BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF	§	
MARYLIN JENKINS MILNER,	§	**CAUSE NO.** 68333
STATE BAR CARD NO. 24025837	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Marylin Jenkins Milner, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.
2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Marylin Jenkins Milner, 434 Minna Street, Apt. 1813, San Fransico, CA 94103.
3. On or about January 10, 2023, a Petition for Negotiated Discipline (Exhibit 1) was entered by the District of Columbia Court of Appeals Board on Professional Responsibility in a matter styled, *In the Matter of MARYLIN JENKINS, Respondent, An Administratively Suspended Member of the Bar of the D.C. Court of Appeals, Bar Registration No. 390626, Date of Admission: August 1, 1985*, Disciplinary Docket No. 2022-D094, 23-BG-545; that states in pertinent part as follows:

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.

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).

4. On or about June 29, 2023, a Report and Recommendation of Ad Hoc Hearing Committee Approving Petition for Negotiated Discipline (Exhibit 2) was entered by the District of Columbia Court of Appeals Board on Professional Responsibility Ad Hoc Hearing Committee in a matter styled, *In the Matter of: Marylin Jenkins, Respondent. An Administratively Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 390626),* Board Docket No. 23-ND-002, Disciplinary Docket No. 2022-D094; that states in pertinent part as follows:

II. FINDINGS PURSUANT TO D.C. BAR R. XI, § 12.l(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.

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").

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, 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 ¶ l.

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 1s 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.

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.

5. On or about July 27, 2023, the District of Columbia Court of Appeals issued an Order (Exhibit 3) in Cause No. 23-BG-0545, styled, *In Re Marylin Jenkins, Respondent.* An Administratively Suspended Member of the Bar of the District of Columbia Court of Appeals, (Bar Registration No. 390626)*,* On Report and Recommendation of the Board on Professional Responsibility Ad Hoc Hearing Committee Approving Petition for Negotiated Discipline (Disciplinary Docket No. 2022-D-094) (Board Docket No. 23-ND-002), that states in pertinent part as follows:

> In this matter, the Hearing Committee recommends approval of a petition for negotiated attorney discipline. *See* D.C. Bar R. XI, § 12.1(c). Respondent Marylin Jenkins voluntarily acknowledged that, in connection with applying for a job in California, she concealed her prior discipline in this jurisdiction (a 2016 reprimand for a violation of D.C. R. Prof. Conduct 8.4(c)), her prior employment out of which that 8.4(c) violation arose, and even her admission to the D.C. Bar. As a result, Ms. Jenkins admits that she (again) violated D.C. R. Prof. Conduct 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), as well as the corresponding and substantially similar Cal. R. Prof. Conduct 8.4(c) (conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation). The proposed discipline consists of a 30-day suspension.

> Having reviewed the Hearing Committee's recommendation in accordance with our procedures in uncontested disciplinary cases, *see* D.C. Bar R. XI,§ 12.l(d), we agree that this case is appropriate for negotiated discipline and that "the agreed upon sanction is 'justified,'" *In re Mensah*, 262 A.3d 1100, 1104 (D.C. 2021) (per curiam) (quoting D.C. Bar R. XI, § 12.l(c)(3)), given the sanctions we have previously imposed for similar violations, *see, e.g., In re Rosen*, 481 A.2d 451, 455 (D.C. 1984) (imposing a 30-day suspension on an attorney who made three misrepresentations to the court and previously had been reprimanded for misrepresentation). We also agree with the Hearing Committee that, in these circumstances, there is no need to decide whether our rules or California's rules apply to respondent's misconduct. See D.C. R. Prof. Conduct 8.5(b)(2)(ii) ("If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied 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."); *In re Tun*, 286 A.3d 538, 543 (D.C. 2022) (explaining that even when we evaluate an attorney's misconduct under another jurisdiction's rules, we follow District of Columbia law when determining the appropriate sanction); *In re Cooper*, 936 A.2d 832, 835 (D.C. 2007) ("Courts should not decide more than the occasion demands." (quoting *District of Columbia v. Wical Ltd. P'ship*, 630 A.2d 174, 182 (D.C. 1993))). Accordingly, it is
>
> ORDERED that respondent Marylin Jenkins is hereby suspended from the practice of law in the District of Columbia for 30 days. We direct respondent's attention to D.C. Bar R. XI, § 14(g), which requires the filing of an affidavit with this court for purposes of reinstatement in accordance with D.C. Bar R. XI, § 16, and Board Prof. Resp. R. 9.

6. A copy of the Petition for Negotiated Discipline filed by the District of Columbia Court of Appeals Board on Professional Responsibility, the Report and Recommendation of the Ad Hoc Hearing Committee Approving Petition for Negotiated Discipline filed by the Board on Professional Responsibility Ad Hoc Hearing Committee, and the Order issued by the District of Columbia Court of Appeals, are attached hereto as Petitioner's Exhibits 1, 2, and 3, and made a part hereof for all intents and purposes as if the same was copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibits 1, 2, and 3, at the time of hearing of this cause.

7. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the District of Columbia Court of Appeals and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Amanda M. Kates
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
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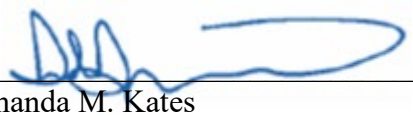
Email: akates@texasbar.com



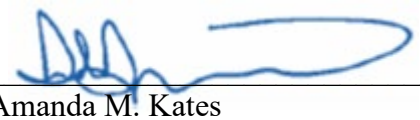
Amanda M. Kates
Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Marylin Jenkins Milner by personal service.

Marylin Jenkins Milner
434 Minna Street, Apt. 1813
San Fransico, CA 94103



Amanda M. Kates

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	
MARYLIN JENKINS,	**Disciplinary Docket No. 2022-D094**
Respondent	**23-BG-545**
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 Marylin 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

EXHIBIT
1

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 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.

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

Marylin Jenkins
Respondent

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

Email: foxp@dcodc.org

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

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

AFFIDAVIT OF NEGOTIATED DISPOSITION

I, Marylin Jenkins, affiant, pursuant to D.C. Bar Rule XI, § 12.1(b)(2) and Board Rule 17.3(b), and in furtherance of my wish to enter into a negotiated disposition, declare as follows:

1. I understand that I have the right to the assistance of counsel in this matter. I have decided to represent myself *pro se.*

2. I am aware that there is currently pending an investigation into allegations of misconduct, the nature of which are set forth in the petition for negotiated disposition.

3. I have carefully reviewed both the petition for negotiated disposition and this affidavit.

4. I affirm that the stipulated facts in the accompanying petition and this affidavit are true and support the stipulated misconduct and the agreed-upon sanction.

5. I am agreeing to this negotiated disposition because I believe that I could not successfully defend against disciplinary proceedings based on the stipulated misconduct.

6. I freely and voluntarily enter into the negotiated disposition. I am not being subjected to coercion or duress.

7. I acknowledge that Disciplinary Counsel has made no promises or inducements other than what is contained in the accompanying petition for negotiated disposition.

8. I understand that the petition for negotiated disposition and this affidavit shall become public once they are filed with the Executive Attorney for the Board on Professional Responsibility, at which time all proceedings before the Hearing Committee shall become open to the public, and any exhibits introduced into evidence, any pleadings filed by the parties, and any transcript of the proceeding shall be available for public inspection.

9. I am fully aware of the implications of this negotiated disposition including, but not limited to, that by entering into this negotiated disposition I am giving up the following rights:

a. My right to a contested hearing before a Hearing Committee at which I could cross-examine adverse witnesses and compel witnesses to appear on my behalf;

b. My right to require that Disciplinary Counsel prove each and every charge by clear and convincing evidence;

c. My right to seek review of an adverse determination by a Hearing Committee by filing exceptions with the Board to the Hearing Committee's report and recommendation; and

d. My right to appeal to the District of Columbia Court of Appeals by filing exceptions to the Board's report and recommendation.

10. I understand that the negotiated disposition, if approved, may affect:

a. My present and future ability to practice law, and

b. My bar memberships in other jurisdictions.

11. I understand that this negotiated disposition could be rejected by the Hearing Committee pursuant to D.C. Bar Rule XI, §12.1(c) and Board Rule 17.7, or by the Court pursuant to D.C. Bar Rule XI, §12.1(d).

12. I understand that any sworn statement made by me in the petition for negotiated disposition, the accompanying affidavit, or the limited hearing may be used for purposes of impeachment at any subsequent hearing on the merits.

13. I understand that the negotiated disposition consists of the agreed-upon sanction of a 30-day suspension.

14. In mitigation of my misconduct, I submit the following:

a. I regret and fully acknowledge my misconduct;

b. I have cooperated fully with Disciplinary Counsel's investigation;

c. I no longer intend to practice law and have changed by status with the Bar of the State of California, where I live; and where I have principally practiced to "inactive." I am unable to resign from the California Bar because of this pending disciplinary matter; and

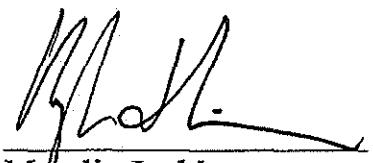
d. in August of 2021, I contracted Covid-19, which resulting in a weeklong hospitalization. I returned to work in October 2021, despite extreme fatigue, "fuzziness" of thought, and shortness of breath, which affected my ability to work full days. In late March or April of 2022, I applied for a partnership position in the San Francisco office of Beveridge & Diamond. The position seemed perfect for my experience, and I truly hoped that the excitement of a new position would provide an impetus to move beyond my fatigue. After my application process with Beveridge & Diamond was terminated by them, and before I received notice of this action, I was officially diagnosed with worsening pulmonary and cardiac conditions resulting from the Covid infection. At that time, I determined that I would retire

from my law practice, after I had completed immediate assignments in the cases for which I had responsibility. Approximately a week later, I learned that this matter had been filed. Because of the pendency of this matter, I am unable to resign from the California Bar, and have therefore changed my status to "inactive," effective June 3, 2022. I have no intention to return to the practice of law in California or elsewhere.

15. I acknowledge that because of the negotiated disposition requires my suspension from the practice of law, I will be required to file an affidavit pursuant to D.C. Bar Rule XI, § 14, and Board Rule 9.9, and that my period of suspension will not be deemed to commence for purposes of my eligibility to return to the practice of law until such affidavit is filed with the Court and the Board, with a copy served on Disciplinary Counsel.

