Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-089
District Docket No. XII-2015-0034E

In the Matter of	:	
Seth Asher Nadler	:	
An Attorney at Law	:	Dissent

Decided: November 8, 2019

The majority has voted to impose a two-year suspension upon respondent for misleading prospective employers about his academic record and work history. For the reasons expressed below, I disagree with my colleagues that a two-year suspension is warranted.

I agree that there is clear and convincing evidence (indeed, it is admitted by respondent and has been throughout these proceedings) that respondent violated the Rules of Professional Conduct by submitting a knowingly false transcript to a law firm with which he was seeking employment. The transcript had been altered by respondent, and the alterations were multiple and material. In addition, respondent made statements on his resume that were found to be misleading. The conduct is clearly improper and deserving of meaningful discipline. Where I part ways with

the majority is the severity of the sanction. I believe a three-month suspension is more appropriate for the misconduct here than the two years urged by the majority.

My dissent from the majority's determination is guided, in part, by my reading of other cases referenced in the majority opinion involving similar conduct in which the discipline imposed has been in the range of a censure to a three-month suspension.

In the case at bar, there is no evidence that respondent misstated his credentials on his application for admission to the bar, which was the case in In re Tan, 188 N.J. 389 (2006). In Tan, the misrepresentation, that the applicant had received a bachelor's degree when, in fact, he had not received an undergraduate degree, was arguably more egregious than misrepresenting grades received in securing a degree. The misrepresentation in Tan was made both in Tan's application to law school and his application for admission to the bar, spanning a period of years. For his misconduct, Tan received a reprimand, with the Board and the Court taking into account his youth and inexperience. In In re Prothro, 208 N.J. 340 (2011), the attorney had, like the respondent in this case, altered an unofficial law school transcript in an effort to enhance his employment prospects. When the alterations came to light and the matter was under investigation, he was asked by the investigator if he had provided the altered transcript to any other law firm. Mr. Prothro stated he had not; a statement subsequently proven to be false. In Prothro,

the discipline imposed was a censure. In another reported decision with somewhat analogous facts, In re Hawn, 193 N.J. 588 (2011), a three-month suspension was the discipline imposed under circumstances more egregious, in my view, than those presented here. In re Hawn involved the circulation of an altered transcript and misleading résumé through a headhunter to multiple law firms, and lying to the law school registrar and others when confronted with the alterations.

My reading of these cases is that the appropriate range for discipline in cases addressing conduct of the type at issue here is a censure to a three-month suspension. I believe a three-month suspension is in order here, given the number of alterations made in the transcript and the additional misstatements brought to light on respondent's résumé. I do not believe the majority's recommendation of a two-year suspension can be reconciled with the reported decisions involving similar wrongdoing, a fact acknowledged by the majority opinion. In addition, I believe it is unduly harsh under the circumstances.

The majority opinion explains its enhancement of the sanction to a two-year suspension based upon the totality of the circumstances, which appears to include other findings relating to a reference on respondent's résumé to an article he co-authored, and an honors designation he claims he was given in a legal writing class and in his first job out of law school. While the evidence supports a finding that

respondent claimed honors designations that were never awarded, the evidence regarding publication does not, to my mind, support a violation of RPC 8.4.[1]

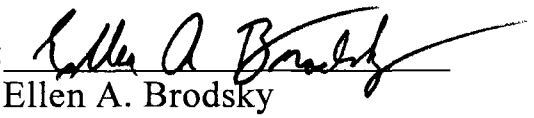
However, even accepting the findings of the hearing panel that all of these references were improper misstatements, I do not believe this additional element justifies the majority's recommended sanction (a two-year suspension), given that it is so far outside the range of other reported decisions. Moreover, the majority's conclusion, that respondent's conduct calls into question the "core of his character" is, in my view, unfairly judgmental and should not serve as the basis for imposing a sanction as severe as a two-year suspension. At the time of the misconduct here, which occurred in 2015, respondent was at the beginning of his legal career, having been admitted to the bar in 2014. He made serious mistakes during a limited period of time. He has no other record of disciplinary misconduct since then.

For the clearly improper and knowing deceptive conduct committed by respondent, I believe a three-month suspension is the appropriate quantum of

[1] With respect to the co-authorship of the article, respondent's résumé listed, under Publications, an article entitled "Denying Credit: The Failure to Transition Troops to Civilian Employment," with no reference to its authors. By listing it on his résumé under Publications, respondent was clearly conveying that he authored the article, but the fact is his résumé does not state one way or the other whether it was solely authored by him or whether he had assistance. Clearly, the better course would have been to indicate that he was a co-author of the article, but I am not persuaded that the failure to have done so rises to the level of a violation of RPC 8.4. Indeed, I question whether this level of scrutiny of editorial decision-making in crafting a résumé is either warranted by the Rules of Professional Conduct or consistent with the purpose and goals of the disciplinary process.

discipline. It is both within a reasonable range of existing precedent and more than sufficient to protect the public and deter future misconduct of this type. Accordingly, and for the foregoing reasons, I respectfully dissent from the majority determination to impose a suspension of two years.

Disciplinary Review Board
Peter J. Boyer

By: 
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