

4th Annual HBCU Tech Law Summit
&
19th Annual IP and Social Justice CLE Seminar

Ethics Session



AISHA CASSIS



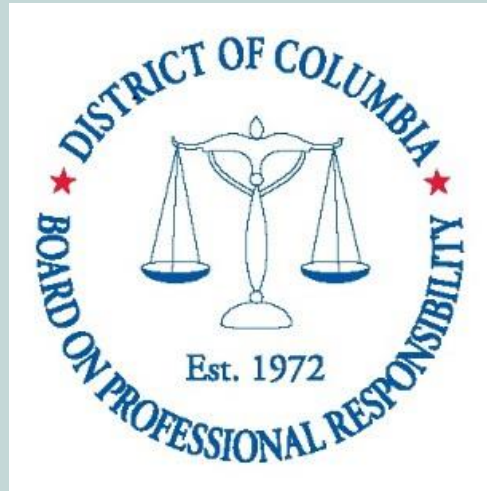
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Aisha L. Cassis

Deputy Executive Attorney – D.C. Board on Professional Responsibility

- Ms. Cassis advises Hearing Committee and Board members in disciplinary law matters pending before them concerning substantive and procedural issues as they arise.
- She recruits and trains the newly appointed Hearing Committee members.
- Prior to her tenure with the Board, Ms. Cassis was engaged in private practice with Gilbert LLP and Covington & Burling LLP.



AISHA L. CASSIS
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Assistant Executive Attorney

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Staff Attorney

Abbey Luffey
Staff Attorney

Karly Jordan
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Meghan Borrazas
Senior Case Manager

Jennifer Aguilar
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Pamela DuBost
Legal Secretary

**THE
DISCIPLINARY
SYSTEM NEEDS
YOU...**

Are you...?

- Licensed in DC?
- A practicing lawyer in the District?
- Interested in public service?

THE RULES

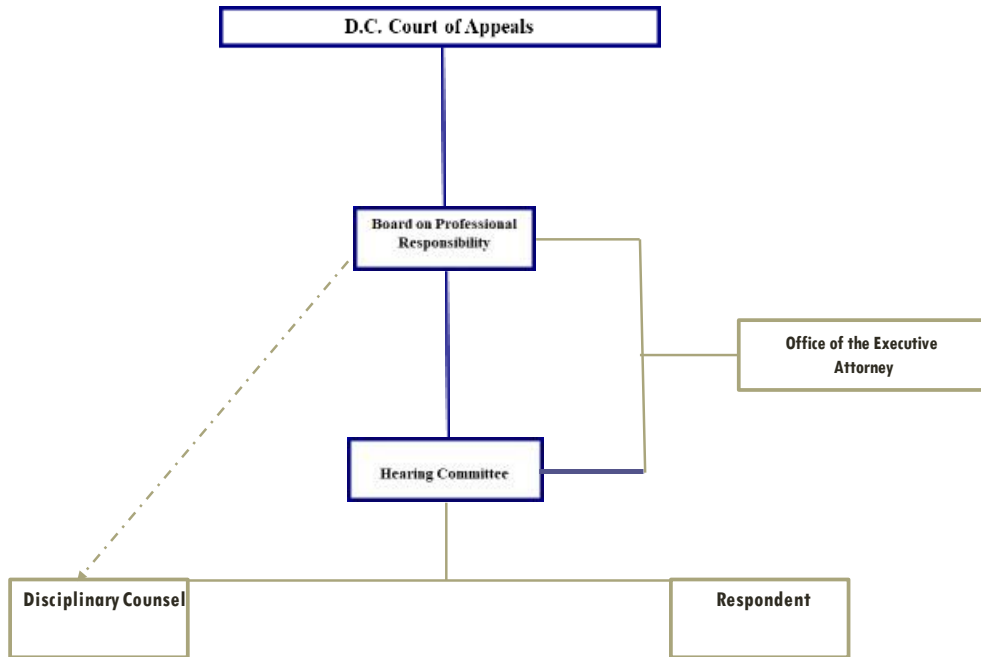
- (i) The D.C. Rules of Professional Conduct <https://www.dcbbar.org/for-lawyers/legal-ethics/rules-of-professional-conduct>
- (ii) D.C. Bar Rule XI (Disciplinary Proceedings): <https://www.dcbbar.org/about/who-we-are/rules-and-bylaws/rules-governing-the-district-of-columbia-bar/rule-xi-disciplinary-proceedings>
- (iii) The Board Rules (implementing D.C. Bar R. XI): [https://www.dcbbar.org/getmedia/443fd252b0-4f7d-b012-9878ad4a38bf/BoardRules-August-4,-2020-\(Clean\)](https://www.dcbbar.org/getmedia/443fd252b0-4f7d-b012-9878ad4a38bf/BoardRules-August-4,-2020-(Clean))



