

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

In the Matter of	:	
	:	
HARRY TUN,	:	
	:	
Respondent.	:	Bar Docket No. 273-06
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 416262)	:	

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

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on June 11, 2009, for a limited hearing on a Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Robert Bernius, Esq. (Chair), Lula Ivey and Jill Cummings, Esq. The Office of Bar Counsel was represented by Assistant Bar Counsel Joseph Bowman. Respondent Harry Tun was represented by Hamilton P. Fox, Esq. and was present throughout the limited hearing.

The Hearing Committee has carefully considered the Petition for Negotiated Discipline filed by Bar Counsel, the accompanying affidavit filed by Respondent (the "Affidavit"), and the representations made during the limited hearing by Respondent and Bar Counsel.

II. FINDINGS PURSUANT TO D.C. BAR RULE XI, §12.1 AND BOARD RULE 17

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 him a proceeding involving allegations of misconduct. Tr. at 7; Affidavit at ¶ 2.¹

3. The nature of the allegations that were brought to the attention of Bar Counsel were the following:

a. Respondent is a criminal defense attorney who, prior to the events underlying these disciplinary proceedings, accepted a substantial number of appointments from the District of Columbia Superior Court to represent indigent criminal defendants under the Criminal Justice Act, D.C. Code § 11-2601 *et seq.* (2001 ed.). Petition at 1; Tr. 11 – 12.

b. Each time Respondent was appointed by the Court to represent an indigent defendant he was given a voucher form that he filled out and submitted for payment. The voucher form included spaces for Respondent to itemize his time, as well as an oath and affirmation as to the accuracy of the claimed compensation, with a line for his signature. Usually at the conclusion of a case, Respondent would fill in the blanks for the amount of time spent on the case and the compensation he was claiming for his work. He would then execute the form, attesting to its truth and accuracy. Between 1999 and 2002, Respondent submitted a significant number of these vouchers to the Superior Court. One of the Superior Court judges who reviewed Respondent's vouchers became suspicious when he discovered that Respondent had sought payment for work allegedly done during the same time period for two or more clients ("double billing"). The Superior Court referred the matter to the United States Attorney's Office. Although it declined to prosecute, the United States Attorney required Respondent to self-report

¹ References to Respondent's Affidavit, dated April 14, 2009, are designated "Affidavit, ¶ ___"; references to transcript of the limited hearing dated June 11, 2009 are designated "Tr. ___"; and references to the Petition for Negotiated Discipline filed March 27, 2009 are designated "Petition ___."

his conduct to Bar Counsel, which he did. Bar Counsel subsequently opened its own investigation. Petition at 1-2; Tr. 11 – 12.

4. Respondent has knowingly and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. at 13 – 14; Affidavit at ¶ 4. Specifically, Respondent acknowledges that:

a. Between 1999 and 2003, Respondent practiced criminal defense law. As a part of his practice, he accepted appointments from the Superior Court of the District of Columbia (“Superior Court”), pursuant to the District of Columbia Criminal Justice Act, D.C. Code § 11-2601 *et seq.* (2001 ed.) (“CJA”), to advise and represent indigent criminal defendants in the Superior Court.

b. When the Superior Court appointed Respondent to represent an indigent criminal defendant, it would issue a court order, pursuant to the CJA, to that effect. The order incorporated and included a form entitled “Appointment and Voucher for Legal Services-Initial Claim” (“voucher”), so that Respondent could claim payment for legal services that he rendered to his clients. The voucher included spaces and sections for Respondent to itemize his time, expenses and compensation claimed on the case. The voucher also included on its face an oath and affirmation of the correctness of the claimed compensation, with a line for Respondent’s signature.

c. After certain intervals in a case, or upon completion of a case, Respondent would fill out a voucher claiming payment for services rendered in that case, swear to its truthfulness and correctness by signing a verification clause on the face of the voucher, and turn the voucher in to the Superior Court for processing and payment.

d. Between 1999 and 2003, Respondent submitted 162 vouchers to the Superior Court claiming payment for legal services rendered to indigent defendants. In each voucher, Respondent would set forth the time he started and stopped working for a particular client for each day he claimed payment. A review of the vouchers that Respondent submitted between 1999 and 2003 reflects that Respondent sought payment for the same time period for two or more clients on 162 occasions. As a result of the double billing for multiple clients, Respondent sought and received payment for 1,180.25 hours of services that he did not provide, or that he did not provide at the time that he claimed. For example, in the case of *United States v. Lawrence*, Case No. F-3729-99 (#1 on the itemization in subparagraph e, *infra*), Respondent claimed 7.5 hours for times that he also claimed on other vouchers.