16. I agree that the limited hearing described in Board Rule 17.4(a) may be conducted by video conference.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 30th day of June, 2022, at Larkspur, California.



Marylin Jenkins
Respondent

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

FILED

Apr 28 2023 3:45pm

Board on Professional Responsibility

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

ORDER

PLEASE TAKE NOTE THAT the limited hearing in the above-captioned matter will be held on **May 10, 2023,** at **10:00 a.m.** via Zoom videoconference. Disciplinary Counsel and Respondent shall appear promptly at that time. The parties are directed to avoid scheduling conflicting matters and shall inform any court/administrative agency of the prior commitment to the disciplinary system.

If Respondent or counsel are unfamiliar with Zoom, they are advised to consult the Board on Professional Responsibility's Guidelines for Remote Disciplinary Proceedings set forth in Administrative Order 2020-06 (https://www.dcbar.org/attorney-discipline/attorney-discipline-news/administrative-order-2020-6-guidelines-for-remote-). In order to facilitate the highest quality video transmission, it is recommended that each party connect to Zoom using a wired (rather than wireless) internet connection and test their connection to Zoom through https://zoom.us/test. If either party has difficulty using the Zoom test, they are advised to contact one of the Board's Case Managers at CaseManager@dcbpr.org to test their Zoom connection.

AD HOC HEARING COMMITTEE

By: Christina Biebesheimer
Christina Biebesheimer
Chair

cc:

Marylin Jenkins, Esquire
marylinjenkins@gmail.com

Hamilton P. Fox, III, Esquire
Disciplinary Counsel
foxp@dcodc.org

Meghan Borrazas

From: Phil Fox
Sent: Friday, May 5, 2023 10:55 AM
To: BPR Case Managers
Subject: FW: [EXT]RE: In re Marylin Jenkins, DDN 2022-D094

Can this email exchange be made part of the record in In re Jenkins, Board Docket no. 23-ND-002, Disciplinary Docket No. 2022-D094.

From: Susan E. Smith <SSmith@bdlaw.com>
Sent: Thursday, May 4, 2023 3:43 PM
To: Julia L. Porter <porterj@dcodc.org>
Cc: Phil Fox <FoxP@dcodc.org>; Angela Thornton <thorntona@dcodc.org>
Subject: [EXT]RE: In re Marylin Jenkins, DDN 2022-D094

Thank you, Ms. Porter. B&D does not intend to submit comments or attend the hearing.

Susan E. Smith
Managing Principal, San Francisco Office

BEVERIDGE & DIAMOND PC
O +1.415.262.4023 ~ M +1.443.621.9652 ~ SSmith@bdlaw.com

From: Julia L. Porter <porterj@dcodc.org>
Sent: Monday, May 1, 2023 7:21 AM
To: Susan E. Smith <SSmith@bdlaw.com>
Cc: Phil Fox <FoxP@dcodc.org>; Angela Thornton <thorntona@dcodc.org>
Subject: In re Marylin Jenkins, DDN 2022-D094

[EXTERNAL SENDER: Use caution with links/attachments]

Dear Ms. Smith – because you filed a complaint against Ms. Jenkins on behalf of your firm, we are advising you of the proposed disposition of our investigation. Disciplinary Counsel and Ms. Jenkins have filed a petition for negotiated discipline, which I have attached along with Ms. Jenkin's supporting affidavit. Ms. Jenkins has agreed to serve a 30-day suspension for violating Rule 8.4(c)(dishonesty). The Board Office has scheduled a hearing on the petition for May 10, 2023, at 10 a.m. I have attached the order scheduling the hearing. Once we receive the zoom link for the hearing, we will forward it to you. You may attend the hearing and you also may submit comments in writing to our office that we will submit to the Hearing Committee. If you wish to submit written comments, please send them to Phil Fox at least three days before the hearing – *i.e.*, by Friday, May 5, 2023. Thank you for your cooperation and please let us know if you have any questions.

Sincerely,

Julia Porter, Deputy Disciplinary Counsel
Office of Disciplinary Counsel
515 5th Street, NW

Building A, Room 117
Washington, DC 20001
(202) 638-1501 (ext. 1715)

Date: May 10, 2023

Case: Board on Professional Responsibility, In Re Marylin Jenkins

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DISTRICT OF COLUMBIA COURT OF APPEALS

BOARD ON PROFESSIONAL RESPONSIBILITY

AD HOC HEARING COMMITTEE

- - - - - - - - - - - - - - - - - - X

In the Matter of, Board Docket No.

MARYLIN JENKINS, 23-ND-002

Respondent. Disciplinary Docket No.

- - - - - - - - - - - - - - - - - - X

Wednesday, May 10, 2023

REMOTE LIMITED HEARING OF

MARYLIN JENKINS

Reported by

Kim M. Brantley

Page 2

Remote limited hearing of MARYLIN JENKINS, taken via Zoom, commencing at 9:43 a.m., before Hearing Committee Number Four, and before Kim M. Brantley, a Court Reporter and Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

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APPEARANCES:

Ad Hoc Hearing Committee:
CHRISTINA BIEBESHEIMER, ESQUIRE
Chair
MR. DAVID BERNSTEIN
Public Member
LISA GREENLEES, ESQUIRE
Attorney Member

On behalf of DC Attorney Disciplinary System:
HAMILTON P. FOX, ESQUIRE
Disciplinary Counsel
515 Fifth Street NW, Ste. A-117
Washington, DC 20001
(202) 638-1501

ALSO PRESENT:
MARYLIN JENKINS, Respondent
and
MEGHAN BORRAZAS, BOPR Staff

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P R O C E E D I N G S

CHAIRPERSON BIEBESHEIMER: I think everyone on here. I'm Christina Biebesheimer. I'm the chair of this committee. So I just want to say good morning and welcome. If everyone is all set and can hear, then I think that we will get underway.

