:

- (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).

While we appreciate the statements made and submitted by the complainants, we find that the three elements required for approval have each been satisfied.

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 Petition and Affidavit are full, complete, and in proper order.

2. Respondent is aware that there is currently pending against her an investigation into allegations of misconduct. Tr. 30<sup>1</sup>; Affidavit 1 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent violated Section 6106 of the California Business and Professions Code (commission of an act involving moral turpitude and dishonesty)<sup>2</sup> and D.C. Rules of Professional Conduct 8.1(a) (knowingly making a false statement to Disciplinary Counsel) and 8.4(c) (engaging in conduct involving dishonesty). Petition at 7-8.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 30, 37; Affidavit 1 4. Specifically, Respondent acknowledges that:

a. In 2016, Respondent began to represent Dominique Collier for the purpose of bringing claims against The Steve Harvey Show, on which Ms. Collier had appeared. While appearing on the show, Ms. Collier signed a release that provided that state or federal courts located in Los Angeles

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<sup>1</sup> "Tr." refers to the transcript of the limited hearing held on June 13, 2022.

<sup>2</sup> Respondent was charged under the California Business and Professions Code in connection with a matter pending before the Los Angeles Superior Court. *See* D.C. Rule of Professional Conduct 8.5(b)(1); *see also* 1 4, *infra*.

County, California were the exclusive forum for any dispute related to Ms. Collier's appearance.

b. On April 12, 2018, Ms. Collier filed *pro se* a complaint in Los Angeles Superior Court for a variety of claims against the Steve Harvey Show and its producers. The law firm Kelly, Drye & Warren LLP represented the defendants.

c. On August 24, 2018, Candace Bryner, whom Ms. Collier had hired as local counsel, entered her appearance in the case on Ms. Collier's behalf. On the same day, Respondent filed an application to be admitted *pro hac vice* in the case. In the application, verified under penalty of perjury, Respondent stated that she was not a resident of California, nor had she regularly practiced in California.

d. On September 7, 2018, Kelly Drye filed motions to strike Ms. Collier's complaint on behalf of the defendants, arguing, among other things, that the lawsuit violated California's anti-SLAPP statute and seeking an award of attorney's fees based on that statute.

e. Kelly Drye attempted to serve the motion to strike on Respondent by mailing it to the Washington, D.C. address that she provided in her *pro hac vice* application. When the motion was returned as undeliverable, a Kelly Drye employee emailed Respondent asking for her current address. Respondent responded with her "California address."

f. Upon learning that Respondent had a California address, Cary Finkelstein, a Kelly Drye associate working on the case, investigated Respondent and discovered that she held herself out as a Los Angeles or Hollywood attorney on her website and on social media because many of her clients had Hollywood or Los Angeles connections. Respondent previously did supervised work in California. Respondent's website included a profile for an attorney named Michael Smith, listed as Of Counsel for Respondent's firm. The associate investigated Michael Smith and could not find a member of the State Bar of California who matched the profile.

g. On September 14, 2018, the defendants filed an opposition to Respondent's application for admission *pro hac vice*, arguing that she was ineligible for *pro hac vice* status because she had held herself out as a Los Angeles attorney. In an accompanying declaration, the associate set forth the results of his investigation, including his investigation of the Michael Smith profile.

h. Less than two hours after the defendants sent Respondent a copy of the opposition, Respondent altered her website to remove the reference to Michael Smith. Mr. Finkelstein noticed that the website had been altered and investigated the issue further. He learned that the image purporting to show Michael Smith was used on other websites, including several collections of corporate headshots on the website Pinterest. That same day, the defendants filed a supplement to their opposition adding that information.

i. On September 17, 2018, Ms. Bryner filed a response to the opposition and included a declaration from Respondent. In the declaration, Respondent, under penalty of perjury, provided the following explanation for the Michael Smith reference:

Approximately 9 months ago, I purchased a law firm website template through Word Press. The website included sample bios and photos as content for adapting and building the website. I included language relating to my profile and my paralegal on the website. However, I neglected to delete the sample attorney profile and picture of "Michael Smith" that was included with the template. I was not aware of the error until I received defense counsel's Response to my *Pro Hac Vice* Application. When this was brought to my attention, I took immediate action to remove the profile from my website.

j. In fact, neither the language of the Michael Smith profile, nor the photograph was included in a WordPress template.

