DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	
WILLIAM H. BRAMMER, JR., ESQUIRE,	**Board Docket No. 22-BD-080** **Disciplinary Docket No. 2022-D024**
Respondent	
A Member of the Bar of the District of Columbia Court of Appeals **Bar Number: 478206** **Date of Admission: 07/08/2002**	

AMENDED
PETITION FOR NEGOTIATED DISPOSITION

Pursuant to the District of Columbia Court of Appeals Rules Governing the Bar as prescribed by Rule X and Rule XI, § 12.1 (D.C. Bar R.) and Board Rule 17.3, Disciplinary Counsel and Respondent, William H. Brammer, Esquire, respectfully submit this petition for negotiated disposition in the above-captioned matter. Pursuant to D.C. Bar R. XI, §1(a), jurisdiction is found because Respondent is a member of the District of Columbia Bar.

I. STATEMENT OF THE NATURE OF MATTERS BROUGHT TO DISCIPLINARY COUNSEL'S ATTENTION

Disciplinary Counsel received a complaint from two of Respondent's co-

clients in an estate matter, alleging, among other things, that Respondent engaged in neglect and was dishonest with them when communicating about their matter.

II. STIPULATION OF FACTS AND RULE VIOLATIONS

Disciplinary Counsel and Respondent stipulate to the following:

The Facts

1. Pursuant to D.C. Bar R. XI, §1(a), Disciplinary Counsel has jurisdiction to prosecute because Respondent is a member of the Bar of the District of Columbia Court of Appeals admitted on July 8, 2002, and assigned Bar number 478206.

2. On July 1, 2021, Patricia Easley Whearty and her brother Craig Easley retained Respondent to represent them in their efforts to obtain information about expenditures made by the trustee of their mother's trust. The trustee was their sister, who lived in Virginia with their mother. The siblings' parents had lived in Maryland before their father's death and certain assets remained in that state. The trustee had not responded to Ms. Whearty's and Mr. Easley's questions about how their mother's assets were being spent. They were concerned that the trustee was spending trust assets inappropriately while refusing to provide information about her expenditures.

3. Ms. Whearty and Mr. Easley first interviewed Respondent on or about June 8, 2021, by teleconference because of the pandemic. They have never met with him in person. Ms. Whearty and Mr. Easley informed Respondent that they sought an attorney who was familiar with the relevant law in both Maryland and Virginia. They chose to retain Respondent after he led them to believe that his law firm had the requisite expertise to handle their matter, despite that the trust was formed in Maryland and the trustee and beneficiary lived in Virginia.

4. The initial telephone conference was followed by a Zoom call on June 17, 2021. Participants in this zoom teleconference were the complainant, her brother Craig Easley, Respondent, and the Maryland attorney.

5. Respondent did not adequately disclose that he was not licensed in either Virginia or Maryland in the parties' first telephone conference, or on the June 17, 2021 Zoom call. He explained that he would need to bring in a Maryland attorney but did not share that one of the reasons for this was that he was not licensed in Maryland or Virginia.

6. Respondent informed Ms. Whearty and Mr. Easley that he had a team that included a Maryland attorney. Though Respondent shared that the Maryland attorney worked for "Lincoln Park Associates," he failed to disclose that the attorney was not an associate, partner, or otherwise employed at his firm.

Ms. Whearty and Mr. Easley believed that Respondent's team were members of Respondent's own law firm.

7. Respondent's law firm did not have a Maryland or Virginia attorney. Respondent was the only lawyer at his firm. He did not disclose these facts to Ms. Whearty and Mr. Easley.

8. Ms. Whearty and Mr. Easley would not have retained Respondent if they had known he was the firm's only attorney without a license in either relevant jurisdiction.

9. Around the time they initially met with Respondent, Ms. Whearty and Mr. Easley asked Respondent about projected fees to handle their matter. Respondent estimated that legal fees could range from $6000 to $30,000 or more for the representation, depending on whether the trustee would provide the information they sought without need of prolonged litigation.

10. Respondent agreed to bill Ms. Whearty and Mr. Easley hourly and agreed to alert them to replenish the retainer as fees were earned. He explained the concept of an evergreen deposit and agreed that they could replenish it in $3000 increments as the fees were earned.

11. Ms. Whearty and Mr. Easley paid Respondent $6000 to begin the representation.

12. On June 30, 2021, Mr. Easley signed Respondent's retainer agreement; Ms. Whearty signed it the next day. Respondent's retainer agreement identified the Maryland attorney as local counsel but did not clearly state his billing rate, and did not set forth the division of responsibility or give any more details about the effect of the association of lawyers outside the firm on the fee to be charged.