e. The following itemization provides the case name, case number, voucher number, number of hours for each voucher that overlap with another voucher, and the date that the Superior Court paid the voucher:

	United States v.	Case #	Voucher #	Overlap (double billing)	Date Voucher Paid
1	Lawrence	F-3729-99	868254	7.5	02/01/02
2	Stevenson	F-04223-00	898511	12.5	05/10/02
3	Nicholson	F-04234-00	898531	7.5	11/02/02
4	Davis	M-09940-00	902399	5	11/15/02
5	Allen	F-05126-00	901821	7.75	06/02/02
6	Bogan	F-05190-00	902063	0.25	10/26/01
7	Crawford	M-13694-00	908472	8	12/21/01
8	Williams	M-13671-00	908474	10	01/25/02
9	Miller	M-13778-00	908603	7.25	02/28/03
10	Jordan	M-13780-00	908593	8.25	04/10/02
11	Simmons	M-13770-00	908606	5.5	10/26/01
12	West	F-07132-00	908631	4.75	12/01/01
13	Doe	M-14457-00	910877	1	06/20/03
14	Ashmon	F-07487-00	910867	10.5	07/05/02
15	Taylor	M-00311-01	911530	4	03/29/02
16	Gray	M-00797-01	912536	3.5	12/21/01
17	McFadden	F-01687-01	915854	5.75	12/21/01
18	Rose	F-01668-01	915858	6	05/17/02
19	Grose	M-03589-01	917104	6.75	11/09/01

	United States v.	Case #	Voucher #	Overlap (double billing)	Date Voucher Paid
20	Sandler	F-02116-01	917231	7.5	11/02/01
21	Enworom	M-03622-01	920503	6.75	12/06/01
22	Hinton	F-00459-01	920757	12.75	05/10/02
23	Lea	F-07738-00	948358	0.5	03/01/02
24	Rose	F-03319-01	921317	2.5	05/10/02
25	Short	M-06886-01	922485	9.75	10/26/01
26	Porter	M-06939-01	922519	12.5	12/21/01
27	Epps	F-03743-01	922522	7.25	02/07/02
28	Matthews	SP-1659-01	922541	5.5	10/26/01
29	Anderson	M-06949-01	922569	5.5	12/07/01
30	Jones	M-06950-01	922593	2.5	10/24/03
31	Price	M-06982-01	922597	11.25	12/21/01
32	Boradus	M-00771-01	922719	1.25	10/31/02
33	Enworom	SP-1993-01	925029	2	11/02/01
34	Anderson	M-09238-01	926465	5.5	11/28/01
35	Kilgore	M-09256-01	926466	7	06/07/02
36	Hodge	M-09236-01	926487	12.75	02/15/02
37	Hodge	M-09262-01	926488	12.25	12/21/01
38	Philson	F-04966-01	926490	13.75	04/19/02
39	Monton	M-09241-01	926496	7	05/03/02
40	Puertos	F-04968-01	926498	7	01/03/03
41	Hill	M-11206-01	945246	3.5	02/08/02
42	Liverpool	M-11313-01	945351	7.75	08/23/02
43	Masters	F-06220-01	945378	11.75	06/06/03
44	Monarez	M-11264-01	945408	9.75	03/08/02
45	Davis	M-11304-01	945413	5.75	12/21/01
46	Best	F-05062/01	945454	0.5	05/03/02
47	Porter	F-06213-01	946016	9.25	10/24/02
48	Bell	F-06530-01	946028	10.5	04/19/02
49	White	M-11831-01	946071	8	09/20/02
50	Harrell	M-11932-01	946072	11.75	03/06/02
51	Johnson	F-06541-01	946100	7.5	12/14/01
52	Johnson	S-02861-01	946128	5	05/03/02
53	Bell	F-06536-01	946430	3	04/04/02
54	Mims	M-12076-01	946614	5.5	07/12/02
55	Johnson	M-12235-01	946824	7.25	05/10/02
56	Temple	M-12236-01	946825	7.25	04/26/02
57	Puertos	F-0698-001	947180	9.25	01/03/03
58	Porter	M-11061-01	948026	2.5	12/21/01
59	Bossie	M-12793-01	948113	2.5	08/15/03
60	Sillah	M-12818-01	948117	6.5	07/12/02
61	Keye	M-12320-01	948197	1.25	05/30/03
62	Fitzgerald	M-13090-01	948202	3.5	08/26/02
63	Wright	F-07525-01	948342	12	07/05/02
64	Williams	M-09357-01	949102	2	08/26/02
65	Thomas	M-14323-01	950259	2.5	06/07/02