k. Upon receiving the response, Andreas Becker, another Kelly Drye associate, undertook further investigation of the Michael Smith profile. He learned that the information set forth in Michael Smith's bio, except for one sentence, was copied verbatim from the website of a California lawyer named Michael Kernan of the Kernan Law Firm. On September 19, 2018, the defendants filed an additional pleading setting forth that information.

l. Mr. Kernan had served as Ms. Collier's local counsel in the case before being terminated. Respondent had communicated with Mr. Kernan during that period.

m. On November 5, 2018, Ms. Bryner filed a supplemental response to the opposition to the *pro hac vice* application, including declarations from Respondent and Ms. Collier. Respondent's declaration did not address the fact that the Michael Smith profile had been copied from the Kernan Law Firm website.

n. On November 27, 2018, the court held a hearing on the *pro hac vice* application. During the hearing, the judge voiced concerns about Respondent's credibility and honesty with respect to the biography of Michael Smith on her website. The court denied Respondent's application for admission.

o. Ms. Collier eventually settled the lawsuit against The Steve Harvey Show.

p. On May 3, 2019, Ms. Collier filed a complaint against Respondent with the Office of Disciplinary Counsel.

q. On November 25, 2019, the Office of Disciplinary Counsel sent a letter to Respondent asking for an explanation as to how the "Michael Smith" profile had come to appear on her website.

r. On December 5, 2019, Respondent responded to the inquiry, falsely stating that:

the website at issue was a draft website that was being built to include the bio information of Attorney Kernan who at the time was being listed on my website as counsel in the Collier case. The website template About Us section came with a stock photo from Google and sample name and bio of a Michael Smith which of course is not a real person but was provided again as a sample. This bio was in the process of being

edited to state Kernan bio info as you read instead and ultimately the photo and name would have been changed as well but remained unfinished. Kernan['s] title would have also been stated at the lead counsel in the Collier case not 'Of Counsel' as the sample bio stated for the Michael Smith template.

Petition at 2-7.

5. Respondent is agreeing to the disposition because Respondent believes that she cannot successfully defend against the discipline based on the stipulated misconduct. Tr. 29; Affidavit 1 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Affidavit 1 7. Those promises and inducements are that Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in the Petition other than the three violations set forth or any sanction other than that agreed upon. Disciplinary Counsel also has agreed not to pursue Count I in the Specification of Charges filed against Respondent before the parties reached this agreed disposition. Petition at 8. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 41-42.

7. Respondent has conferred with her counsel. Tr. 14-15; Affidavit 1 1.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 28, 42; Affidavit 1 6.

9. Respondent is not being subjected to coercion or duress. Tr. 28, 42; Affidavit 1 6.



10. Respondent is competent and was not under the influence of any substance or medication that would affect her ability to make informed decisions at the limited hearing. Tr. 15-16.

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

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

Tr. 17-21; Affidavit 1 1, 9.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a six-month suspension with 90-days stayed, provided that Respondent: (1) take three hours of pre-approved legal education related to online and website policies and practices and ethically networking and advertising online;

and (2) not engage in any misconduct in this or any other jurisdiction within a year from her reinstatement. Petition at 8-9; Tr. 39-40, 44-46.

a) Respondent further understands that she must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for her suspension to be deemed effective for purposes of reinstatement. Tr. 44; Affidavit 1 13.

b) Respondent understands that the conditions of this negotiated disposition are that she will be required to take three hours of continuing legal education, pre-approved by Disciplinary Counsel, related to online and website policies and practices and ethically networking and advertising online, and to certify and provide documentary proof that she has met this requirement to the Office of Disciplinary Counsel within six months of the Court's final order; and not engage in any misconduct in this or any other jurisdiction within a year from her reinstatement. Respondent acknowledges that Disciplinary Counsel may seek that Respondent serve the remaining 90 days of the suspension previously stayed, if it has probable cause to believe that Respondent has engaged in misconduct. Tr. 39-40, 44-46; Petition at 8-9.

13. The parties offered no evidence in aggravation. Tr. 43; Petition at 12.

14. Evidence of mitigation includes that Respondent acknowledges her misconduct, has cooperated with Disciplinary Counsel, has expressed remorse, and has no prior discipline. Tr. 42-43; Petition at 11.