13. At some point early in the representation, Respondent informed Ms. Whearty and Mr. Easley that the attorney with the Maryland license was going to travel out of the country for an extended period. He mentioned that another person would be brought in to perform some of the same duties the Maryland attorney would have performed if he had not been traveling. Respondent did not explain what these duties were or to what degree the new person would be involved.

14. Respondent contends that the duties he expected the new person to complete were proofreading, document compiling, and other basic paralegal functions. This was not explained to Ms. Whearty and Mr. Easley.

15. The new person Respondent identified was H. Franklin Green, whom Respondent knew or should have known was a convicted felon and former member of the D.C. Bar disbarred for financial misconduct.

16. Respondent explained to Ms. Whearty and Mr. Easley that Mr. Green possessed a Juris Doctor, but was not a practicing attorney. Respondent did not disclose Mr. Green's criminal and disciplinary history.

17. Ms. Whearty and Mr. Easley would not have retained Respondent or his firm if they had known about Mr. Green's criminal and disciplinary history.

18. As the representation progressed, Mr. Green, Respondent, the Maryland attorney, Ms. Whearty and Mr. Easley had teleconferences and exchanged e-mails.

19. On August 6, 2021, the Maryland attorney filed (a) a motion for preliminary injunction, and (b) a petition to account for trust assets, modify the trust, and replace the trustee on behalf of Ms. Whearty and Mr. Easley in the Circuit Court for Montgomery County, Maryland. The Maryland attorney, Respondent, and Mr. Green, worked together in preparing the pleadings and supporting affidavits. Respondent and the Maryland attorney both signed the substantive pleadings and the relevant documents to admit Respondent *pro hac vice* to the Maryland court.

20. Ms. Whearty and Mr. Easley were unclear about Mr. Green's role in their case and believed he was an attorney working in Respondent's law office. Respondent never explicitly told them that Mr. Green was not an attorney in his

law firm. Ms. Whearty and Mr. Easley reasonably concluded that Mr. Green was an attorney.

21. Although Ms. Whearty and Mr. Easley had been prepared for the Maryland attorney to be less involved because of his foreign travel, the Maryland attorney stayed as involved in the representation as Respondent.

22. From the perspective of Ms. Whearty and Mr. Easley, Mr. Green's role in the representation was indistinguishable from that of the Maryland attorney and Respondent. Respondent concedes that he did not adequately explain to his clients Mr. Green's role in the representation.

23. About seven weeks after retaining Respondent, Ms. Whearty and Mr. Easley received their first invoice for legal services. It was for more than the initial estimate of $30,000. They were surprised by the amount. Despite Respondent's explanation of the evergreen deposit, they had expected to be charged in $3000 increments. Though he had provided some updates to Ms. Whearty and Mr. Easley about the work that was being performed, Respondent had never revised his initial estimate of the litigation cost. Respondent concedes that he had not provided billing updates or regular invoices because he had not had time to compile them. Respondent also concedes that though he explained the

concept of an evergreen deposit, he failed to make sure that Ms. Whearty and Mr. Easley understood the difference between that and their billing schedule.

24. It was only after Ms. Whearty and Mr. Easley reviewed the invoice that they learned that the Maryland attorney was not part of Respondent's law firm. Respondent concedes that his designation of the Maryland attorney as "local counsel" was not sufficient to inform Ms. Whearty and Mr. Easley of the salient facts.

25. Ms. Whearty and Mr. Easley disputed the amount of the legal fees stating they believed Respondent to be overcharging them. Ms. Whearty and Mr. Easley expressed their disappointment at the lack of communication and failure to advise them when the initial retainer was exhausted.

26. Ms. Whearty and Mr. Easley directed Respondent to cease further work except to move to dismiss the petition that had been filed.

27. The trustee filed a counter-motion and Ms. Whearty and Mr. Easley obtained successor counsel to respond.

28. Ms. Whearty and Mr. Easley discovered Mr. Green's criminal and disciplinary background after Ms. Whearty filed a disciplinary complaint.

29. Ms. Whearty and Mr. Easley ultimately paid Respondent $26,000 in fees.

30. At the onset of the representation, Respondent created a DropBox folder for Ms. Whearty and Mr. Easley to use to view all of the documents in the case. Respondent uploaded all of the pleadings to this folder, including the August 6, 2021 Motion for Special Admission for Respondent to practice in Maryland. Although this document was available to Ms. Whearty and Mr. Easley, Respondent concedes that he never made any efforts to confirm that they had actually read it.