	United States v.	Case #	Voucher #	Overlap (double billing)	Date Voucher Paid
66	McCallister	F-00649-02	952713	11.75	07/19/02
67	Bailey	SP-00522-02	955554	5	04/26/02
68	Richardson	F-01636-02	956257	8.5	03/07/03
69	Drumming	M-02774-02	956459	10.25	07/26/02
70	Smith	F-01741-02	956818	7	06/28/02
71	Jackson	M-06913-01	957036	3	04/10/02
72	Thomas	M-08791-01	957038	6	04/26/02
73	Richardson	F-01806-02	957075	2	10/31/02
74	Stoney	M-03026-02	957531	9.5	12/26/02
75	McCoy	F-01965-02	957608	12.5	10/17/02
76	Clark	M-03300-02	957650	10.75	07/19/02
77	Mayreant	M-03333-02	957669	16	07/26/02
78	Graham	F-01995-02	957701	5.5	11/28/03
79	Gilbert	F-02057-02	957761	15	02/21/03
80	Barnes	M-03400-02	957795	9.5	11/14/02
81	Holloway	M-03409-02	957797	11.5	12/06/02
82	Furbee	M-2071-02	957827	13.25	05/02/03
83	Coffield	M-00030-02	957849	4.25	07/12/02
84	Flythe	M-03016-02	957861	5.75	10/10/02
85	Franklin	M-03399-02	957870	10.75	08/09/02
86	Robinson	M-03418-02	957880	14.5	02/21/02
87	Hemingway	M-03429-02	957886	12.25	02/21/03
88	Lovelace	M-03448-02	957895	8.75	07/10/02
89	Johnson	F-06813-01	957956	4	05/10/02
90	Johnson	M-03468-02	957972	8	07/12/02
91	Carter	F-02592-02	958078	1.5	07/05/02
92	McCallister	M-12614-01	958147	3.75	07/19/02
93	Carrington	M-9233-01	958403	5.25	07/12/02
94	Seal	F-02250-02	958641	7.25	10/03/02
95	Hornes	F-02253-02	958642	11.75	11/08/02
96	Dupree	M-03759-02	958746	5.5	02/14/03
97	McCleod	M-03786-02	958762	12.25	08/16/02
98	Cooper	SP-00934-02	958867	5	07/12/02
99	Robinson	M-0416-02	959220	15	02/28/03
100	Ellis	F-02470-02	959272	8.75	11/07/02
101	Jordan	F-02480-02	959277	7	11/29/02
102	Johnson	M-04145-02	959302	15.25	09/27/02
103	Carter	SP-01045-02	959314	5.5	07/05/02
104	Ware	M-03428-02	959424	12.5	01/03/03
105	Seal	F-04971-01	961089	11.75	10/03/02
106	Hunter	F-03091-02	961407	6.5	05/23/03
107	Glasgow	F-03273-02	961974	9.5	07/12/02
108	Curry	M-05500-02	962028	13.5	08/02/02
109	Jones	M-05521-02	962035	10	09/27/02
110	Wilson	M-05536-02	962939	7.5	09/27/02
111	Rice	M-05546-02	962943	8.5	10/17/02