So this is a matter before the ad hoc hearing committee for a limited hearing on a petition for negotiated discipline and the accompanying affidavit filed by respondent, Marylin Jenkins.

The hearing is public and a matter of public record. It will proceed in accordance with the procedures and requirements set fourth in section 12.1 of Rule XI of the rules governing the bar, and chapter 17 of the rules of the Board on Professional Responsibility.

My name, as I mentioned, is Christina Biebesheimer. I'm the chair of this hearing committee and the hearing committee is also comprised of David Bernstein, who is the public

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member, and Lisa Greenlees, who is the attorney member.

Before we begin, I will note that the COVID-19 pandemic has required the disciplinary system to make some adjustments to ensure that cases move forward despite the inability to meet in person. Specifically, the disciplinary system now conducts hearings via remote videoconference, which we will be Live Streaming for public access through a designated YouTube channel.

The board staff has made every effort to make this hearing run smoothly, but we know that there may still be some glitches with technology. So, we may need to exercise patience.

I will also ask the parties to put themselves on mute when you're not speaking, which helps to minimize the feedback and allows us to hear each person more clearly.

So, if I may now, Ms. Brantley, I will swear you in as the court reporter. Do you solemnly swear or affirm that you will faithfully and accurately report the present proceedings to

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the best of your ability as directed by the presiding officer herein?

THE COURT REPORTER: I do.

CHAIRPERSON BIEBESHEIMER: Thank you.

Would the parties please identify themselves for the record, beginning first with the Office of Disciplinary Counsel.

MR. FOX: Hamilton Fox, Office of Disciplinary Counsel.

CHAIRPERSON BIEBESHEIMER: Thank you.

And Ms. Jenkins?

MS. JENKINS: Marylin Jenkins. I'm not sure what my title is in the proceeding.

CHAIRPERSON BIEBESHEIMER: Thank you. That's fine.

The purpose of this limited hearing is for this hearing committee to determine whether to recommend to the District of Columbia Court of Appeals that the discipline negotiated by Disciplinary Counsel and respondent be approved.

First, I'm going to ask Disciplinary Counsel to summarize the terms of the negotiated

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discipline, including the stipulated facts, violations of the rules, and the agreed upon sanctions.

So, if you would please summarize that for us, Mr. Fox.

MR. FOX: Yes. In 2016, the board issued a reprimand to Ms. Jenkins for an 8.4(c) violation arising out of her employment in-house for Amtrak.

In February of 2022, Ms. Jenkins, who at that time was living in California, applied for a position in the San Francisco office of the law firm Beveridge & Diamond. That law firm has a form that they require lateral applicants to fill out, and on that form, in the materials that Ms. Jenkins submitted, she did not disclose that she had worked at Amtrak, nor did she disclose that she was a member of the DC Bar, and she omitted to disclose that she had received a reprimand. There were two specific questions on the form: One asked whether she had ever been subject to a disciplinary proceeding, and the second asked

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whether she had ever been disciplined. And she responded no to both of those matters.

Beveridge & Diamond conducted an investigation, and in May of this year, they -- or last year, sorry, they wrote this off as a letter saying that they believe they had an obligation to disclose this. They didn't -- they -- they said they did not believe they had an obligation to disclose it to California.

We, as we customarily do, sent the Beveridge & Diamond letter to Ms. Jenkins who immediately agreed that she had omitted this information and ended up -- and we ended up negotiating the proposed discipline, which is a suspension of 30 days or a violation of Rule 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty or misrepresentation.

CHAIRPERSON BIEBESHEIMER: Thank you very much.

Ms. Jenkins, do you agree with Disciplinary Counsel's statement?

MS. JENKINS: I do.

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CHAIRPERSON BIEBESHEIMER: Thank you.

Second, I am going to ask if Disciplinary Counsel notified the complainants of the negotiated discipline and their right to comment, either by written submission or a brief statement to this hearing committee?

MR. FOX: We did, and we have submitted to the hearing committee the email exchange that we had with the Beveridge & Diamond firm and their indication that they have no interest in participating in these proceedings.

CHAIRPERSON BIEBESHEIMER: Thanks.

And I'll just confirm, there are no complainants in the waiting room, Meghan?

MS. BORRAZAS: Correct, there is no one in the waiting room.

CHAIRPERSON BIEBESHEIMER: Okay, thank you.

Third, to assist in deciding whether to recommend a negotiated discipline, I reviewed Disciplinary Counsel's investigative file in camera, meaning that I read it by myself without

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the assistance of parties, and I discussed the matter with Disciplinary Counsel ex parte, meaning that I met with Disciplinary Counsel by phone by myself without respondent, pursuant to Rule XI Section 12.1(c) and Board Rule XVII.4(h). I have shared the results of my review and discussion with the other members of the hearing committee.