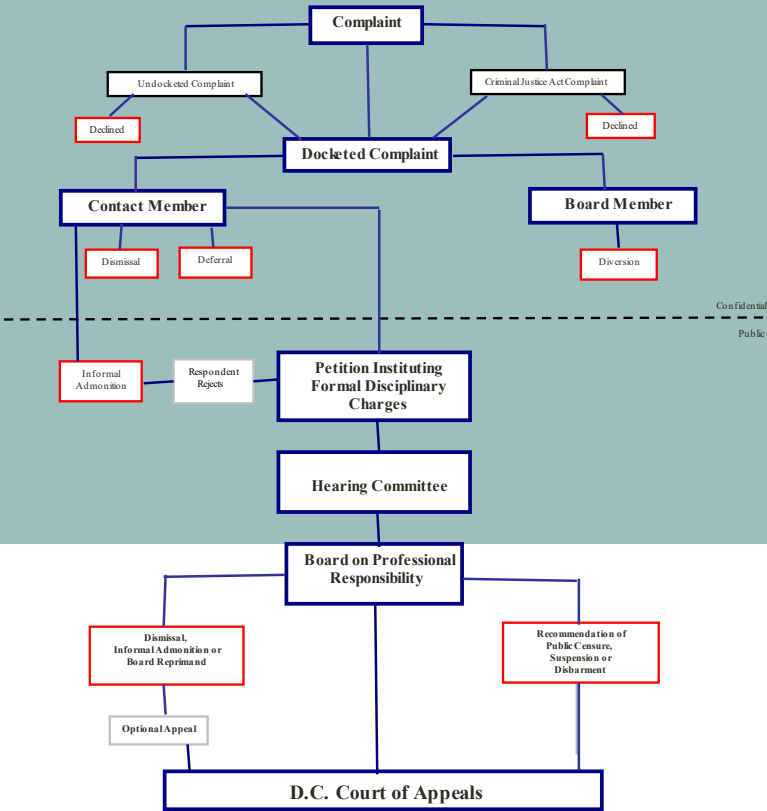
*Viewing Hearings
& Arguments on
YouTube*

- <https://www.dcbar.org/attorney-discipline/board-on-professional-responsibility/hearing-and-oral-argument-schedule>

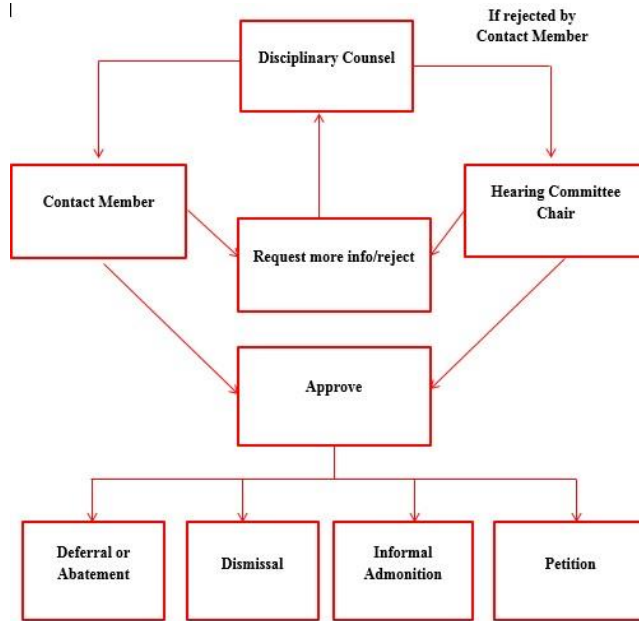
THE DISCIPLINARY SYSTEM



Contested Disciplinary Proceedings



CONTACT MEMBER REVIEW



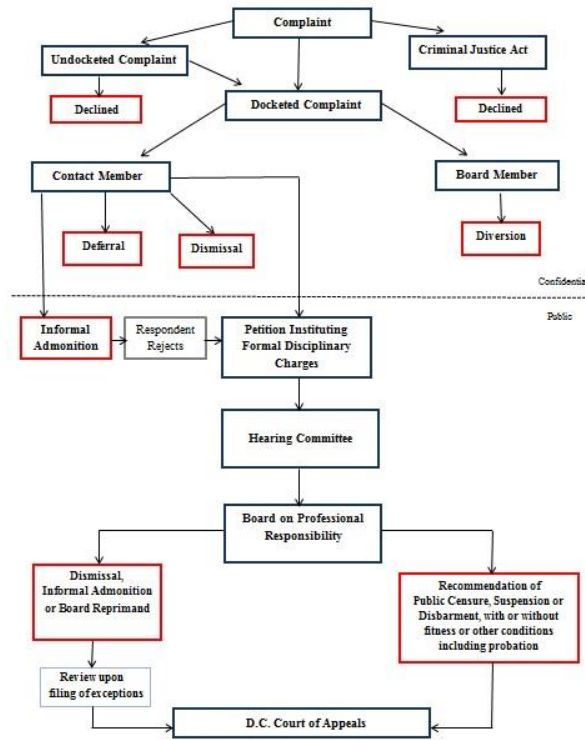
CONTACT MEMBER REVIEW

The Contact Member may:

