# DISTRICT OF COLUMBIA COURT OF APPEALS BOARD ON PROFESSIONAL RESPONSIBILITY

Apr 25 2023 3:00pm

Board on Professional

Responsibility

:

In the Matter of

:

LYNN BURKE, ESQUIRE : Disciplinary Docket No. 2014-D303,

: 2017-D266, 2018-D102, 2018-D325

Respondent

:

A Member of the Bar of the

**District of Columbia Court of Appeals** 

**Bar Number: 1006423** 

Date of Admission: March 9, 2012

\_\_\_\_**:** 

#### **AMENDED SPECIFICATION OF CHARGES**

The disciplinary proceedings instituted by this petition are based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar Rule X and D.C. Bar Rule XI, § 2(b).

Jurisdiction for these disciplinary proceedings is prescribed by D.C. Bar Rule XI. Pursuant to D.C. Bar Rule XI, § 1(a), jurisdiction is found because:

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on March 9, 2012, and assigned Bar Number 1006423.

## Count I – Disciplinary Docket No. 2014-D303

The conduct and standards that Respondent has violated are as follows:

- 2. Respondent lives and practices law in North Carolina but is not a member of the North Carolina Bar. Respondent maintains that her practice is limited to federal immigration law.
- 3. Respondent's letterhead did not list any jurisdictional limitations and did not state that she was not licensed to practice law in North Carolina.
- 4. On May 4, 2016, the Office of Disciplinary Counsel wrote to Respondent and questioned her about the lack of jurisdictional limitation information on her letterhead. On June 30, 2016, Respondent wrote that she had updated her letterhead to include "licensed to practice law in Washington, DC the Fourth Circuit Court of Appeals Not licensed to Practice North Carolina Law."
- 5. Despite The North Carolina State Bar's Letter of Caution dated November 4, 2014, to Respondent about engaging in the unauthorized practice of law, and Disciplinary's Counsel's letter of June 2016 about Respondent's letterhead, as of January 2020, Respondent continued to use letterhead with a North Carolina address that did not include information about the jurisdictional limitations on her practice.
- 6. Respondent's website (<u>www.lynneburkelaw.com</u>) indicates that her practice is limited to immigration and post-conviction relief (state appeals), inter alia, without indication that she is prohibited from practicing in North Carolina state courts.

#### Respondent's Representation of the Battles and Their Son

- 7. On or about October 11, 2013, Jesse and Sharon Battle asked Respondent if their son, David R. Stewart, was eligible to seek relief under *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (*en banc*), which modified how state criminal convictions are to be considered under the federal sentencing guidelines. Mr. and Mrs. Battle wanted to determine whether Mr. Stewart was eligible for relief from the Federal Career Criminal Sentencing Enhancement under *Simmons*.
- 8. Initially, Respondent told Mr. and Mrs. Battle that she could not represent their son because she did not think Mr. Stewart qualified under *Simmons*.
- 9. Respondent then contacted Mr. and Mrs. Battle on November 2, 2013, and said that, after discussing Mr. Stewart's case with her colleague, Respondent now believed that their son did have a good chance under *Simmons*.
- 10. In November 2013, the Battles retained Respondent to represent their son who was sentenced to 30 years in federal prison for a federal robbery charge. Respondent agreed to prepare and file a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct Mr. Stewart's sentence.
- 11. Respondent told Mr. and Mrs. Battle that her fee was \$1,500. Respondent did not provide the Battles with a written fee agreement for the

representation. Mr. and Mrs. Battle paid the fee in installments over the course of several months.