The criteria for approving a petition for a negotiated discipline are set forth in Rule XI Section 12.1(c) and Board Rule XVII.5, and these criteria are as follows: One, that respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition; two, that the respondent has agreed to the sanctions set forth in the petition; three, that the facts set forth in the petition or as shown in this hearing support the admission of misconduct and the agreed upon sanction; and fourth, that the sanction is justified.

In order to assist the hearing committee in making these determinations, I am going to place respondent under oath and will then

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ask her a number of questions about what is set forth in the petition for negotiated discipline and her affidavit.

So, I will ask you, Ms. Jenkins, do you solemnly swear or affirm that the testimony you will give in this proceeding will be the truth, the whole truth and nothing but the truth?

MS. JENKINS: I affirm.

CHAIRPERSON BIEBESHEIMER: Thank you.

Whereupon,

MARYLIN JENKINS

the respondent, called on her own behalf, and after having affirmed to tell the truth, was examined and testified as follows:

CHAIRPERSON BIEBESHEIMER: This hearing committee is required to determine whether you are entering into the negotiated discipline knowingly, freely and voluntarily and that you have not been subjected to coercion or duress.

You are appearing before us pro se. You are of course free to represent yourself. I simply want to establish whether you were aware

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that you have the right, if you want, to consult with counsel.

Are you aware that you may file a motion with the board for appointment of counsel based on indigency supported by an affidavit of indigency?

MS. JENKINS: I am.

CHAIRPERSON BIEBESHEIMER: Being fully aware of these rights, is it your desire to represent yourself in this matter?

MS. JENKINS: It is.

CHAIRPERSON BIEBESHEIMER: Are you under the influence of any substance or medication that would affect your ability to make informed decisions at this hearing?

MS. JENKINS: No.

CHAIRPERSON BIEBESHEIMER: Do you believe you are competent to enter into this negotiated discipline?

MS. JENKINS: I do.

CHAIRPERSON BIEBESHEIMER: Thank you. And I have a few more questions for you, Ms.

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Jenkins.

The function of this hearing committee is to decide whether to recommend approval of the petition for negotiated discipline to the District of Columbia Court of Appeals.

Do you understand at that?

MS. JENKINS: I do.

CHAIRPERSON BIEBESHEIMER: Do you also understand that the ultimate decision whether to accept the terms of your negotiated discipline lies with the Court of Appeals?

MS. JENKINS: I do.

CHAIRPERSON BIEBESHEIMER: Are you aware that if this hearing committee decides to reject this negotiated discipline after considering the criteria in Rule XI Section 12.1(c) and Board Rule XVII.5, you will have no right to appeal our decision to either the Board on Professional Responsibility or the court of appeals.

MS. JENKINS: I understand.

CHAIRPERSON BIEBESHEIMER: Are you also

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aware that if this hearing committee decides not to recommend approval of the negotiated discipline to the court of appeals, you and Disciplinary Counsel are free to revise and resubmit another petition for negotiated discipline to this hearing committee?

MS. JENKINS: Yes, I understand that.

CHAIRPERSON BIEBESHEIMER: Thank you.

Next I will ask you a few questions about the implications and consequences of agreeing to negotiated discipline.

The hearing committee needs to make sure that you understand the implications of entering into negotiated discipline. Do you understand that you will give up your right to have a hearing before a hearing committee at which you may cross-examine adverse witnesses and compel the attendance of witnesses favorable to your defense?

MS. JENKINS: I do.

CHAIRPERSON BIEBESHEIMER: Do you understand that you will give up the right to have

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Disciplinary Counsel prove and a hearing committee decide each charge under a clear and convincing evidence standard?

MS. JENKINS: I do.

CHAIRPERSON BIEBESHEIMER: And do you understand that if you had a hearing on these charges, you would be able to subpoena witnesses favorable to you and compel their attendance?

MS. JENKINS: I do.

CHAIRPERSON BIEBESHEIMER: Do you understand that if you had a contested hearing on these charges, instead of entering into this negotiated disposition, you would have had the right to seek review by the Board on Professional Responsibility of any adverse findings by the hearing committee?

MS. JENKINS: Yes, I understand.

CHAIRPERSON BIEBESHEIMER: Do you understand that if the negotiated discipline is approved, that it may affect your present and future ability to practice law?

MS. JENKINS: I do.

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CHAIRPERSON BIEBESHEIMER: Do you understand that if you had a contested hearing on these charges, following review by the board, you would have had a right to appeal the court of appeals -- to the court of appeals any adverse findings and conclusions by the Board on Professional Responsibility?

MS. JENKINS: I do.

CHAIRPERSON BIEBESHEIMER: Do you understand that by entering into this disposition, and if it is approved, that it may affect your bar membership in other jurisdictions?

MS. JENKINS: I do.

CHAIRPERSON BIEBESHEIMER: Just three more questions.

Do you understand that by entering into this disposition, and if it is approved, that it may affect your present employment?

MS. JENKINS: I have no present employment, so I guess the answer is yes.

CHAIRPERSON BIEBESHEIMER: Thank you.