	United States v.	Case #	Voucher #	Overlap (double billing)	Date Voucher Paid
112	Larker	M-05559-02	962050	12.25	09/20/02
113	Commadore	M-03052-02	962247	0.75	07/12/02
114	Burton	F-03393-02	962354	12.5	12/17/02
115	Tyler	M-04354-02	962399	3.75	09/27/02
116	White	M-05680-02	962413	17.5	10/17/02
117	Burton	M-05706-02	952421	7.5	01/03/03
118	Walker	M-05739-02	962432	8.5	11/02/02
119	Jordan	SP-01422-02	962449	5	07/05/02
120	Williams	M-03353-02	962555	14	02/21/03
121	Roby	M-05738-02	962568	1.5	11/07/03
122	Williams	M-05742-02	962571	9	02/21/03
123	Coffield	F-04003-02	964268	7.25	05/23/03
124	Travis	M-13079-01	965646	14.25	09/27/02
125	Butler	M-04255-02	966120	2.5	03/21/03
126	Best	M-7138-02	966158	4	09/27/02
127	Butler	M-07213-02	966168	4	03/21/02
128	Grant	M-03343-02	966381	9.25	09/20/02
129	Kenny	F-04716-02	966775	4.5	09/27/02
130	Martin	F-04725-02	966882	4.5	09/05/03
131	Wise	F-04774-02	967050	2.25	01/09/04
132	Mickey	M-07919-02	967092	4.25	04/18/03
133	Stoutamire	M-07942-02	967107	9	09/27/02
134	Creek	F-04775-02	967141	4.25	09/19/03
135	Sherman	F-04779-02	967143	6.5	04/11/03
136	Collins	F-04878-02	967382	5.75	11/07/02
137	Bradley	M-08129-02	967447	8.25	12/06/02
138	Martin	M-08126-02	967524	3.5	06/06/03
139	Shuler	M-08336-02	967875	6.5	10/31/02
140	Robinson	M-08341-02	967877	11	08/29/03
141	Watkins	F-05039-02	967946	8.5	02/21/03
142	Littlejohn	M-08327-02	968127	11	01/17/03
143	Bowler	SP-62136-02	968255	5	09/27/02
144	Best	F-05304-02	968910	4	09/19/03
145	Robinson	F-05339-02	968925	6	02/14/03
146	Ware	M-09009-02	969017	12	12/27/02
147	Travis	F-00303-02	970461	6.75	10/17/02
148	Cameron	M-13077-01	970950	7.25	10/31/02
149	Garlington	F-06028-02	971241	7.5	06/06/03
150	Gethers	M-10207-02	971319	5	04/18/03
151	Odemns	F-05852-02	971439	7	06/13/03
152	Brown	F-060030-02	971561	7	08/29/03
153	Douglas	M-10462-02	971888	10.25	09/26/03
154	Lawson	M-10472-02	971895	4.5	01/03/03
155	Davis	M-10488-02	971903	2.75	01/03/03
156	Williams	M-10504-02	971912	9	01/24/03
157	Dupree	M-11220-02	973530	1.25	02/21/03

	United States v.	Case #	Voucher #	Overlap (double billing)	Date Voucher Paid
158	Dupree	M-11244-02	973536	1	02/14/03
159	Andrews	M-08524-02	973724	9.5	12/06/02
160	Jones	M-08526-02	973958	2.5	01/24/03
161	Key	M-11150-02	974581	1	02/21/03
162	Dupree	M-03767-02	978135	8	02/14/03
	TOTALS			1,180.25	

f. A Judge of the Superior Court became concerned about the accuracy of Respondent's vouchers and notified the Chief Judge, who then referred the matter to the United States Attorney's Office for the District of Columbia for investigation. During the course of the United States Attorney's investigation, Respondent provided evidence that he had rendered legal services in CJA cases and for which he had never submitted vouchers. Although the United States Attorney's Office determined that it would not proceed with criminal prosecution of Respondent, Respondent and the United States Attorney's Office agreed that Respondent would remove himself from the Superior Court's list of attorneys who accept court-appointed cases, and he repaid \$16,034 (representing time that Respondent had double billed minus a reasonable estimate that he could have but failed to bill for other court-appointed matters) to the Superior Court. *See* Petition p. 2-7, ¶¶ 1 – 6.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against disciplinary proceedings based on that misconduct. Tr. at 16; Affidavit at ¶5.

6. Bar Counsel has made no promises to Respondent other than what is contained in the Petition for Negotiated Discipline. Tr. 17 – 19; Affidavit at ¶ 7. Those promises and inducements are that Bar Counsel agrees not to pursue any additional charges arising out of the conduct specified above in paragraph 4. In addition, Bar Counsel agrees to dismiss, without

prejudice, one unrelated investigation into Respondent's conduct now pending sub nom *Tun/O'Donnell*, Bar Docket No. 2007-D406. Tr. 17 – 19; Petition at 8.