- 12. On or about November 12, 2013, Mr. Battle asked Respondent if she was licensed in the United Stated District Court for the Middle District of North Carolina. Respondent responded that she was licensed in the Fourth Circuit Court of Appeals and in the District of Columbia and she further stated that because she is licensed in the District of Columbia, she can do all federal appeal work. Respondent misrepresented that she could file pleadings in the United Stated District Court for the Middle District of North Carolina, when she could not without court permission.
- 13. On December 7, 2013, Respondent told Mr. and Mrs. Battle that because their son was detained in South Carolina, she would visit him in January 2014.
- 14. On December 9, 2013, Respondent told the Battles that the *Simmons* motion was almost finished, and she would send it to them for their review. Respondent also stated that she would send their son a copy of her brief for his review.
- 15. Respondent did not send the Battles or their son the motion in December 2013.

- 16. On January 30, 2014, Mr. Battle asked Respondent if she had visited his son, Mr. Stewart. Respondent stated that she would do so the following week.
  - 17. Respondent did not visit Mr. Stewart as she had promised.
- 18. On April 24, 2014, Mrs. Battle asked Respondent if the motion had been filed. Respondent stated that she would be filing it on the following Monday, April 29, 2014. Respondent did not file the motion.
- 19. On May 8, 2014, Respondent told Mr. and Mrs. Battle that she was working on a new strategy in the case. Respondent told Mr. and Mrs. Battle that she would attempt to have the state court in Durham County, North Carolina correct an alleged error that was made on Mr. Stewart's worksheet that had been used to enhance Mr. Stewart's sentence by filing a Motion for Appropriate Relief (MAR). Respondent made these representations to the Battles when she could not practice law before the North Carolina state court pursuant to N.C. Gen. Stat. §84-4.1, which prohibits North Carolina residents from being admitted to North Carolina state courts by *pro hac vice* admission.
- 20. Respondent drafted a MAR and provided it to the District Attorney who prosecuted Mr. Stewart's underlying case. Respondent advised the Battles that after she spoke to the District Attorney, she was abandoning this strategy and pursuing an appeal based on ineffective assistance of counsel.

- 21. On May 15, 2014, Mrs. Battle asked Respondent how long it would take her to prepare the motion. Respondent responded, by text message, "I cannot give that to you because I don't know myself [sic]. The deadline [sic] is August 3 but it will not take that long... Furthermore... what's the rush your son still got to do the 10 years... He not getting out anytime soon. I do not want to piss anyone off either so when I know, you will know.... If your son worrying you then tell him to chill for real... I have to write another motion which I had not anticipated...Have a good day."
- 22. On July 1, 2014, Mr. Battle sent Respondent an email asking her whether she could represent her son if she was not licensed in the United States District Court for the Middle District of North Carolina.
- 23. Respondent responded to the email and stated that she could be admitted *pro hac vice*, if necessary. Respondent never sought admission to the United States District Court for the Middle District of North Carolina.
- 24. On July 21, 2014, Mr. Battle sent Respondent an email stating that Mr. Stewart had not heard from Respondent. Respondent replied the following day, stating that she continued to work on the § 2255 motion to vacate and would send a final copy to Mr. Stewart and the Battles.
- 25. On July 30, 2014, Respondent emailed Mr. Battle and stated that she would be visiting Mr. Stewart on Friday August 2, 2014. Respondent further stated

that she would have the client sign the motion *pro se* because the courts "give a lot more latitude to *pro se* litigants." Mr. and Mrs. Battle responded that they did not want their son signing his own motion. They emphasized that Respondent was the attorney and that she should sign and file the motion on his behalf.

- 26. On August 2, 2014, Respondent provided Mr. and Mrs. Battle with a copy of the motion.
- 27. Mr. and Mrs. Battle were dissatisfied with Respondent's position and reiterated that she was hired to write and file the motion on behalf of their son. Mr. and Mrs. Battle emphasized that Respondent had never discussed with them or Mr. Stewart the possibility of him signing his own motion *pro se* and representing himself.
- 28. On August 1, 2014, Respondent arrived at the Federal Correctional Institution and had a staff member take the documents to Mr. Stewart for his signature without discussing their contents or her strategy with Mr. Stewart. Mr. Stewart signed the § 2255 motion and it was returned to Respondent.
- 29. On August 4, 2014, Respondent filed the § 2255 motion without her signature (and crossing out the signature line for the attorney of record) and bearing only Mr. Stewart's signature as movant in the United States District Court for the Middle District of North Carolina. Respondent did not speak with Mr. Stewart about her strategy that he proceed *pro se*.

