DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In re **MATHEW W. TULLY, ESQ.**	DDN 2017-D030
In re **GREGORY T. RINCKEY, ESQ.**	DDN 2016-D371; 2018-D052

RESPONDENTS' ANSWER TO THE SPECIFICATION OF CHARGES

Comes now the Respondents, by and through the undersigned counsel, and for their Answer to the Specification of Charges, state as follows:

General Denial & Context in Which Specification Has Been Filed

The Specification of Charges does not question the quality of work performed for any client by any of the hundreds of lawyers who have ever worked for Respondents' New York-based law firm, whether in the firm's District-based office, any of its other domestic offices, or in its offices in Ireland, or the United Kingdom, since the firm's founding nearly 20 years ago. The Specification of Charges does not allege dishonesty or criminal misconduct. The Specification follows an intense five-year investigation of docket 2017-D030 in which Respondents cooperated: they produced thousands of documents from their law firm; answered Disciplinary Counsel's repeated written inquiries; voluntarily sat for interviews with Disciplinary Counsel; and encouraged other current and former firm employees and vendors to cooperate with the investigation.

The 2017 investigation originated with a 439 page bar complaint (inclusive of exhibits) filed by a disgruntled former employee (the "Complainant"), who left Respondents' firm in 2010 and spent years thereafter attempting to build his own law

practice by harming Respondents.[1] The Complainant filed his bar complaint in the wake of litigation initiated by Respondents' firm to redress the Complainant's theft from, and other civil misdeeds against, Respondents' firm. The theft crimes only became known because the Complainant uploaded documents from Respondents' firm to the server of the Complainant's next employer; and that law firm's server was compromised by the group *Anonymous* in a widely reported hack.[2] We brought these concerns to Disciplinary Counsel's attention; but Disciplinary Counsel refused to open an investigation against its Complainant.

After that five year investigation, the Specification does not include the Complainant's most serious allegations. Instead, the Hearing Committee will be asked to review law office management policies and practices. The Specification as filed includes the first-ever prosecution in the District for violation of Rule 5.6, in which Disciplinary Counsel is arguing that Respondents' firm imposed unreasonable contractual restrictions on the post-employment lateral mobility of the firm's lawyers *and non-lawyer* personnel.[3] The Specification also includes a patently false charge that Respondents attempted to deter witnesses from cooperating with this investigation in violation of Rule 8.4(d); and a

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[1] The 2017 bar complaint was filed solely against Respondent Tully. The 2016 docket was a client complaint solely against Respondent Rinckey that sat dormant for an extended period of time while Disciplinary Counsel investigated the 2017 matter; the only apparent issue surviving from the 2016 matter is addressed below at paragraphs 27 and 29. The 2018 docket was initiated by Disciplinary Counsel as a means of making Rinckey a co-Respondent on the 2017 bar complaint.

[2] See news coverage at https://www.abajournal.com/news/article/unaware_that_anonymous_hacking_group_existed_until_friday_law_firm_partner and https://www.theatlantic.com/business/archive/2012/02/how-anonymous-could-destroy-law-firm/332080/

[3] Disciplinary Counsel has taken the unusual step of arguing this charge in media coverage. *See, e.g.,* https://www.reuters.com/legal/legalindustry/law-firms-employment-agreements-prompt-dc-bar-ethics-case-2022-06-02/

hodgepodge of *failure to supervise* allegations under Rules 5.1 and 5.3 which, while drafted with the flair of a best selling novelist, are not based in reality.

Objections to Improperly Obtained Evidence

Disciplinary Counsel provided the undersigned with certain discovery access pursuant to Board Rule 3.1. Review of that discovery revealed that Disciplinary Counsel received some statements and some records from third parties that those parties had no right to transmit because such transmittals violated Respondents' attorney-client privilege, work product privilege, or subpoena objection rights under Board Rule 3.15. Respondents reserve the right to move to preclude the introduction of improperly obtained evidence.

Objections to Vague Pleading

Respondents object to each instance in which the Specification alleges misconduct by generalization, sometimes with no specific transaction at all; and other times while claiming that one or more specific transactions constitute examples of something that is *typical,* something that occurred *often* or *sometimes,* or other words of similar import. Non-specific pleading denies Respondents a meaningful opportunity to prepare a defense in anticipating of the merits hearing on these dockets.