7. Respondent has conferred with his counsel, who confirms that Respondent is competent to enter into this negotiated discipline. Tr. 7; Affidavit at ¶ 1.

8. This negotiated discipline is freely and voluntarily entered into. Tr. At 8, 37; Affidavit at ¶ 6.

9. Respondent is not being subjected to coercion or duress. Tr. at 8, 37; Affidavit at ¶ 6.

10. Respondent is competent to enter into this negotiated disposition. Tr. at 7.

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

a. he will waive his right to cross examine adverse witnesses and to compel witnesses to appear on his behalf (Tr. 33; Affidavit at ¶ 9);

b. he will waive his right to have Bar Counsel prove each and every charge by clear and convincing evidence (Tr. 32-33; Affidavit at ¶ 9);

c. he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court (Tr. 33; Affidavit at ¶ 9);

d. the negotiated disposition, if approved, may affect his present and future ability to practice law (Tr. 34; Affidavit at ¶ 10);

e. the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions (Tr. 34; Affidavit at ¶ 10);

f. any sworn statement by Respondent in his affidavit may be used to impeach his testimony if there is a subsequent hearing on the merits. Tr. 9 – 10; Affidavit at ¶ 11.

12. Respondent and Bar Counsel have agreed that the appropriate sanction in this matter for the stipulated misconduct and rule violations discussed above is a nine-month suspension coupled with a one-year period of probation. Affidavit at ¶ 13. (That is, Respondent will be suspended for six months, followed by a one year period of probation. If Respondent complies with the conditions of his probation, the remaining ninety days of the nine-month suspension will be suspended. Tr. 4 – 5.) Respondent must comply with the following conditions of probation:

a. Respondent will take five hours of pre-approved continuing legal education related to accounting and record keeping and must certify and provide proof documenting that he has met this requirement to the Office of Bar Counsel within six months of the Court's order approving this petition; and

b. During the one-year period of probation, Respondent must:

i. meet with Dan Mills, Esquire, the Manager of the Practice Management Advisory Service of the District of Columbia Bar, either before or within 30 days after the period of probation begins;

ii. execute a waiver allowing Mr. Mills and/or a practice monitor appointed by Mr. Mills, to communicate directly with the Office of Bar Counsel regarding his compliance;

iii. when Respondent meets with Mr. Mills, or his designated practice monitor, in his office, Mr. Mills or the designated practice monitor shall conduct a full assessment of Respondent's business structure and his practice, including but not limited to reviewing financial records, invoices, client files, engagement letters, supervision and training of staff, and responsiveness to clients;

iv. Mr. Mills and/or his designated practice monitor shall ensure that Respondent maintains complete records relating to maintenance of client funds and that Respondent complies with all of Mr. Mills's recommendations;

v. Respondent must be in full compliance with Mr. Mills' requirements during the period of probation. Mr. Mills, or the designated practice monitor, shall submit quarterly reports regarding Respondent's compliance during the period of probation;

vi. Respondent must sign an acknowledgement that he is in compliance with Mr. Mills's requirements and file the signed acknowledgement with the Office of Bar Counsel by the tenth month of his probation, Tr. at 35-37; Affidavit at ¶ 13.

13. Bar Counsel has provided a statement demonstrating the following circumstances in aggravation, which the Hearing Committee has taken into consideration:

a. Respondent was issued an informal admonition on February 24, 2004, for violating Rules 1.15(a) and 1.16(d) by failing to retain a copy of his client's file and records reflecting his handling of her settlement funds for the required five-year period. *See In re Harry Tun*, Bar Docket No. 2003-D385 (Feb. 24, 2004).

b. In addition to the instant matter, Respondent is currently the subject of an unrelated Bar Counsel investigation in the matter of *Tun/O'Donnell*, Bar Docket No. 2007-D406. Petition at 13.

14. Respondent and Bar Counsel have provided the following circumstances in mitigation, which the Hearing Committee has taken into consideration:

a. Respondent has taken full responsibility for his actions;

b. Respondent has cooperated fully with Bar Counsel in its investigation of this matter;

c. Respondent produced evidence to the United States Attorney's Office that he had not billed the District of Columbia for time that he spent representing the indigent criminal defendants in other court-appointed cases;

d. Respondent has repaid \$16,034 to the Superior Court reflecting the difference between the amount that he had double billed and an estimated amount that he could have, but did not bill the District of Columbia Superior Court in other cases;

e. Pursuant to an agreement between Respondent and the United States Attorney's Office, Respondent has withdrawn his name from the list of attorneys who accept court-appointed cases for which they are entitled to be compensated under the CJA. Petition at 13; Affidavit at ¶ 15.