- 30. On September 9, 2014, Mr. and Mrs. Battle filed a complaint with the Office of Disciplinary Counsel, alleging that Respondent misrepresented to them that she was able to practice in North Carolina courts, failed to visit Mr. Stewart as she promised, failed to maintain regular communication, and failed to file the federal motion to vacate with her own signature.
- 31. On October 14, 2014, Respondent responded to the complaint. She admitted agreeing to write and file the motion on behalf of Mr. Stewart. She also admitted to not having a fee agreement for the representation. Respondent stated that she explained to the Battles that she was not licensed in North Carolina but could appear *pro hac vice* in state court with the supervision of a North Carolina attorney. In fact, she could not.
- 32. On November 6, 2014, the Office of Disciplinary Counsel received a copy of a Letter of Caution issued by the North Carolina State Bar Authorized Practice Committee to Respondent finding that she engaged in the unauthorized practice of law in Mr. Stewart's matter. The North Carolina State Bar Authorized Practice Committee found that Respondent violated N.C. Gen. Stat. §§ 84-2.1, 4, 5 and §84-4.1, when she: "(1) held out to two North Carolina residents and their son as able to provide their son with legal assistance and representation in North Carolina, (2) held out as having an office in North Carolina, (3) charged North Carolina residents \$1,500 for legal services, (4) sent letters to the residents

and their son expounding upon North Carolina law, and (5) indicated that you could and would file a Motion for Appropriate Relief in a North Carolina state court." The North Carolina State Bar further advised Respondent that a North Carolina resident may not be admitted to North Carolina state courts *pro hac vice* pursuant to §84-4.1.

- 33. In response to a further inquiry, Respondent admitted that she was mistaken in her statement to the Battles that she could appear *pro hac vice* in their son's case.
- 34. On September 8, 2016, the United States Attorney filed a motion to place Mr. Stewart's matter in abeyance pending decisions by the Fourth Circuit in *United States v. Hassan Sharif Ali* (4th Cir. Docket No. 15-4433), *United States v. Joseph Simms* (4th Cir. Docket No. 15-4640), and *In re Chong Chen* (4th Cir. Docket No. 16-0577).
- 35. On September 27, 2016, the United District Court for the Middle District of North Carolina granted the motion to place Mr. Stewart's matter in abeyance.
- 36. On January 7, 2021, Mr. Stewart's conviction was vacated, and the case was remanded to the district court for further proceedings consistent with the court's decision.

- 37. Respondent's conduct set forth above violated the following provisions of the D.C. Rules of Professional Conduct and/or the North Carolina Rules of Professional Conduct, to the extent they may apply:
  - a. Rule 1.4(a), in that she failed to keep her clients reasonably informed about the status of a matter and promptly comply with reasonable requests for information;
  - b. Rule 1.4(b), in that she failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
  - c. Rule 1.5(b), in that she failed to communicate to the client, in writing, the scope of the representation and the basis or rate of her fee when she did not regularly represent this client;
  - d. Rule 5.5(a), in that she engaged in the unauthorized practice of law in North Carolina;
  - e. Rules 7.1(a) and 7.5(a), in that her letterhead and website were misleading in that she failed to state that she was not licensed to practice law in North Carolina; and
  - f. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, and/or misrepresentation.