Do you understand that, should this

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negotiated disposition or any subsequent negotiated dispositions fail to secure this hearing committee's recommendation for approval, and this matter proceeds to a formal disciplinary hearing, a new hearing committee will be selected to hear the merits of the matter?

MS. JENKINS: Yes, I do.

CHAIRPERSON BIEBESHEIMER: And finally, do you understand that this new hearing committee may not consider what has occurred in this limited hearing in deciding whether rules were violated or in fashioning discipline, except that any statements that you may have made in your affidavit, or any statements that you make in this proceeding, may be used for purposes of impeachment?

MS. JENKINS: Yes, I understand.

CHAIRPERSON BIEBESHEIMER: Thank you very much.

Recognizing that you are giving up all these rights by entering into a negotiated disposition, do you still want to proceed with

this limited hearing?
MS. JENKINS: I do.
CHAIRPERSON BIEBESHEIMER: Do you feel that you are being treated fairly and impartially in these proceedings?
MS. JENKINS: Yes.
CHAIRPERSON BIEBESHEIMER: Do you agree that no one is forcing you against your will or your better judgment into entering into this negotiated discipline?
MS. JENKINS: I agree with that.
CHAIRPERSON BIEBESHEIMER: This hearing committee has had presented to it the petition for negotiated discipline dated June 30th, 2022, and filed with the Office of the Executive Attorney on January 10 2023, and your affidavit, also dated June 30th, 2022, and also filed on January 10, 2023.
Have you carefully read both of these documents?
MS. JENKINS: I have.
CHAIRPERSON BIEBESHEIMER: Your

affidavit states that you are agreeing to this negotiated discipline because you believe you could not successfully defend against disciplinary proceedings based on the misconduct described in the petition for negotiated discipline.
Is this statement in your affidavit accurate?
MS. JENKINS: It is correct.
CHAIRPERSON BIEBESHEIMER: The petition contains a statement of the nature of the matter that brought you to Disciplinary Counsel's attention.
Have you read that?
MS. JENKINS: I have.
CHAIRPERSON BIEBESHEIMER: Your affidavit states that you are aware that there is currently pending against you a proceeding involving allegations that you engaged in professional misconduct.
Is that an accurate statement?
MS. JENKINS: It is.
CHAIRPERSON BIEBESHEIMER: In the

petition you and Disciplinary Counsel have stipulated to certain facts and charges.
Do you have a copy of the petition?
MS. JENKINS: I do.
CHAIRPERSON BIEBESHEIMER: And have you carefully reviewed the stipulation of facts set forth on pages three and four?
MS. JENKINS: I have.
CHAIRPERSON BIEBESHEIMER: Do you admit that those stipulated facts, which are set fourth on pages three and four, are true and accurate?
MS. JENKINS: I do.
CHAIRPERSON BIEBESHEIMER: Is there anything that is incorrect about those stipulated facts?
MS. JENKINS: No.
CHAIRPERSON BIEBESHEIMER: The petition states that, based on the stipulated facts, you violated Rule 8.4(c) of the District of Columbia Rules of Professional Conduct by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and Rule 8.4(c) of the

California Rules of Professional Conduct by engaging in conduct involving dishonesty, fraud, deceit or reckless or intentional misrepresentation.
Is that correct?
MS. JENKINS: It is correct.
CHAIRPERSON BIEBESHEIMER: Do you admit that the stipulated facts support a finding that you violated DC Rule of Professional Conduct 8.4(c)?
MS. JENKINS: I do.
CHAIRPERSON BIEBESHEIMER: Do you admit that the stipulated facts support a finding that you violated California Rule of Professional Conduct 8.4(c)?
MS. JENKINS: I do.
CHAIRPERSON BIEBESHEIMER: The petition for negotiated discipline states that the sanction you and Disciplinary Counsel have agreed upon is a 30-day suspension.
Do you agree to this sanction?
MS. JENKINS: I do.

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CHAIRPERSON BIEBESHEIMER: The petition states that disciplinary counsel as made no promises to you other than to ask for a 30-day suspension.

Has Disciplinary Counsel made any promises to you or given you any inducements that are not set forth in writing in this petition?

MS. JENKINS: No.

CHAIRPERSON BIEBESHEIMER: In your affidavit you state that you are entering into this disposition freely and voluntarily.

Is that correct?

MS. JENKINS: It is.

CHAIRPERSON BIEBESHEIMER: Have you been subjected to any coercion or duress?

MS. JENKINS: No.

CHAIRPERSON BIEBESHEIMER: Is it your opinion that this disposition is in your best interest and the correct decision?

MS. JENKINS: Yes, I believe it is.

CHAIRPERSON BIEBESHEIMER: The petition contains certain facts in mitigation of sanction,

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namely that you, Ms. Jenkins, are at the end of your legal career. You have changed your status with the California Bar to inactive on June 3rd, 2022 and California is where you reside and have practiced for the past seven years.

You have readily accepted responsibility for your conduct and did so less than a week after receiving Disciplinary Counsel's letter of inquiry.

As respondent, you have been suffering from "long COVID" since your initial recovery from COVID-19 virus in September of 2021. You experienced extreme fatigue and some fuzziness of your mental processes.

At the time you submitted your application to Beveridge & Diamond, you believed that the excitement of a new position would help to recover from symptoms, but subsequently you have been diagnosed with worsening pulmonary and cardiac symptoms, which resulted in your decision to retire from the practice of law entirely.