Response to Specification's Enumerated Paragraphs

Without waiving the foregoing objections, Respondents Answer the Specification's enumerated paragraphs as follows:

1. Admit. Although licensed in the District, Tully principally practices from an office in Albany, NY.

2. Admit. Although licensed in the District, Rinckey principally practices from an office in Albany, NY.

3. Admit.

4. Admit that Respondents were the firm's only equity partners prior to 2020 and have variously described themselves as Founding Partners or Managing Partners. Admit that the firm's 100 or so lawyers, in any given year, across multiple offices and jurisdictions in the United States, Ireland and the United Kingdom, indirectly reported to one or both Respondents through the firm's tiered management structure. Given that the Specification is focused on matters in the firm's District-based office, note that such office has always had an on-site Managing Partner (other than one of the Respondents) who managed the day-to-day legal operations of the DC office including supervision over client matters associated with that office. Admit that the Managing Partner in the District reported to one or both Respondents prior to 2020, depending on the issues involved. Admit that Respondents would have been responsible for approving SOPs prior to 2020. Admit that one or both Respondents approved some of the templates in use prior to 2020. Deny that Respondent Tully was involved in managing or supervising others during periods when he was on military or FMLA leave, which included extended periods in 2012-14 and part of 2017. Except as admitted, paragraph 4 is denied.

5. The Specification's claim that the firm prioritized profits to the detriment of clients is unfounded. The Specification's purported examples in support of that claim would render virtually every law firm guilty of the same accusation. Common practices at other small to large sized law firms, as relate specifically to Disciplinary Counsel's focus on uncollected lawyer time, include: little or no base salary with income contingent on

the lawyer's collected billable time[4]; time management counseling; withholding of promotions, limiting annual raises, limiting of holiday bonuses; or termination. Respondents' firm, like most medium to large sized law firms, used key performance indicators (KPIs) to evaluate and compare employees in a nondiscriminatory manner. Unlike many other law firms, the KPIs that were used for compensation, promotion, evaluation, and other fringe benefit purposes are written down and shared with employees in a transparent manner. The *qualified billable hour* referenced in the Specification was but one of nearly a dozen KPIs that the Respondents' firm used to quantify individual lawyer performance. Contrary to the impressions conveyed in the Specification, the vast majority of the firm's lawyers received satisfactory or good KPI evaluations; and most employees expressed appreciation that their KPIs were written down and shared with them, so they knew what was expected of them from the very start of the employment relationship. Deny that any policy or practice within the firm was designed to, or had the effect of, harming the interests of any client. Specifically aver that the firm's policies and practices with respect to non-paying clients was consistent with each lawyer's ethical obligations, including those of Rules 1.1 through 1.4 and 1.16(d).

6. Object to lack of relevance and misleading lack of context. Without waiving these objections, admit that the firm used surveillance cameras to protect itself and its staff from criminal activity and tort claims, which has included a history of break-ins, threats of violence and actual altercations, and the like -- the same reasons why other law firms and other businesses install cameras. Admit that the firm used an automated algorithm to monitor outgoing emails that flags unusual activity; and that such a flag may

[4] Each lawyer in the firm's District-based office was paid an-above market salary irrespective of collected time.

result in further efforts to confirm the reason for the flagged activity. Deny that phone calls were monitored (further deny that such monitoring would be improper). Aver further that the firms' monitoring efforts were lawful, ethical, and contractually authorized. Except as admitted, paragraph 6 is denied.

7. Object to phrase *considerable turnover* as devoid of legal meaning and not relevant to any charged rule violation. Admit that the two lawyers referenced in this paragraph left the District-based office of Respondents' firm in 2010; but deny they formed a firm together at that time. Further aver that one of the two lawyers referenced in paragraph 7 is the Complainant we identified in our introductory General Denial. Immediately prior to leaving the firm in 2010, the Complainant surreptitiously copied client lists covering matters in which he had no involvement (some of which contained non public contact information and non public agency information of intelligence agents and high ranking military officers thus risking the unmasking of US Intelligence agents in violation of 50 U.S.C. § 3121); proprietary marketing adwords and website coding developed over the course of years at millions of dollars in expense to the Respondents (and in which the Complainant had no role developing); and the firm's library of forms and templates (in which the Complainant also had no role in developing). The Complainant's theft did not become know to Respondents until the hacker group *Anonymous* breached the law firm the Complainant joined after leaving Respondents' firm. A partner at the breached law firm subsequently informed Tully that audit of the breached firm's servers revealed - to the partner's surprise - that the Complainant had imported Tully Rinckey's records to the breached firm's servers. It was following the 2012 breach that the Complainant then left the breached firm and started a competing

practice in the District with the other lawyer referenced in paragraph 7; and then, with unlawfully obtained knowledge of the compensation packages of Respondents' District-based staff, began an aggressive campaign to poach staff. At various points in time, nearly all of the lawyers in the Complainant's firm were former Tully Rinckey employees who left the Respondents at the urging of the Complainant who injected himself in the employment relationship between Tully Rinckey and its staff.