#### Count II – Disciplinary Docket No. 2017-D266

- 38. On or about October 20, 2015, Cynthia Baah retained Respondent to represent her in an immigration matter.
- 39. Respondent undertook the work but did not provide Ms. Baah with a written fee agreement or other writing setting forth the basis or rate of her fees.
- 40. Respondent's conduct set forth above violated the following provisions of the D.C. Rules of Professional Conduct:
  - a. Rule 1.5(b), in that Respondent failed to communicate to the client, in writing, about the scope of the representation and the basis or rate of her fee when she did not regularly represent the client.

#### Count III – Disciplinary Docket No. 2018-D102

- 41. On June 25, 2014, K.O.F., and her cousin B.Q.O., both minors and undocumented immigrants, entered the United States from El Salvador to escape gang violence after witnessing the murder of their female cousin. Both minors were released to Pedro Osorio-Aparicio ("Mr. Osorio").
- 42. On March 10, 2015, the U.S. Committee for Refugees and Immigrants' Immigrant Children's Legal Program, a non-profit organization, referred Mr. Osorio to Respondent for legal representation of his minor daughter, K.O.F., and his minor niece, B.Q.O., both seeking asylum relief from deportation. The Immigrants Children's Legal Program provides support for unaccompanied minor immigrants

who are in removal proceedings.

- 43. Respondent agreed to represent K.O.F and, later, B.Q.O., on a *pro bono* basis in their immigration cases.
- 44. Respondent did not provide a written fee agreement setting forth the basis or rate of her fees or the scope of the representation to Mr. Osorio for either representation.
- 45. Respondent recommended that both K.O.F. and B.Q.O. apply for relief of removal to El Salvador under the Special Immigrant Juvenile Petition ("SIJP").
- 46. Respondent informed Mr. Osorio that, in order for K.O.F. to apply for relief under SIJP, a North Carolina court would have to establish jurisdiction over her and make a factual determination that she was eligible under the statute to submit the petition.
- 47. On July 1, 2015, Respondent referred Mr. Osorio to a North Carolina licensed attorney who, on Mr. Osorio's behalf, filed for sole custody of his daughter, K.O.F., in the Durham County District Court.
- 48. On July 19, 2015, Mr. Osorio, with the aid of North Carolina counsel, filed for sole custody of B.Q.O. in the Durham County District Court, as both of her parents resided in El Salvador.
- 49. On May 27, 2016, the Durham County District Court granted Mr. Osorio sole custody of K.O.F. and deemed her eligible to petition for relief under

SIJP.

- 50. On June 20, 2016, Respondent filed K.O.F.'s I-360 petition for the Special Immigration Juvenile Petition ("SIJP") with USCIS.
  - 51. On August 29, 2016, USCIS approved K.O.F.'s I-360 Petition for SIJP.
- 52. On November 18, 2016, the court granted Mr. Osorio sole custody of B.Q.O. and deemed her eligible to petition for relief under SIJP.
- 53. On November 21, 2016, the same date as the Master Calendar hearing scheduled in Immigration Court in Charlotte, North Carolina in B.Q.O.'s matter, Respondent filed a motion to submit documents for SIJP relief, which was granted. On November 25, 2016, Respondent filed B.Q.O.'s I-360 petition for SIJP with USCIS.
- 54. On February 9, 2017, USCIS approved B.Q.O.'s I-360 Petition for SIJP.

## **Adjustment of Status Representation (Flat Fee Representation)**

55. On September 22, 2016, Mr. Osorio retained Respondent to file for adjustment of status for K.O.F. and to complete an I-485 application for lawful permanent resident and an I-765 application for employment authorization. Mr. Osorio paid Respondent \$2,070 in cash - \$1,000 for her fee and \$1,070 to cover the USCIS filing fee. Respondent provided Mr. Osorio with receipts indicating the \$1,000 fee for Respondent's legal services and the scope of the representation and

the amount paid for the USCIS filing fee.