Disciplinary Counsel, do you stipulate

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to these facts?

MR. FOX: Sorry, I had to unmute.

I do, except there has been one change since the affidavit, which is that Ms. Jenkins has now moved to Massachusetts.

CHAIRPERSON BIEBESHEIMER: Okay, thank you for that change.

Respondent, Ms. Jenkins, do you stipulate to these facts with the one change about moving to Massachusetts?

MS. JENKINS: I do with the -- the one change that I had gone back on active status with the bar in anticipation of perhaps going back to my firm for economic reasons, although that has not worked out because of their economic situation.

CHAIRPERSON BIEBESHEIMER: So, just to clarify, you have moved to active status with the California Bar?

MS. JENKINS: Correct. But I will -- I will once again go to inactive.

CHAIRPERSON BIEBESHEIMER: Thanks. I'm

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just making a note of that. Thank you.

Are there any other mitigating facts of which the hearing committee should be aware? And I ask this to both you, Ms. Jenkins, and to Disciplinary Counsel.

MS. JENKINS: No. I think the COVID is it, the COVID problems.

MR. FOX: I am not aware of anything in addition.

CHAIRPERSON BIEBESHEIMER: Okay. Thank you both.

Although not specifically identified as an aggravating factor, the parties have stipulated in paragraph two of the petition that on December 5, 2016, respondent was reprimanded by the Board on Professional Responsibility for violating Rule 8.4(c), conduct involving misrepresentation and dishonesty.

Are there any aggravating factors of which the hearing committee should be aware?

MR. FOX: No, I'm not aware of anything else.

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CHAIRPERSON BIEBESHEIMER: Thank you.
And I will ask now some questions about the notice requirements of Rule XI.
Do you understand that by entering into this disposition, and if it is approved and you are suspended, that there are notice requirements set forth in Rule XI, Section 14, with which you must comply?
And I ask this to you, Ms. Jenkins.
MS. JENKINS: I do understand that, yes.
CHAIRPERSON BIEBESHEIMER: Do you understand that the period of suspension will not be deemed to begin to run for purposes of reinstatement until you file an affidavit in compliance with Rule XI, Sectio 14(g)?
MS. JENKINS: I do.
CHAIRPERSON BIEBESHEIMER: And I will just confirm once again with Disciplinary Counsel that the complainant, who is not present, was sent proper notice of this hearing?
MR. FOX: Yes, that's right, and -- and

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as I indicate earlier, they have affirmatively indicated that they do not wish to participate.
CHAIRPERSON BIEBESHEIMER: Thank you . I -- I remember you did say that, and I apologize for asking you twice.
If the committee -- I will ask now if either member of the committee, Mr. Bernstein or Ms. Greenlees, whether you have any questions regarding the nature of the misconduct, circumstances in aggravation or mitigation, or relevant precedence that you would like to raise at this time?
MR. BERNSTEIN: I have no questions.
MS. GREENLEES: I have a question or two, so, thank you, Christina and Ms. Jenkins, appreciate it.
I just wanted to ask a little bit more about the -- your bar licensures. On your -- on the California Bar you said you had gone to active status hoping to get a -- a job back, but there was not anything at this time at your firm.
I was a little confused. Are you at a

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different law firm? You're not at Beveridge & Diamond. Are you in a -- in a private practice somewhere else?
MS. JENKINS: I was in a private practice. I've been on disability since June 1st of 2022.
MS. GREENLEES: Got it. Okay, thank you.
And then if your -- the private practice firm where you were could have taken you back, would you have stayed on active status and gone back to work?
MS. JENKINS: I would have liked to, yes.
MS. GREENLEES: Okay, thank you.
And then my other question is are you licensed to practice law in Massachusetts?
MS. JENKINS: I am.
MS. GREENLEES: You are, okay.
MS. JENKINS: I'm on retired status.
MS. GREENLEES: Okay, and then is that inactive, or is that -- is that different from

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inactive, or is it -- is it just they have a different status for different circumstances?
MS. JENKINS: They have different wording of it.
MS. GREENLEES: Got it.
MS. JENKINS: I don't pay dues and I can't practice.
MS. GREENLEES: Okay, and could you always -- could you at any time reactivate your Massachusetts Bar --
MS. JENKINS: Upon payment of substantial back dues, yes.
MS. GREENLEES: Okay, so you could go from retired status to active status and practice in Massachusetts?
MS. JENKINS: I could.
MS. GREENLEES: And do you have plans to do that?
MS. JENKINS: I do not.
MS. GREENLEES: Okay, thank you. That was what I wanted to know.
CHAIRPERSON BIEBESHEIMER: Thank you

very much, Lisa.

That brings us to the close of this hearing. The hearing committee thanks the parties and we will take this matter under advisement.

The hearing is adjourned. Thank you all very much.

MS. JENKINS: Thank you.

MS. GREENLEES: Thank you.

(Whereupon at 10:28 a.m. the hearing concluded.)