8 Object to compound form of pleading multiple concepts within the same paragraph as it deprive Respondents of a meaningful opportunity to ascertain which allegations are linked to a specific rule violation or are instead merely added for dramatic effect. Without waiving these objections, deny premise of the paragraph's first sentence. Admit that Respondents' firm filed suit in New York against Cole-Paul and Fletcher with the stated docket numbers. Deny that either suit was filed because clients followed the lawyers to their new firms. Note, parenthetically, that in one of those matters, a New York Supreme Court judge issued an order directing the defendant to return the firm's files. Admit that the firm began using, in 2010 or 2011, an evolving confidentiality template that was subject to negotiation on a lawyer-by-lawyer basis. Deny that Respondents used confidentiality agreements to restrict client choices or the right of lawyers to practice law. Deny any intent to violate any Rule by use of confidentiality agreements. Further aver that the firm modified its templates promptly after the D.C. Bar's Legal Ethics Committee issued its LEO 368. Except as admitted, paragraph 8 is denied.

9. Admit that Respondents' firm began using, in 2010 or 2011, an evolving employment agreement template that was subject to negotiation on a lawyer-by-lawyer

basis. Deny any intent to violate any Rule by use of employment agreements. Further aver that the firm modified its employment agreement template promptly after the D.C. Bar's Legal Ethics Committee issued its LEO 368. Except as admitted, paragraph 9 is denied.

10. Admit that some of the firm's employment agreements contained the quoted passage. Further admit that the passage was designed to inhibit eleventh-hour no-notice departures from the staff of Respondents' firm (as compared to orderly exits in which the firm would have ample time to backfill positions workload). Deny any intent to violate any Rule by use of employment agreements. Further aver that the firm modified its employment agreement template promptly after the D.C. Bar's Legal Ethics Committee issued its LEO 368. Except as admitted, paragraph 10 is denied.

11. Admit that employment agreements with Harrison, Watkins, and Molnar included reference to a referral fee; aver that separation agreements with each of these three did not include a referral fee. Admit that a non-attorney human resource manager mistakenly tendered an outdated separation template to Gregerson that contained a referral fee clause; aver that the executed separation agreement with Gregerson, which one of the Respondents signed on behalf of the firm, did not contain a referral fee clause. Deny that Rule 1.5(e) was intended to apply to fee division incident to a lawyer separating from the firm that originally engaged the client. Independent of what Rule 1.5(e) may now be interpreted as precluding, aver that pure referral fees were ethical in the District until Rule 7.1 was amended in October 2015. Further aver that the referral fee as a template clause constituted a commercially reasonable effort to compensate the firm for its efforts and substantial costs in capturing new client engagements, through the

firm's in-house marketing and client intake processes that Respondents funded and in which the subject attorneys were expected to have no role. Deny any intent to violate any Rule by use of this clause. Further aver that the firm modified its employment and separation templates promptly after the D.C. Bar's Legal Ethics Committee issued its LEO 368. Except as admitted, paragraph 11 is denied.

12. As previously noted, all of the firm's templates were negotiable on a case-by-case basis. Admit that some employment agreements contained a prevailing party litigation clause that only ran in favor of Respondents' firm. Except as admitted, paragraph 12 is denied.

13. As previously noted, all of the firm's templates were negotiable on a case-by-case basis. Admit that some employment agreements included the described liquidated damages clause.

14. Admit that employment agreements with non-lawyers May and Milone contained some restrictive covenants; but such contracts have no legal relevance to these proceedings. As a matter of law, the contracts with May and Milone were not covered by Rule 5.6 -- and Disciplinary Counsel should know this. Except as admitted, paragraph 14 is denied.

15. Admit lawyers could be terminated for cause for material breach of terms of employment, as is true in every law firm (with or without a written employment agreement). Admit that cause in Respondents' firm (or any other law firm) could include failure to meet pre-announced performance metrics. Admit that some material breaches of contract could warrant litigation, as is true in every law firm (with or without a written employment agreement). Admit that contracted-for liquidated damages with prevailing

party legal fees could be pursued as a remedy, if the factual preconditions for such a remedy were present. Except as admitted, paragraph 15 is denied.