15. The complainants presented written comments and made statements during the limited hearing pursuant to Board Rule 17.4(a). The complainants both

requested that Respondent be disbarred for her dishonesty. *See* Complainants' Submissions, dated June 21, 2022; Tr. 47-51, 65-69; 77-78.

### III. DISCUSSION

The Hearing Committee finds that each of the elements of negotiated discipline have been satisfied:

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

The Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein. In addition to the stipulated facts set forth in the Petition, Assistant Disciplinary Counsel provided a detailed summary of the factual basis for the charges against Respondent at the outset of the limited hearing. Tr. 9-11. Respondent, after being placed under oath, admitted the stipulated facts and charges set forth in the Petition, and denied that she is under duress or has been coerced into entering into this disposition. *See supra* 11 8-9. Respondent understands the implications and consequences of entering into this negotiated discipline. *See supra* 1 11

In admitting these facts at the limited hearing, which would have required a simple affirmative statement, Respondent testified at length to "clarify" two stipulated facts. Tr. 30-35. Specifically, Respondent sought to downplay her lack of candor with the California court regarding her residence in the state and sought to shift some of the blame for errors in her firm's website to a deceased graphic designer she had contracted to build the site. The Hearing Committee reminded

Respondent that its purpose at a limited hearing was not to take evidence for the purpose of making findings of fact, as it would with a contested hearing. Tr. 35-37. Respondent reiterated that all of the Petition's stipulated facts were true and accurate. Tr. 37. The Hearing Committee has not considered Respondent's "clarifying" testimony, and has limited its consideration to the stipulated facts.

Respondent has acknowledged that any and all promises that have been made to her by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the Petition and that there are no other promises or inducements that have been made to her. *See supra* 16.

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

The Hearing Committee has carefully reviewed the facts set forth in the Petition and established during the hearing, and we conclude that they support the admissions of misconduct and the agreed-upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because she believes that she could not successfully defend against the misconduct described in the Petition. *See supra* 5. The Petition sets forth admissions of three violations: (1) Section 6106 of the California Business and Professions Code (commission of an act involving moral turpitude and dishonesty); (2) D.C. Rule of Professional Conduct 8.1(a) (knowingly making a false statement of fact in connection with a disciplinary matter); and (3) D.C. Rule of Professional Conduct 8.4(c) (engaging in conduct involving dishonesty).

Section 6106 of the California Business and Professions Code states, in part, that:

The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.

A violation of Section 6106 is any misconduct involving moral turpitude, dishonesty or corruption as described by statute and case law. *Matter of Burckhardt*, 1991 WL 16498, at \*4-5 (State Bar of Cal. Feb. 4, 1991). California courts appear to treat purposeful dishonesty as synonymous with moral turpitude. *See, e.g., Stevens v. State Bar of California*, 794 P.2d 925, 929 (Cal. 1990) (when an attorney "purposely misled [a client] about the status of her case, he was dishonest; this involves moral turpitude within the meaning of [6106]"). The stipulated facts support Respondent's admission that she violated Section 6106 of the California Business and Professions Code in that she submitted an affidavit in support of a motion to appear *pro hac vice* that misstated her then-present residence and her connections to the State of California, (*see supra* 11 4c, 4e, 4f), and that she misrepresented the circumstances that resulted in the inclusion of inaccurate information regarding "Michael Smith" on her website. *See supra* 11 4i, 4j.

A violation of Rule 8.1(a) requires evidence that the attorney knowingly made a false statement of fact in connection with a disciplinary matter. A violation of Rule 8.4(c) is any conduct that involves dishonesty, fraud, deceit, or misrepresentation. The stipulated facts support Respondent's admission that she violated both Rule

8.1(a) and 8.4(c) on December 5, 2019, when she responded to the Office of Disciplinary Counsel's request for an explanation as to how the "Michael Smith" profile had come to appear on her firm's website. Respondent admits that her response was knowingly false. *See supra* 14r; Tr. 38-39.

C. The Agreed-Upon Sanction Is Justified.

The third and most complicated 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's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* discussion with Disciplinary Counsel, and our review of relevant precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient.

