THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
MARYLIN JENKINS,	:	
	:	Board Docket No. 23-ND-002
Respondent.	:	Disciplinary Docket No. 2022-D094
	:	
An Administratively Suspended	:	
Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 390626)	:	

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 May 10, 2023, for a limited hearing on a Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Christina Biebesheimer, Chair; David Bernstein, Public Member; and Lisa Greenlees, Attorney Member. The Office of Disciplinary Counsel was represented by Disciplinary Counsel, Hamilton P. Fox, III. Respondent, Marylin Jenkins, appeared without counsel.

The Hearing Committee has carefully considered the Petition for Negotiated Discipline signed by Disciplinary Counsel, and Respondent, the supporting affidavit submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent, and Disciplinary Counsel. The Hearing Committee also has fully considered its *in camera* review of Disciplinary Counsel's

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

files and records, and *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, we approve the Petition, find the negotiated discipline of a thirty-day suspension is justified and recommend 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 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. 19;[1] Affidavit ¶ 2.

3. The allegation that was brought to the attention of Disciplinary Counsel was that Respondent had given false answers in an employment application about her disciplinary history. Petition at 1.

4. Respondent has freely and voluntarily acknowledged that the stipulated facts and misconduct reflected in the Petition are true. Tr. 20; Affidavit ¶ 4. Specifically, Respondent acknowledges that:

> 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,

[1] "Tr." Refers to the transcript of the limited hearing held on May 10, 2023. Pursuant to Board Rule 11.9, the Hearing Committee *sua sponte* makes the following corrections to the limited hearing transcript: page 4, line 3 ("everyone on here" is changed to "everyone is on here"); page 4, line 15 ("fourth" is changed to "forth"); and, page 22, line 2 ("disciplinary counsel as made no promises" is changed to "disciplinary counsel has made no promises").

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."

5. Respondent is agreeing to the disposition because Respondent believes that she cannot successfully defend against discipline based on the stipulated misconduct. Tr. 19; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises to Respondent other than to ask for a 30-day suspension. Petition at 5; Tr. 22; Affidavit ¶ 7.

7. Respondent confirmed that she understands that she has a right to be represented by counsel, and affirmed that she wanted to proceed without counsel. Tr. 11-12; Affidavit ¶ 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. 22; Affidavit ¶ 6.

9. Respondent is not being subjected to coercion or duress. Tr. 22; Affidavit ¶ 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. 12.

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. 11-12, 14-18; Affidavit ¶¶ 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a thirty-day suspension. Petition at 5; Tr. 21. Respondent further understands that her period of suspension will not be deemed to begin to run for purposes of reinstatement until she files an affidavit in compliance with Rule XI, Section 14(g). Tr. 26; Affidavit ¶ 15.

13. Although not specifically identified as an aggravating factor, the parties have stipulated that on December 5, 2016, respondent was reprimanded by the Board on Professional Responsibility for violating Rule 8.4(c), for engaging in conduct involving misrepresentation and dishonesty. Petition at 3; Tr. 25.

14. The Petition sets forth the following factors in mitigation of sanction:

> Respondent is at the end of her legal career. She has changed her status with to 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.

Petition at 6-7; *see also* Affidavit ¶ 14.

15. During the limited hearing, Respondent represented that she had returned to active status in the California Bar, in the hope of practicing again, but "that has not worked out because of [her firm's] economic situation." Tr. 24. Respondent intends to return to inactive status with the California Bar. *Id.* Respondent also represented that she had moved to Massachusetts, where she is a retired member of the Bar; she has no plans to practice law in Massachusetts. *Id.* at 24, 28-29.

16. The complainant was notified of the limited hearing but did not appear and did not provide any written comment. Tr. 9, 26-27.

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 Petition and agreed to the sanction therein. 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* ¶¶ 8-9. Respondent understands the implications and consequences of entering into this negotiated discipline. *See supra* ¶ 11.

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* ¶ 6.

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 admission 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 states that Respondent violated *both* D.C. and California Rules 8.4(c). Petition at 4-5. This may seem incompatible with Comment [3] to D.C. Rule 8.5, which provides that "any particular conduct of an attorney shall be subject to

only one set of rules of professional conduct." Because Respondent's misconduct did not arise in connection with a matter pending before a tribunal, and because she is a member of another Bar, the rules to be applied to her misconduct:

> shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

D.C. Rule 8.5(b)(2)(ii). Because Respondent's misconduct arose in connection with an application for employment in California, it appears that the California Rules should apply. We need not conclusively resolve this issue because the two Rules are substantively identical. *Compare* Cal. R. Prof. Cond. 8.4(c) ("It is professional misconduct for a lawyer to: . . . engage in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation."), *with* D.C. R. Prof. Cond. 8.4(c) ("It is professional misconduct for a lawyer to: . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation.").