16. Admit that Peters initiated arbitration against the firm. Respondents have found no records regarding arbitration or alleged threat against Quashie; and therefore deny. Admit seeking prevailing party attorneys fees in matters in which the firm has been a prevailing party. Deny seeking attorney fees when not the prevailing party. Except as admitted, paragraph 16 is denied.

17. Admit that the firm would attempt to engage *some* lawyers in renewal negotiations as their initial term was nearing completion; and those negotiations typically resulted in either an agreement on a renewal or a coherent separation process. Admit that the firm declined to make renewal offers to some employees. Except as admitted, paragraph 17 is denied.

18. Admit that Ellis, McCullough, and Molnar signed separation agreements in consideration of the firm's release of its claims for material breach of contracts. Except as admitted, paragraph 18 is denied.

19. Denied.

20. Admit that Friedman (who became a partner at the Complainant's firm) tendered the described letter. Admit that Casteleiro's counsel (who is the Complainant) tendered the described letter. Admit that one arbitrator in one of several litigation matters declared that the firm's liquidated damage clause could not be enforced against the litigant; and that the firm made no attempt to appeal the arbitrator's decision. Deny any intent to violate any Rule by use of employment agreements or by failing to agree with three referenced objectors. Except as admitted, paragraph 20 is denied.

21. Admit issuing a demand letter to Molar. Admit that Molnar (who went to work for the Complainant immediately following her departure from Respondents' firm) has claimed to be the requesting party on LEO 368. Notwithstanding the purely advisory nature of every D.C. Bar LEO, admit that Respondents' firm modified its templates promptly following issuance of LEO 368. Except as admitted, paragraph 21 is denied.

22. Admit that Respondents' firm instituted the cited New York courthouse litigation to compel arbitration against the defendants for material breaches of contract, including their participation in theft of proprietary information from Respondents' firm. The defendants, all of who left Respondents' firm to join the Complainant's firm, argued in court that the firm's employment agreement (inclusive of arbitration clause) could not be enforced because the employment agreement was unethical. The Complainant represented the defendants. The New York court granted the motion to compel over the Complainant's objections and directed the defendants to arbitrate the underlying dispute. Aver that the matter settled before Respondents' firm initiated any arbitration proceedings. Except as admitted, paragraph 22 is denied.

23. Object to the Specification's publication of settlement discussions; but if such discussions will be admissible in these proceedings, notice is given that Respondents may seek to offer the defendants' two sizeable settlement offers. Admit filing suit in New York against the Complainant and his firm, the Federal Practice Group. Admit that the focus of the suit was an effort to redress the theft and torts we detailed in our answer to paragraph 7. Except as admitted, paragraph 23 is denied.

24. Admit informing lawyers in the firm's District-based office of the status of New York-based litigation. Deny Specification's stated purpose for such communications..

25. Denied. The firm's Rules-compliant policies and practices, based on its SOP, for the supervision and management of subordinate lawyers and non-lawyers included but was not limited to: monthly attorney file audits, client contact audits, firm in-house monthly training, and firm in-house ethics CLE and subject matter CLE. Direct oversight of the District-based office and its personnel was conducted by an on-site Managing Partner.

26. Respondents built and funded the firm's marketing mechanisms and intake center that were responsible for developing almost every client who came to the firm. With rare exceptions, the firm's clients hired the firm without requesting services by any particular lawyer. Clients contractually authorized the firm to assign lawyers as the firm deemed appropriate to meet each client's needs. It is ironic that the Specification seeks to treat Respondents as the responsible parties for all alleged Rule violations, but wishes to treat the clients as somehow belonging to an associate. Respondents became aware of instances in which the firm was unable to provide a client with new contact information for a departed lawyer -- because there were lawyers who refused to disclose where they were going or claimed to be leaving private practice only to pop up later at a private firm. Respondents were not, however, aware of any instance in which anyone under their management actively impeded a client in violation of Rule 1.4. Deny that any projects on which Friedman had been one of the assigned lawyers were reassigned because of her notice of intent to resign. Admit that client projects on which Gregerson had been one of

the assigned lawyers were reassigned in the wake of her notice of intent to resign based on her apparent intent to take leave from the practice of law. Clients were informed of the reassignments of their projects, who their new firm attorney would be, and were not charged for the need to bring the new lawyer up to speed. Except as admitted, paragraph 26 is denied.