15. With no objection from Bar Counsel, the Hearing Committee received further evidence in mitigation from Respondent, pursuant to Board Rule 17.4(a), which provides, in pertinent part: in "exceptional circumstances, the Hearing Committee may also take live testimony or accept sworn affidavits to reach a final disposition on the negotiated discipline." Respondent credibly testified that he failed to bill at least \$23,000 on CJA cases; that his double billing resulted from incompetent record keeping rather than deliberate falsification; that he has taken a number of assigned cases pro bono; and that his time accounting for cases he handles on an hourly basis is now scrupulous. Tr. 20 – 28.

16. Bar Counsel and Respondent have submitted the following statement of relevant precedent in support of the agreed upon sanction (Petition at 9 – 13):

When a court-appointed attorney "deliberately and knowingly makes a false representation in [a] CJA voucher, [he] violates Rule 8.4(c)." *In re Cleaver-Bascombe*, 892 A.2d 396, 404 (D.C. 2006) (citing *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989)). Even

absent a finding of willfulness or intent, an attorney who “recklessly maintains inadequate time records, and consciously disregards the risk that [he] may overcharge a client (or here, the CJA fund), also engages in dishonesty within the meaning of Rule 8.4(c).” *Id.* (citing *In re Romansky*, 825 A.2d 311, 317 (D.C. 2003)). As a general matter, sanctions for dishonesty range from public censure on the low end, to disbarment on the high end, depending upon the egregiousness of the conduct at issue. *See, e.g., In re Hadzi-Antich*, 497 A.2d 1062 (D.C. 1985) (censure for submitting resume containing false information); *In re Sandground*, 542 A.2d 1242 (D.C. 1988) (90-day suspension for assisting client in concealing information about client’s funds in discovery responses in divorce proceeding); *In re Goffe*, 641 A.2d 458 (D.C. 1994) (*per curiam*) (disbarment for egregious dishonesty, including making false representations, forging signatures on legal documents, falsely notarizing legal documents, and fabricating and creating evidence). Moreover, where, as here, an attorney’s dishonest conduct includes false statements to a court, serious suspensory sanctions are the norm. *See In re Reback*, 513 A.2d 226 (D.C. 1986) (*en banc*) (six-month suspension for neglecting divorce matter, then filing divorce complaint by forging client’s signature and having it falsely notarized); *In re Corizzi*, 803 A.2d 438 (D.C. 2002) (disbarment for misconduct in three client matters, including advising two clients to lie during depositions and lying to court regarding representation of third client).²

A case with facts similar to those presented here is *In re Cleaver-Bascombe*, 892 A.2d 396 (D.C. 2006). *Cleaver-Bascombe* involved allegations that the Respondent had submitted

² The Hearing Committee notes, however, that the Court has imposed public censure and brief suspensions for such misconduct. *See In re Uchendu*, 812 A.2d 933 (D.C. 2002) (30-day suspension); *In re Owens*, 806 A.2d 1230 (D.C. 2002) (*per curiam*) (30-day suspension); *In re Margulies*, No. 88-1032 (D.C. Jan. 26, 1989) (*per curiam*) (public censure).

CJA vouchers to the Superior Court claiming payment for work that she had never done. *Id.* at 398. Specifically, the Respondent billed the Court for multiple meetings and phone calls with a client that, in fact, never occurred. *Id.* at 400. Bar Counsel filed a Petition charging the Respondent with violations of Rule 1.5(a) (charging an unreasonable fee); Rule 3.3(a)(1) (making a false statement of material fact to a tribunal); Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(d) (engaging in conduct prejudicial to the administration of justice). The Hearing Committee found that the Respondent had violated Rule 1.5(a) and Rule 8.4(c), but dismissed the remaining two charges. The Board, however, upheld all four charges in Bar Counsel’s Petition. *Id.* at 401. Notwithstanding their disagreement on the Rule violations, both the Hearing Committee and Board recommended that the Respondent be suspended for 90-days, with a requirement that she complete certain CLE courses as a prerequisite to reinstatement. *Id.* at 398-99.