- 56. On that same day, Respondent deposited \$1,500 of Mr. Osorio's funds into her operating account maintained at Wells Fargo Bank, the account ending in 2505.
- 57. Respondent's operating account was not a DC IOLTA although the account held IOLTA-eligible funds required to be deposited in a DC IOLTA.
- 58. The next day, on September 23, 2016, Respondent informed Mr. Osorio that the USCIS filing fees were due to increase in December 2016 and suggested that he file fee waivers for both his daughter and niece and that she would file an application for adjustment of status and employment authorization for Mr. Osorio's niece as soon as her petition for SIJP was approved.
- 59. On September 23, 2016, Respondent made a cash deposit of \$800 which represented a portion of Mr. Osorio's fee into her operating account. Following these deposits, the balance in Respondent's operating account stood at \$12,548.22, and included funds belonging to Respondent which she used to pay for personal expenses.
- 60. By November 3, 2016, the balance in Respondent's operating account was \$1,994.87, which was below the amount that Mr. Osorio had paid to Respondent. By November 29, 2016, Respondent had withdrawn or spent most of the funds in her operating account, and the balance was only \$90.97.

- 61. Respondent used the funds in her operating account, including the advance legal and filing fees belonging to Mr. Osorio, to pay her business and personal expenses.
- 62. For example, Respondent made several withdrawals from her operating account for Starbucks, Taco Bell, McDonald's, Food Lion, and Victoria's Secret.
- 63. Respondent failed to obtain the informed consent of Mr. Osorio to treat the fees and expenses he advanced as her own. Respondent failed to communicate verbally or in writing the material risks and consequences of treating the advanced fee and expenses as Respondent's property upon receipt. Respondent also failed to explain the reasonably available alternatives to depositing the advanced fees and expenses in her operating account rather than an IOLTA.
- 64. On April 11, 2017, Respondent submitted I-485 applications for both Mr. Osorio's daughter and niece, along with applications for fee waivers.
- 65. Respondent did not provide Mr. Osorio with a written fee agreement or other writing setting forth the rate or basis of her fee or the scope of the representation for Mr. Osorio's niece's representation.
- 66. On April 28, 2017, USCIS rejected both Mr. Osorio's daughter and niece's applications as premature as neither minor was eligible for the relief requested at that time.

- 67. On June 2, 2017, Respondent filed the I-765 Application for Employment Authorization for both Mr. Osorio's daughter and niece along with two checks for filing fees of \$495 each. However, the applications along with the two checks for \$495 were returned because Mr. Osorio's daughter and niece were not eligible for the relief at that time.
- 68. Shortly thereafter, Mr. Osorio requested that Respondent refund the \$1,070 USCIS filing fee that he had paid her. Respondent refused and indicated that all the funds were fees that she had earned.
- 69. In July 2017, Respondent terminated the representation. On July 12, 2017, Respondent filed a Motion to Terminate Proceedings Without Prejudice for Remand to USCIS, and a Motion to Withdraw as Counsel of Record, which the Immigration Court granted.
- 70. In August 2017, Mr. Osorio again requested a refund of the filing fees paid to Respondent. Respondent refused to refund the \$1,070.
- 71. On May 14, 2021, after she was under investigation by Disciplinary Counsel, Respondent issued a refund of \$1,070 to Mr. Osorio.
- 72. In a letter dated August 23, 2022, Respondent falsely represented to Disciplinary Counsel that she had not deposited the funds from Mr. Osorio into her operating account.

- 73. Respondent violated the following D.C. Rules of Professional Conduct and/or North Carolina Rules of Professional Conduct:
  - a. Rule 1.5(b), in that she failed to communicate to the client in writing the scope of the representation and the rate or basis of the fee;
  - b. Rule 1.15(a) and (e), in that she failed to hold property belonging to her client separate from her own property and commingled them in her operating account;
  - c. Rule 1.15(a) and (e), in that Respondent failed to maintain complete financial records and recklessly or intentionally misappropriated the client's funds;
  - d. Rule 1.15(b), in that she failed to deposit entrusted funds into a DC IOLTA:
  - e. Rule 1.15(d), in that she failed to keep separate disputed funds and hold it in an IOLTA until such time that the dispute was resolved;
  - f. Rule 1.16(d), in that she failed to take timely steps to the extent reasonably practicable to protect her client's interests by refunding advance fees or expenses that had not been earned or incurred.
  - g. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, and/or misrepresentation.