27. Denied.

28. Admit that the firm reassigned cases, and sent timely unilateral notices to clients on which Friedman and Casteleiro had provided services. Aver that Friedman and Casteleiro each refused to disclose where they would be practicing law and each refused to participate in framing a joint letter. Except as admitted, paragraph 28 is denied.

29. Admit that Sullivan sought contact information for her prior counsel. Aver that the firm timely provided the requested information to Sullivan. Deny that Chatman sought contact information about Watkins. Except as admitted, paragraph 29 is denied.

30. The firm's policy was to treat the file as the firm's property unless and until notified that the client was going elsewhere; and at that point the firm's policy was to comply with Rule 1.16(d) with respect to forwarding the file. Except as admitted, paragraph 30 is denied.

31. The firm expected departing lawyers to attempt to cooperate with the firm in framing a joint notification to affected clients. Such a letter is consistent with the D.C. Bar Legal Ethics Committee's interpretive guidance. Aver that any departing partner or associate who refused to participate in that process had no ethical right, while still employed by the firm, to commence notifying clients of the intent to leave; and, for partners, common law fiduciary duties may also be implicated. Respondents admit that,

following separation from the firm, nothing prevented the departed lawyer from sending professional announcements. Respondents deny that the SOP and employment templates were intended to prevent such an announcement. To the extent not admitted, paragraph 31 is denied.

32. Object to the Specification's suggestion that it is somehow improper for Respondents' firm, or any law firm, to delegate tasks associated with transferring files or refunding of unearned fees. At Respondents' firm, hundreds of cases per year are transferred in from, or out to, other law firms. The firm therefore has a staff that is experienced in handling these processes. To the extent of non-lawyer involvement, the process is overseen by a branch Managing Partner, Director of Legal Administration and a transition attorney. Respondents were not involved directly in the transfer of any file or refund unless the underlying case was one in which a Respondent was lead counsel; and, to our knowledge, no such cases are at issue in these dockets. To the extent not admitted, paragraph 31 is denied.

33. Admit that Young announced that she would be moving to Pittsburgh approximately six months prior to what turned out to be her last day employed with the firm. The firm agreed to continue to employ Young from her new home office in Pittsburgh with the possibility that arrangement would last indefinitely. The firm shipped all of Young's paper files to Pittsburgh promptly after Young's relocation. Young had electronic access to all of her email and electronic records until her last day of employment. Client notification letters about Young's departure were timely sent once Young informed Respondent Tully where she was next going to work. The firm cooperated in the transition of all clients who elected to go with Young. No client lost a

case because of the firm's actions associated with Young's transition to her next firm. Except as admitted, paragraph 33 is denied.

34. Admit; but deny relevance of this rather common clause that is routinely found in employment, separation, and settlement agreements in every sector of the economy. Nothing in this clause was intended to, or could reasonably be interpreted as, trumping a lawyer's independent duty to report known ethical violations under Rule 8.3(a) or the independent duty under Rule 8.1(b) to respond to a lawful inquiry from Disciplinary Counsel. Except as admitted, paragraph 34 is denied.

35. Admit; but deny relevance of this rather common clause that is routinely found in employment, separation, and settlement agreements in every sector of the economy. Nothing in this clause was intended to, or could reasonably be interpreted as, trumping a lawyer's independent duty to report known ethical violations under Rule 8.3(a) or the independent duty under Rule 8.1(b) to respond to a lawful inquiry from Disciplinary Counsel. Except as admitted, paragraph 35 is denied.

36. Object to suggestion that Disciplinary Counsel has the right to conduct secret investigations against any member of the D.C. Bar, because such a claim would deny a respondent the right to move to quash an improperly issued subpoena for records or interviews. Without waiving this objection, paragraph 36 is denied.

ANY MATTER NOT SPECIFICALLY ADMITTED IS DENIED

ALL CHARGED RULE VIOLATIONS ARE DENIED.

Wherefore, Respondents pray that the Specification be dismissed and for such other and further relief as may be proper upon the factual record

Respectfully submitted,

Respondents Tully and Rinckey
By Counsel:

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CERTIFICATE OF SERVICE

I certify that a true copy of this Answer was served upon the Office of Disciplinary Counsel, via email, on this 21st day of June, 2022.

Daniel Schumack
_____
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