On review, the Court upheld the Board’s conclusion that the Respondent had violated each of the charges in Bar Counsel’s Petition. *Id.* at 403-404. However, the Court was perplexed by the seemingly inconsistent findings, made by both the Hearing Committee and Board, that the Respondent had, on the one hand, submitted a “patently fraudulent” voucher, which claimed compensation for meetings and calls that she knew had never occurred, but, on the other hand, had not engaged in deliberate dishonesty when she insisted in her testimony before the Hearing Committee that the fictitious meetings and calls had in fact taken place. *Id.* at 398-99. In order to resolve these two conflicting findings, the Court remanded the matter to the Board. *Id.* at 410-411.

On remand, the Board found that the record supported a finding “that Respondent’s description of her specific activities [in her voucher submission] was false.” Bd. Rpt. Bar

Docket No. 183-02 at 4 (Jul. 21, 2006), *pending review*, D.C. App. No. 04-BG-1540. The Board acknowledged that this could either have been because the description was “deliberately and knowingly dishonest,” or because Respondent’s “reckless time-keeping” practices had caused her to submit a voucher that “contained a description of services that she knew was inaccurate,” however, it concluded that, ultimately, it was “a distinction without difference.” *Id.* at 4-5. In light of the fact that the Respondent’s misconduct in submitting a false voucher had been “exacerbated by [her] false testimony during the hearing,” the Board recommended a 2-year suspension with a condition of fitness. *Id.* at 7-8. Obviously, *Cleaver-Bascombe* bears many similarities to the instant case. However, the Respondent’s false testimony before the Hearing Committee in *Cleaver-Bascombe*, a factor not present here, was undoubtedly a significant aggravating factor warranting the particularly lengthy suspension and a fitness requirement recommended by the Board in that case. Moreover, there are factors in mitigation here, discussed below, that were not present in *Cleaver-Bascombe*.

Several other cases, while not directly on point because of differences in the charges at issue or procedural posture, are at least instructive. In *In re Ayeni*, 822 A.2d 420 (D.C. 2003) (*per curiam*), for example, the Respondent was disbarred for committing a number of offenses over the course of three separate matters, including violations of Rules 1.5(a), 1.17(a), 1.3(b) and 8.4(c). *Id.* at 421. In one of the three matters, the Respondent plagiarized a brief for which he submitted a CJA voucher claiming some 19 hours in compensation. The Board concluded that his submission of the false voucher violated Rule 8.4(c) and the Court agreed. *Id.* In *In re Parshall*, 878 A.2d 1253 (D.C. 2005) (*per curiam*), the Respondent, a government attorney, submitted a false status report to the United States District Court and attached documents that he had fabricated to support it. *Id.* at 1254. The Respondent was reprimanded in Maryland;

however, in a reciprocal proceeding, the Court imposed an 18-month suspension based on a single violation of Rule 3.3(a)(1). *Id.* In *In re Sealy*, 725 A.2d 1016 (D.C. 1999) (*per curiam*), a New York attorney, also licensed in the District of Columbia, was reciprocally disbarred “for submitting, over a four-year period, vouchers for compensation as a court-appointed attorney for work that he had not performed.” *Id.* at 1017.

Based on the relevant precedent discussed above, it is evident that a serious sanction is warranted in this case.

III. DISCUSSION

17. The Hearing Committee shall approve an agreed negotiated discipline if it finds:

- a. that the attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein;
- b. that the facts set forth in the Petition or as shown during the limited hearing support the attorney's admission of misconduct and the agreed upon sanction; and
- c. that the agreed sanction is justified. Rule XI, § 12.1(c); Board Rule 17.5(a)(i)-(iii).

18. With regard to the first factor, this Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and has 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 he is under duress or that he has been coerced into entering into this disposition. Respondent understands the implications and consequences of entering into this negotiated discipline. Respondent has acknowledged that any and all promises that have been made to him by Bar 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 him. The Hearing Committee has carefully reviewed the facts set forth in the Petition and established during the hearing and we conclude that they support the admissions of misconduct and the agreed upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because he believes that he could not successfully defend against the misconduct described in the Petition. Tr. at 16; Affidavit at ¶ 5.