#### Count IV – Disciplinary Docket No. 2018-D325

- 74. On September 22, 2014, Caser Alvarenga-Gomez pled guilty to conspiracy to commit robbery in the Circuit Court for Montgomery Country, Maryland, in the matter styled *State v. Cesar E. Alvarenga-Gomez*, Case No. 124948C. Mr. Alvarenga-Gomez was sentenced to five years imprisonment with all, but 90 days suspended.
- 75. United States Immigration and Custom Enforcement (ICE) considered Mr. Alvarenga-Gomez's conviction to be an aggravated felony and initiated removal proceedings against him in the United States Department of Justice Executive Office for Immigration Review Immigration Court.
- 76. In April 2017, Mr. Alvarenga-Gomez retained Respondent to represent him in his pending immigration proceedings. Respondent agreed to represent him *pro bono* but did not provide him a written retainer agreement.
- 77. As a part of her representation, Respondent sought to challenge Mr. Alvarenga-Gomez's conviction in the Circuit Court for Montgomery County, Maryland.
  - 78. Respondent has never been licensed to practice law in Maryland.
- 79. In the summer of 2017, Respondent contacted Mr. Alvarenga-Gomez's original immigration attorney, Jay S. Marks, Esquire, a Maryland attorney, and asked him to file a Motion for Special Admission of Out-of-State Attorney

pro hac vice on her behalf pursuant to Maryland Rule 19-214. Mr. Marks agreed and requested that Respondent draft the motion and send it to him for review and filing. Respondent drafted the motion but failed to forward it to Mr. Marks. Neither Mr. Marks nor any other Maryland attorney ever filed a Motion for Special Admission of Out-of- State Attorney on Respondent's behalf.

- 80. On July 7, 2017, Respondent filed a Petition for Writ of Actual Innocence ("Petition") in the Circuit Court for Montgomery County, Maryland, on behalf of Mr. Alvarenga-Gomez and requested that the Court scheduled a hearing on the matter. Respondent was the only lawyer that signed the petition.
- 81. The State filed an Answer to the Petition, and on October 13, 2017, Respondent filed a response to the State's motion to deny the Petition and requested a hearing on the matter. Respondent was the only lawyer that signed the pleading.
- 82. On November 15, 2017, the Circuit Court denied the petition without hearing.
- 83. On September 24, 2018, the Attorney Grievance Commission of Maryland issued a reprimand to Respondent for engaging in professional misconduct related to her representation of Mr. Alvarenga-Gomez when she violated the following Maryland Attorneys' Rules of Professional Conduct: Rule 19-301.3 (Diligence); Rule 19-305.5 (Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law); and 19-308.4(a) (Misconduct). Respondent stipulated to the

Maryland violations.

84. Respondent's conduct set forth above violated the following provisions

of the D.C. and/or Maryland Rules of Professional Conduct:

a. Rule 1.3, in that she failed to represent her client zealously and

diligently;

b. Rule 1.5(b), in that she failed to provide her client a written

statement setting forth the basis or rate of her fee and the scope of the

representation

c. Rule 5.5, in that she engaged in the unauthorized practice of law.

85. Respondent's conduct set forth above violated the following provisions

of the Maryland Attorney's Rules of Professional Conduct:

a. Rules 19-305.5(a) & (b), in that she engaged in the unauthorized

practice of law in Maryland.

Respectfully submitted,

s/Hamílton P. Fox, III

Hamilton P. Fox, III

Disciplinary Counsel

s/Caroll G. Donayre

Caroll G. Donayre

**Assistant Disciplinary Counsel** 

OFFICE OF DISCIPLINARY COUNSEL 515 Fifth Street, N.W.