- Approve
 - condition approval upon further investigation
 - condition approval upon modification of the proposed disposition
- Reject

OVERVIEW OF THE CONTESTED DISCIPLINE PROCESS

CONTESTED DISCIPLINARY PROCEEDING



STANDARD CASE TRACK

WITHIN 20 DAYS OF SERVICE OF THE
SPECIFICATION OF CHARGES
RESPONDENT'S ANSWER FILED

WITHIN 42 DAYS OF ANSWER
*PREHEARING CONFERENCE

WITHIN 90 DAYS OF PREHEARING CONFERENCE
Hearing should be scheduled

WITHIN 48 DAYS OF HEARING
Parties submit their briefs

WITHIN 120 DAYS OF LAST HEARING DATE
REPORT DUE

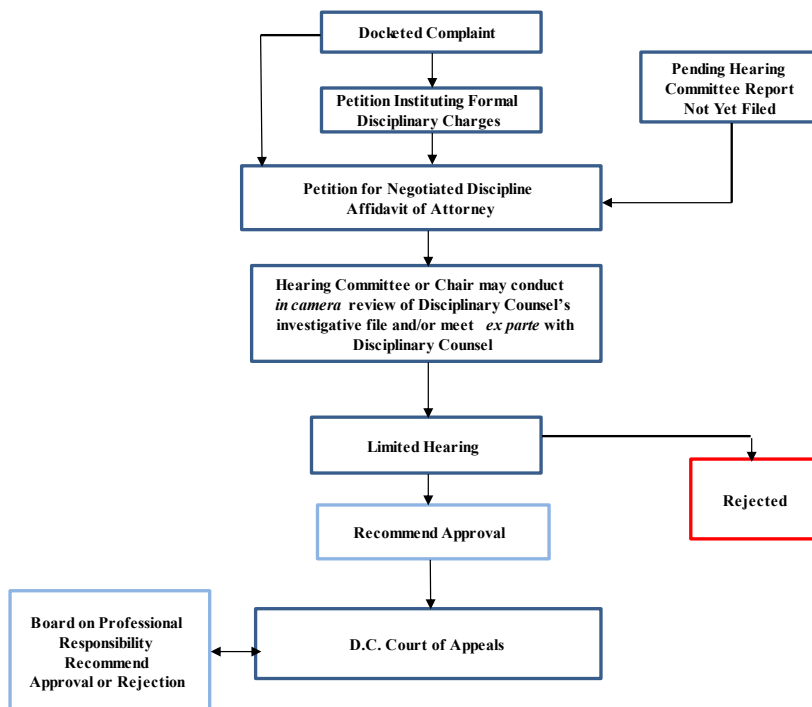
THE HEARING

PART I (VIOLATIONS PHASE)
PART II (SANCTIONS PHASE)



NEGOTIATED
DISCIPLINE

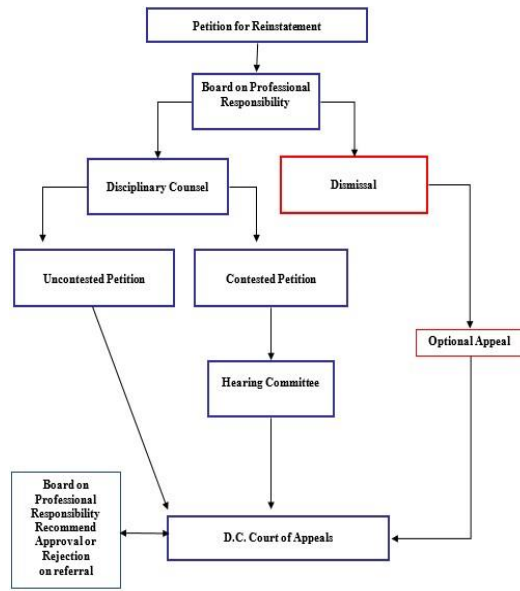
Negotiated Discipline





Contested Reinstatement

Reinstatement Proceeding





Interesting Cases

Misappropriation

D.C. Rule 1.15: Safekeeping Property

- (a) A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Misappropriation

Misappropriation is "any unauthorized use of client [] funds entrusted to the lawyer." *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) (quoting *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983)). It includes "not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [she] derives any personal gain or benefit therefrom." An attorney commits misappropriation when the balance of the attorney's account holding client funds drops below the amount the attorney owes to the client and/or owes to third parties on the client's behalf. *In re Edwards*, 990 A.2d 501, 518 (D.C. 2010). "There is no 'scienter' requirement in this court's approach to misappropriation," which "is essentially a per se offense" regardless of the mental state with which it is committed. *In re Saint-Louis*, 147 A.3d at 1149 (quoting *In re Berryman*, 764 A.2d 760, 768 (D.C. 2000)).