The Rule Violations

31. Respondent violated the following District of Columbia Rules of Professional Conduct:

A. Rule 1.4(a), because Respondent failed to keep his clients apprised of the status of the matter, specifically around fees;

B. Rule 1.4(b), because Respondent failed to explain the matter to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation;

C. Rule 1.5(e), because Respondent worked with an attorney who was not in the same firm without advising his clients in writing of the contemplated division of responsibility and of the effect of the association of

lawyers outside the firm on the fee to be charged, obtaining his clients' informed consent, and ensuring that the total fee was reasonable; and,

D. Rule 8.4(c), because Respondent engaged in reckless conduct rising to dishonesty by misleading his clients to believe that more than one attorney worked for his law firm, that his firm had expertise in representing clients seeking the relief they sought and so could handle their matter efficiently, and that Mr. Green was an attorney who worked for his firm.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II other than those set forth above, or any sanction other than that set forth below.

IV. AGREED UPON SANCTION AND RELEVANT PRECEDENT

The agreed-upon sanction in a negotiated discipline case must be (a) justified; and (b) not unduly lenient, taking into consideration the record as a whole, including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel's evidence, any circumstances in aggravation and mitigation (including Respondent's cooperation with Disciplinary Counsel and acceptance of

responsibility), and relevant precedent. Board Rule 17.5; *see* D.C. Bar R. XI, § 12.1(b)(1)(iv). A justified sanction does not have to comply with the the comparability standard set forth in D.C. Bar R. XI, §9(h). Board Rule 17.5(a)(iii).

Agreed-Upon Sanction

Disciplinary Counsel and Respondent agree that: (a) 30 days after the Court issues its Order (or on a date otherwise specified by the Court), and (b) ending one year from the date that Respondent is reinstated, the sanction to be imposed is:

1. a 90-day suspension, all but 60 days stayed;

2. one year's unsupervised probation on the condition that Respondent not be the subject of a disciplinary complaint that results in a finding that he violated the disciplinary rules of any jurisdiction in which he is licensed to practice during the probationary period;

3. that Respondent will notify Disciplinary Counsel promptly of any disciplinary complaint filed against him and its disposition;

4. that Respondent will consult with the D.C. Bar's Practice Management Advisory Service to conduct a review of Respondent's prior discipline, and his law practice to avoid continuing to make the same ethics breaches, with particular emphasis on clear and effective communication;

5. that Respondent waives confidentiality regarding the PMAS consultation process and will provide proof within 10 days of its completion;

6. that within 30 days of the Court's order suspending Respondent, he will notify Disciplinary Counsel in writing of all jurisdictions in which he is or has been licensed to practice, and all tribunals before which he has appeared as legal counsel; and,

7. Respondent's probation begins on the day he completes his suspension.

Relevant Precedent

Respondent's Misconduct Was Reckless, Rising to Dishonesty

Disciplinary Counsel and Respondent agree that Respondent's reckless communication with his clients about his employees, billing practices, and anticipated fees was dishonest. "Dishonesty" includes not only fraudulent, deceitful or misrepresentative conduct, but also "conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness." *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990); *In re Samad,* 51 A.3d 486, 496 (D.C. 2012). The District of Columbia Court of Appeals has made clear for decades this point: "Honesty is basic to the practice of the law." *In re Baber*, 106 A.3d 1072, 1077 (D.C. 2015) (citation omitted); *In re Hutchinson*,

534 A.2d 919, 924 (D.C. 1987). "Clients must be able to rely unquestioningly on the truthfulness of their counsel." *In re Outlaw*, 917 A.2d 684, 688 (D.C. 2007), citing *In re Reback [and Parsons]*, 513 A.2d 226, 231 (D.C. 1986) (*en banc*).

Nor is an intent to deceive a requirement to violate Rule 8.4(c) (or its predecessor). *See e.g., In re McBride*, 642 A.2d at 1270, 1273 (D.C. 1994) (lawyer engaged in dishonesty notwithstanding that actions were not motivated by personal gain, but "misguided" effort to help friend); *In re Schneider*, 553 A.2d 206, 211 (D.C. 1989) (Court rejected argument that "intent to deceive" was required for dishonesty; Court assumed lawyer's motivation was "simply to utilize 'short-cut' method to obtain reimbursement" to which he thought he was entitled, but lawyer committed acts of deception by altering receipts); *Reback [and Parsons]*, 513 A.2d at 228, 231-32 (lawyers were dishonest for filing accurate second complaint without client's knowledge and after forging then notarizing her signature to replace earlier one dismissed due to neglect, trying to restore client to prior case posture but for their negligence).