Building A, Room 117

Washington, D.C. 20001

(202) 638-1501

**VERIFICATION** 

I verify under penalty of perjury that the foregoing is true and correct.

Executed on January 24, 2023.

s/Caroll G. Donayre

Caroll G. Donayre

**Assistant Disciplinary Counsel** 

**CERTIFICATE OF SERVICE** 

I hereby certify that on January 24, 2023, I caused the foregoing Amended

Specification of Charges to be served electronically to James T. Phalen, Executive

Attorney, Board on Professional Responsibility at CaseManager@dcbpr.org, and to

Lynn Burke, Esquire, c/o Ronald Douglas, Esquire, at rdouglas@nccu.edu.

s/Caroll G. Donayre

Caroll G. Donayre

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## DISTRICT OF COLUMBIA COURT OF APPEALS BOARD ON PROFESSIONAL RESPONSIBILITY

Apr 25 2023 3:00pm

Board on Professional

Responsibility

In the Matter of

LYNN BURKE, ESQUIRE,

Disciplinary Docket Nos. 2014-D303, 2017-D266, 2018-D102, & 2018-D325

Respondent

#### PETITION INSTITUTING FORMAL DISCIPLINARY PROCEEDINGS

A. This Petition (including the attached Specification of Charges which is made part of this Petition) notifies Respondent that disciplinary proceedings are hereby instituted pursuant to Rule XI, § 8(c), of the District of Columbia Court of Appeals' Rules Governing the Bar (D.C. Bar R.).

- B. Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals on the date stated in the caption of the Specification of Charges.
- C. A lawyer member of a Hearing Committee assigned by the Board on Professional Responsibility (Board) pursuant to D.C. Bar R. XI, § 4(e)(5), has approved the institution of these disciplinary proceedings.

## D. **Procedures**

(1) Referral to Hearing Committee – When the Board receives the

Petition Instituting Formal Disciplinary Proceedings, the Board shall refer it to a Hearing Committee.

- of Charges by filing an answer with the Board and by serving a copy on the Office of Disciplinary Counsel within 20 days of the date of service of this Petition, unless the time is extended by the Chair of the Hearing Committee. Permission to file an answer after the 20-day period may be granted by the Chair of the Hearing Committee if the failure to file an answer was attributable to mistake, inadvertence, surprise, or excusable neglect. If a limiting date occurs on a Saturday, Sunday, or official holiday in the District of Columbia, the time for submission will be extended to the next business day. Any motion to extend the time to file an answer, and/or any other motion filed with the Board or Hearing Committee Chair, must be served on the Office of Disciplinary Counsel at the address shown on the last page of this petition.
- (3) <u>Content of Answer</u> The answer may be a denial, a statement in exculpation, or a statement in mitigation of the alleged misconduct. Any charges not answered by Respondent may be deemed established as provided in Board Rule 7.7.
  - (4) Mitigation Respondent has the right to present evidence in

mitigation to the Hearing Committee regardless of whether the substantive

allegations of the Specification of Charges are admitted or denied.

Process - Respondent is entitled to fifteen days' notice of the (5)

time and place of hearing, to be represented by counsel, to cross-examine

witnesses, and to present evidence.

E. In addition to the procedures contained in D.C. Bar R. XI, the Board

has promulgated Board Rules relating to procedures and the admission of evidence

which are applicable to these procedures. A copy of these rules is being provided to

Respondent with a copy of this Petition.

WHEREFORE, the Office of Disciplinary Counsel requests that the Board

consider whether the conduct of Respondent violated the District of Columbia Rules

of Professional Conduct, and, if so, that it impose/recommend appropriate discipline.

Hamilton P. Fox, AAA
Hamilton P. Fox, III

Disciplinary Counsel

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