"[I]n virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence." *In re Addams*, 579 A.2d at 191; *In re Mayers*, 114 A.3d 1274, 1279 (D.C. 2015). Only if there are "extraordinary circumstances" will a sanction less than disbarment be appropriate in contested cases of reckless or intentional misappropriation. *In re Hewett*, 11 A.3d 279, 287-90 (D.C. 2011) (highlighting "truly unique" circumstances); see also *In re Mensah*, 262 A.3d 1100 (D.C. 2021) (negotiated-discipline process "permit[s] a somewhat more flexible approach" than what applies to contested cases).

In re Ekekwe-Kauffman, No. 19BG-1207, 2022 WL 244093 (D.C. Jan. 27, 2022)

Misappropriation

In re Ahaghotu, 75 A.3d 251, 256 (D.C. 2013), the Court adopted a Board finding of recklessness where the respondent attorney was proved to have committed just one instance of misappropriation **lasting only one day** because the attorney "ignored problems with his trust account that started a year before" and because the attorney "was the sole signatory on the account and at the time did not closely reconcile his records and bank statements."

In *In re Gray*, 224 A.3d 1222 (D.C. 2020) (per curiam), the respondent attorney (a solo practitioner) stopped tracking funds in his trust account beginning in 2007, his recordkeeping became haphazard and incomplete, he allowed his accounting to lapse because his practice became too busy, he would not have been able to know at any given time how much of the trust account actually belonged to him, he made no attempt to reconcile his account balance, and he rarely even looked at his monthly bank statements.

Id. at 1226. . . The Court acknowledged that although a good faith and objectively reasonable belief leading to the attorney's misappropriating funds not yet earned from his trust account would be nothing more than negligent, "what makes respondent's belief objectively unreasonable is his knowledge of his duty to keep his clients' funds separate from his own and his unacceptable disregard, from 2007 forward, for the safety and welfare of entrusted funds . . . *Id.* at 1233.

Negligent **Misappropriation** *Ignorance of the Law*

- Respondent's misappropriation of legal fees was negligent where he should have understood when he received a flat fee from his client in 2012—three years after *In re Mance* made clear that, per Rule 1.15(e), flat fees were advance fees that he had to deposit that money in a trust account. And his failure to understand and conform with Rule 1.15(e) as interpreted by *Mance* three years after we issued that decision clearly amounts to negligent misconduct.
- Mindful that “[a] six-month suspension without a fitness requirement is the norm for attorneys who have committed negligent misappropriation of entrusted funds,” *In re Edwards*, 870 A.2d 90, 94 (D.C. 2005), the Board recommended a harsher sanction in *Mr. Haar*'s case in order to impress upon the District's attorneys that “every lawyer, regardless of his or her employment, area of practice or level of seniority, should read, become familiar with, understand, and adhere to the Rules of Professional Conduct and the Court's decisions applying those Rules.”

In re Haar, No. 19-BG-554 (D.C. Feb. 24, 2022)

Confidences & Secrets

D.C. Rule 1.6: Confidentiality of Information

- (a) Except when permitted under paragraph (c), (d), or (e), a lawyer shall not knowingly:
 - (1) reveal a confidence or secret of the lawyer's client;
 - (2) use a confidence or secret of the lawyer's client to the disadvantage of the client;
 - (3) use a confidence or secret of the lawyer's client for the advantage of the lawyer or of a third person.
- (b) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client.

Confidences & Secrets

- 60-day suspension for disclosure of confidences and secrets of the respondent's former employer to a newspaper reporter and government agencies, in violation of Rule 1.6(a)).
- *In re Koeck*, 178 A.3d 463 (D.C. 2018)

DISHONESTY

D.C. Rule of Professional Conduct 8.4(c) prohibits "conduct involving dishonesty, fraud, deceit, or misrepresentation." The Court has held that "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction."

DISHONESTY

"Lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is "basic" to the practice of law. . . . Every lawyer has a duty to foster respect for the law, and any act by a lawyer which shows disrespect for the law tarnishes the entire profession. *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) (per curiam).