Misrepresentations in a *pro hac vice* application do not necessarily merit suspension. *See, e.g., In re Balsamo*, Bar Docket No. 2010-D433 (Letter of Informal Admonition July 13, 2011) (respondent received an informal admonition for a

misrepresentation by omission in failing to state the full circumstances underlying his prior discipline in violation of Rules 3.3(a)(1) and 8.4(c)); *In re Rohde*, Board Docket No. 15-BD-107 (BPR March 11, 2020) (respondent received a public censure for violating Virginia Rule 8.4(c) by failing to disclose prior disciplinary matter and criminal conviction in his *pro hac vice* application), *recommendation adopted*, 234 A.3d 1203 (D.C. 2020) (per curiam). Respondent's misrepresentations to the California court lacked the candor demanded of attorneys practicing before a tribunal.

Sanctions for violations of Rules 8.1(a) and 8.4(c) run from 30-day suspensions to disbarment, depending on the level of dishonesty. *See, e.g., In re Cole*, 967 A.2d 1264 (D.C. 2009) (30-day suspension where respondent, falsely assured his client that the application had been filed, and falsely explained that the delay was attributable to the court); *In re Rosen*, 481 A.2d 451 (D.C. 1984) (30-day suspension for three misrepresentations to the court); *In re Schoeneman*, 891 A.2d 279 (D.C. 2006) (four-month suspension without fitness for violating Rules 1.1(a), 1.3(a), 1.3(b)(1) & (2), 1.4(a), 8.4(c), and 8.4(d)); *In re Rodriguez-Quesada*, 122 A.3d 913 (D.C. 2015) (two-year suspension with fitness and restitution for violating various Rules including 8.4(c) in representing multiple vulnerable immigrant clients); *In re Ukwu*, 926 A.2d 1106 (D.C. 2007) (two-year suspension with fitness and restitution for giving knowingly false testimony at hearings in five immigration law proceedings); *In re Vohra*, 68 A.3d 766, 786, 789 (D.C. 2013) (three-year suspension with fitness for violating several rules along with 8.1 and 8.4 in an

immigration matter); *In re Gil*, 656 A.2d 303 (D.C.1995) (disbarment for "extremely serious acts of dishonesty" and criminal conduct amounting to theft); *In re Goffe*, 641 A.2d 458, 461 (D.C. 1994) (per curiam) (disbarment for "egregious misconduct" including a pattern of dishonesty and lying and blatant fabrication of evidence).

Here, Respondent's knowingly false response to Disciplinary Counsel's request for information about fictional statements on her firm's website could have delayed Disciplinary Counsel's investigation. Ultimately, however, Respondent admitted her false statements, cooperated with Disciplinary Counsel's investigation, and accepted full responsibility for her actions. Petition at 11; Tr. 42, 62-63.

The dishonesty in her public website, to the California court, and to Disciplinary Counsel, however, did not directly harm Ms. Collier. As such, we find Respondent's misconduct to be more in line with the lower range of sanctions afforded for similar misconduct. We also believe that the required legal education will be a more fitting sanction to underscore and educate Respondent as to her role as an attorney in the public sphere.

The complainants both request that Respondent be disbarred. While these serious misrepresentations warrant suspension, we do not find them so grave as to warrant disbarment. At both the limited hearing and in their filed statements, the complainants allege acts of dishonesty that post-date the misconduct at issue here. The Hearing Committee cannot consider these allegations, which are not evidence, because the Hearing Committee is not authorized in a limited hearing to make findings of fact regarding such allegations. If it deems warranted, the Office of



Disciplinary Counsel can consider these as a basis to open a new investigation into Respondent.

The Hearing Committee received two supplemental responses filed by Respondent that challenge the factual allegations in the complainants' statements. The record was kept open exclusively for the purpose of accepting complainants' statements and there is nothing in the Board Rules allowing for the submission of such supplemental responses by Respondent. The Hearing Committee did not consider Respondent's supplemental responses and, to the extent that the filings challenge factual allegations, is not authorized to make such findings of fact.

#### IV. CONCLUSION AND RECOMMENDATION

It is the conclusion of the Hearing Committee that the discipline negotiated in this matter is appropriate.

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court suspend Respondent for six months with 90-days stayed, provided that Respondent: (1) take three hours of pre-approved legal education related to online and website policies and practices and ethically networking and advertising online (and certifies and provides proof to Disciplinary Counsel that she has done so within six months of the date of the Court's final order); and (2) not engage in any misconduct in this or any other jurisdiction within a year from her reinstatement.

AD HOC HEARING COMMITTEE



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Michael J. Zoeller  
Chair



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Carolyn Haynesworth Murrell  
Public Member



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Jay A. Brozost  
Attorney Member