CERTIFICATE OF NOTARY PUBLIC

I, KIM M. BRANTLEY, the officer before whom the foregoing hearing was taken, do hereby, certify that the proceedings were taken by me in stenotype and thereafter reduced to typewriting under my direction; that said hearing is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

KIM M. BRANTLEY
Notary Public in and for
the District of Columbia

My commission expires: October 31, 2024

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A true Copy
Test:
Julio Castillo
Clerk of the District of Columbia Court of Appeals
BY: DEPUTY CLERK
Julio Castillo
Clerk of the District of Columbia Court of Appeals

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:	:	
	:	23-BG-545
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.

EXHIBIT
2

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

A true Copy
Test:

Julio Castillo
Clerk of the District of Columbia Court of Appeals

BY

DEPUTY CLERK
Julio Castillo
Clerk of the District of Columbia
Court of Appeals

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 23-BG-0545

IN RE MARYLIN JENKINS, RESPONDENT.

An Administratively Suspended Member of the
Bar of the District of Columbia Court of Appeals
(Bar Registration No. 390626)

On Report and Recommendation of the Board on Professional
Responsibility Ad Hoc Hearing Committee
Approving Petition for Negotiated Discipline
(Disciplinary Docket No. 2022-D094)
(Board Docket No. 23-ND-002)

(Decided: July 27, 2023)

Before HOWARD and ALIKHAN, *Associate Judges*, and FISHER, *Senior Judge*.

PER CURIAM: This decision is non-precedential. Please refer to D.C. Bar R. XI, § 12.1(d) regarding the appropriate citation of this opinion.

In this matter, the Hearing Committee recommends approval of a petition for negotiated attorney discipline. *See* D.C. Bar R. XI, § 12.1(c). Respondent Marylin Jenkins voluntarily acknowledged that, in connection with applying for a job in California, she concealed her prior discipline in this jurisdiction (a 2016 reprimand

EXHIBIT
3

for a violation of D.C. R. Prof. Conduct 8.4(c)), her prior employment out of which that 8.4(c) violation arose, and even her admission to the D.C. Bar. As a result, Ms. Jenkins admits that she (again) violated D.C. R. Prof. Conduct 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), as well as the corresponding and substantially similar Cal. R. Prof. Conduct 8.4(c) (conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation). The proposed discipline consists of a 30-day suspension.

Having reviewed the Hearing Committee's recommendation in accordance with our procedures in uncontested disciplinary cases, *see* D.C. Bar R. XI, § 12.1(d), we agree that this case is appropriate for negotiated discipline and that "the agreed-upon sanction is 'justified,'" *In re Mensah*, 262 A.3d 1100, 1104 (D.C. 2021) (per curiam) (quoting D.C. Bar R. XI, § 12.1(c)(3)), given the sanctions we have previously imposed for similar violations, *see, e.g.*, *In re Rosen*, 481 A.2d 451, 455 (D.C. 1984) (imposing a 30-day suspension on an attorney who made three misrepresentations to the court and previously had been reprimanded for misrepresentation). We also agree with the Hearing Committee that, in these circumstances, there is no need to decide whether our rules or California's rules apply to respondent's misconduct. *See* D.C. R. Prof. Conduct 8.5(b)(2)(ii) ("If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied

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."); *In re Tun*, 286 A.3d 538, 543 (D.C. 2022) (explaining that even when we evaluate an attorney's misconduct under another jurisdiction's rules, we follow District of Columbia law when determining the appropriate sanction); *In re Cooper*, 936 A.2d 832, 835 (D.C. 2007) ("Courts should not decide more than the occasion demands." (quoting *District of Columbia v. Wical Ltd. P'ship*, 630 A.2d 174, 182 (D.C. 1993))). Accordingly, it is

ORDERED that respondent Marylin Jenkins is hereby suspended from the practice of law in the District of Columbia for 30 days. We direct respondent's attention to D.C. Bar R. XI, § 14(g), which requires the filing of an affidavit with this court for purposes of reinstatement in accordance with D.C. Bar R. XI, § 16, and Board Prof. Resp. R. 9.

So ordered.

A true Copy
Test:

Julio Castillo
Clerk of the District of Columbia Court of Appeals

BY _____
DEPUTY CLERK

Julio Castillo
Clerk of the District of Columbia
Court of Appeals

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04. Appointment of Panels

(a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

(b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05. Filing of Pleadings, Motions, and Other Papers

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

(1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

(2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

(3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) Exceptions.

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

(ii) The following documents must not be filed electronically:

a) documents that are filed under seal or subject to a pending motion to seal; and

b) documents to which access is otherwise restricted by court order.

(iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) Format. An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06. Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07. Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08. Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09. Pretrial Procedure

(a) **Motions.**

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10. Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11. Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12. BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13. Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14. Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15. Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

II. ETHICAL CONSIDERATIONS

Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02. Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

Rule 2.03. Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse himor herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02. Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02. Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) **Preparation of Clerk's Record.**

(1) To prepare the clerk's record, the evidentiary panel clerk must:

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) **Preparation of the Reporter's Record.**

(1) The appellant, at or before the time prescribed for

perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6[1]) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

[1] So in original.

Rule 4.03. Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04. Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05. Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed

within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06. Oral Argument

(a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07. Decision and Judgment

(a) **Decision.** BODA may do any of the following:

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) Mandate. In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08. Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09. Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02. Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02. Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02. Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03. Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair must appoint a substitute member.

Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03. Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) Motion. The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) Report. The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04. Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05. Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06. Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07. Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08. Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02. Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03. Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04. Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.