19. With regard to the second factor, the Petition states that Respondent's conduct violated the following Rules of Professional Conduct, and Respondent specifically acknowledges as much (Tr. 14 – 16). The evidence supports Respondent's admissions: in pertinent part, the stipulated facts recount that Respondent sought and received CJA payment for 1,180.25 hours of legal services that he did not provide, or that he did not provide at the times that he claimed. Accordingly, it is undisputed that Respondent violated:

a. Rule 1.5(a) and (f), in that Respondent charged a fee that was prohibited by law and therefore *per se* unreasonable. Respondent charged a fee for work he did not perform, which is *per se* unreasonable and prohibited by law. *Cleaver-Bascombe*, 892 A.2d at 403;

b. Rule 3.3(a)(1), in that Respondent made a false statement of material fact or law to a tribunal. Respondent falsely claimed to the Superior Court that he had performed work which he had in fact not performed, and that he was not entitled to be compensated for. *Cleaver-Bascombe*, 892 A.2d at 403;

c. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent recklessly maintained inadequate time records, disregarded the risk that he overcharged the CJA fund, and thus engaged in dishonesty within the meaning of Rule 8.4 (c) . *Cleaver-Bascombe*, 892 A.2d at 404;

d. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice. The CJA program is part of the judicial process for purposes of this rule. Respondent's reckless submission of inaccurate vouchers, which were more than minimal, violate this Rule. *Cleaver-Bascombe*, 892 A.2d at 404 – 05.

20. The third and most complex factor the Hearing Committee must consider is whether the sanction agreed upon is justified. Upon consideration of the entire record in this matter including the circumstances in aggravation and mitigation and the relevant precedent, we conclude that the agreed upon negotiated discipline is justified.

21. As described in the relevant precedent section in the Petition, the sanctions for the Rules violations at issue in this case vary considerably. The most pertinent case, however, is *Cleaver-Bascombe*. In *Cleaver-Bascombe*, an attorney was alleged to have sought CJA compensation “for work she knew that she had not done.” *Id.* at 398. The Court of Appeals drew a distinction between lawyers “whose inaccurate and inflated voucher is due to unacceptably poor record-keeping” and those who “deliberately submit[] a fraudulent voucher and then attempt[] to cover up [the] misconduct by lying under oath.” *Id.* at 399. According to the Court, “in fashioning the appropriate discipline” in a case such as this, one must distinguish between “the intentional fabrication of a voucher and of testimony before the Hearing Committee, with the intent to defraud the CJA Fund” on the one hand, from the materially different “recklessly incompetent record-keeping where the attorney's reckless misconduct did not entail an intent to defraud or deliberate lying under oath,” on the other hand. *Id.* at 399:

If the gravamen of Respondent's violation is that she was recklessly sloppy in her timekeeping practices, and if there has been no proof of intent to defraud or of subsequent perjury, a recommendation that a relatively short suspension be imposed, with reinstatement conditioned on completion of the CLE course, may arguably be defensible... If, however, this is a case of a deliberately falsified claim for compensation

for work not performed, with intent to defraud the public fisc, then the violations are far more serious, the attorney's character and fitness to practice law are called into serious question, and [a 90- day suspension] is not commensurate with the violation. This is especially true if the initial fraud in preparing and submitting to the voucher was compounded by false testimony before the Hearing Committee designed to protect and perpetuate the deception. *Id.* at 411-12.

22. We find, based on the stipulated facts and the Respondent's testimony presented at the hearing in this matter, that Respondent engaged in reckless rather than intentional misconduct, and that he testified credibly and truthfully before the hearing committee. He was recklessly sloppy but he did not intend to defraud the court, nor did he attempt to mislead the Hearing Committee or Bar Counsel.

23. It appears therefore that Respondent's conduct was considerably less culpable than that at issue in *Cleaver-Bascombe*, where on remand the Board recommended that the respondent be suspended for two years. Nevertheless, Respondent's false vouchers were many, warranting in our view a serious and meaningful sanction. Accordingly, taking into account all the aggravating and mitigating facts and circumstances – as well as the desirability of an expeditious and final determination herein to both Bar Counsel and Respondent – we agree with the parties that the discipline negotiated in this matter is appropriate.

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.

AD HOC HEARING COMMITTEE

 /RCB/
Robert C. Bernius, Chair

 /LI/
Lula Ivey, Public Member

 /JC/
Jill Cummings, Attorney Member

Dated: July 14, 2009