The stipulated facts show that in seeking law firm employment, Respondent misrepresented her Bar memberships (omitting her D.C. Bar membership), her employment history (omitting her Amtrak employment), and her disciplinary history (denying that she had been party to a disciplinary proceeding, and that she had been sanctioned). These misrepresentations violated either California Rule 8.4(c) or D.C. Rule 8.4(c).

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* communications with Disciplinary Counsel, and our review of relevant precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient.

We begin by noting that even though there may be a question about which jurisdiction's law to apply to decide the Rule violation, D.C. law governs our sanction recommendation. *See, e.g.*, *In re Ponds*, 888 A.2d 234, 240, 245 (D.C. 2005).

We agree with the sanction analysis in the Petition, and the conclusion that the facts in *In re Hawn*, 917 A.2d 693 (D.C. 2007) (per curiam) are most comparable to those here. Hawn falsified his law school transcripts and resume when seeking

law firm employment. *In re Hawn*, Bar Docket No. 258-05, at 4-5 (BPR Dec. 5, 2006). When his law school asked him to explain the transcript discrepancies, he denied altering the transcript and falsely suggested that the changes may have been caused by a malfunction in the electronic transmission from the registrar. *Id.* at 6. He finally reported his misconduct to Disciplinary Counsel, after an in-person meeting with several law school deans. *Id.* at 7. He was suspended for 30 days. *Hawn*, 917 A.2d at 694.

The facts here are both better and worse than those in *Hawn*. Perhaps most importantly, Respondent admitted her wrongdoing when confronted, while Hawn tried to blame transmission problems for his fabrication.[2] However, Hawn had no prior discipline, and Respondent was reprimanded by the Board in 2016 for violating Rule 8.4(c). *In re Jenkins*, Board Docket No. 15-BD-110 (BPR Dec. 5, 2016). In that case, Respondent was asked to provide engagement letters with outside counsel as part of an audit by the Amtrak Office of the Inspector General. Because she did not have engagement letters for three matters, she asked outside counsel to provide engagement letters, backdated to the approximate date that Respondent asked counsel to handle each matter. She then backdated her signature on each engagement

[2] Other than her immediate acceptance of responsibility when confronted with the disciplinary complaint, we do not give any weight to the other proffered mitigating facts. First, Respondent stated in her affidavit that she does not currently intend to resume the practice of law, but she testified at the limited hearing that she took steps to resume practice since she filed her affidavit, and thus, we cannot conclude that Respondent is at the end of her career. Second, it is not clear how the excitement of new employment should mitigate the fact that Respondent tried to obtain that employment by making a series of misrepresentations.

letter. She provided the letters to the OIG, without disclosing that they had been backdated. *Id.* at 2-4. It is troubling that Respondent's Rule 8.4(c) violation here arises from her failure to disclose another Rule 8.4(c) violation, and this makes her misconduct more serious than other cases that have not resulted in suspensions. *See, e.g., In re Rohde*, 234 A.3d 1203 (D.C. 2020) (per curiam) (public censure for knowingly failing to disclose prior discipline when applying for admission *pro hac vice*); *In re Austern*, 524 A.2d 680 (D.C. 1987) (public censure for assisting his client in a fraud: failing to tell purchasers that a check the client purportedly used to fund an escrow account the respondent maintained was in fact, worthless); *In re Hadzi-Antich*, 497 A.2d 1062 (D.C. 1985) (public censure for fabricating various academic honors in support of his application for a teaching position).

Thirty-day suspensions have been imposed where the respondent made three separate misrepresentations to a court, *In re Rosen*, 481 A.2d 451 (D.C.1984), or falsified travel expenses, *In re Schneider*, 553 A.2d 206 (D.C. 1989). Sixty-day suspensions have been imposed for altering a client's medical records and submitting them to an insurer, *In re Zeiger*, 692 A.2d 1351 (D.C. 1997) (per curiam), and for making misrepresentations to a court to avoid disqualification for conflict of interest. *In re Waller*, 573 A.2d 780 (D.C.1990) (per curiam).

After considering the stipulated facts, and the precedent discussed above, we conclude that the stipulated sanction is not "unduly lenient." *See Johnson*, 984 A.2d at 181 (D.C. 2009) (per curiam); *see also In re Mensah*, 262 A.3d 1100, 1104 (D.C.

2021) (per curiam) (sanctions in negotiated discipline cases cannot be "completely unmoored from the sanctions that would be imposed in contested-discipline cases").

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 thirty days.

AD HOC HEARING COMMITTEE

Christina Biebesheimer

Christina Biebesheimer
Chair

David Bernstein

David Bernstein
Public Member

Lisa T. Greenlees

Lisa Greenlees
Attorney Member