60 Days' Served Suspension Falls Within the Broad Range of Sanctions for Respondent's Dishonesty and Other Violations

The parties also agree that a 60-day suspension falls within the broad range of sanction under the Court's jurisprudence for his violation of Rules 8.4(c)

(dishonesty), 1.4(a) and (b) (failures to communicate with clients), and 1.5(e) (failure to comply with required writing setting forth fee-splitting and division of labor with counsel from another law firm). The range of sanctions for dishonesty combined with other ethics violations is from a non-suspensory sanction to disbarment. *See In re Gregory W. Gardner, Esquire*, Disciplinary Docket No. 2017-D102 (Oct. 24, 2018) (informal admonition for violating promise to communicate with both co-counsel and the client)[1]; *In re Cleaver-Bascombe*, 986 A.2d 1191 (D.C. 2010) (disbarment for submitting false Criminal Justice Act vouchers violating Rules 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), 1.5(a) (unreasonable fee), 3.3(a)(1) (false statement of material fact to tribunal), and 8.4(d) (engaging in conduct seriously interfering with administration of justice) – all aggravated by attorney's perjury during disciplinary hearing).

The Sanction Is Justified

A 60-day suspension for Respondent's dishonesty, failure to communicate, and other violations is justified. First, no set of facts will be identical from case to case, but there are examples of attorneys who have violated Rules somewhat comparable to those of Respondent. *See e.g., In re Avery,* 189 A.3d 715 (D.C.

[1] Included at the labeled appendix.

2018) (Court imposed 60-day suspension with 30 days stayed for neglecting client, making misleading statements to Disciplinary Counsel, and giving "not credible" and "false testimony" at hearing); *In re Bailey*, 283 A. 3d 1199, 1209 (D.C. 2022) (Court imposed one year's suspension for dishonestly charging client unreasonable fee (Rules 8.4(c) and 1.5(a)), failing to communicate with client (Rules 1.4(a) and 1.4(b)), failing to provide client a writing about fee-splitting and division of responsibilities with counsel at another law firm (Rule 1.5(e)), and seriously interfering with the administration of justice (Rule 8.4(d)), in the context of much more extensive disciplinary history than Respondent's that included nine-month suspension for, *inter alia*, misappropriation, in addition to two informal admonitions).[2]

Second, Respondent previously benefited from a petition for negotiated disposition but failed to complete his probation before the instant case was docketed. *In re Brammer*, 243 A.3d 863 (D.C. 2021). The 60-day served suspension is designed to capture the 30 days Respondent should have served for failing to complete probation and adds another served 30 days to reflect the dishonest conduct at issue in this case.

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[2] The additional context in *Bailey* can be found in abbreviated fashion in the Board's Report and Recommendation, 18-BD-054 (BPR July 9, 2021) at 34 (discussing attorney's prior discipline).

Finally, Respondent recognizes the pattern of his misconduct and is prepared to learn effective strategies to avoid repeating it. He takes responsibility for failing to disclose to his clients important information about his law firm, its employees, and his billing practices, agreeing that he should have been more forthcoming. Given the broad range of sanctions, a 60-day suspension falls within the range of sanctions for dishonest conduct. The sanction is justified considering relevant precedent and the record as a whole.

A. Evidence in Aggravation to Be Considered

Aggravating factors are that Respondent's misconduct includes dishonesty, and he has a significant disciplinary history (a negotiated stayed 30-day suspension with probation for incompetence, neglect, and failure to communicate, and a prior informal admonition for incompetence and failure to communicate). The Court's order approving the earlier petition for negotiated discipline, the petition for negotiated disposition, and the informal admonition are attached at the labeled appendices. Further, Respondent failed to complete his probation during his prior (fully) stayed suspension before the disciplinary complaint giving rise to these charges was filed.

B. Evidence in Mitigation to Be Considered

In mitigation, Respondent has taken responsibility for his misconduct, in that he acknowledges that he violated the Rules as set forth above, has cooperated fully with Disciplinary Counsel's investigation, agrees that a served suspension incorporating the original 30 days served and the added 30 days served, is appropriate given his failure to complete probation in his prior negotiated disposition, and seeks to learn strategies to avoid further ethics breaches.

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Respondent is aware that he will be required to notify clients of his suspension under D.C. Bar R. XI, § 14, and Board Rule 9.9.

V. RESPONDENT'S DECLARATION

Accompanying this Petition in further support of this Petition for Negotiated Disposition, is Respondent's declaration pursuant to D.C. Bar R. Xl, § 12.1(b)(2).

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