

COUNT I

Representation of Tonja Bennett

2. In November 2015, Tonja Bennett's father, Maurice Toler, and stepmother, Vernise Steadman-Toler, passed away.

3. Lesa Horton, a family friend, acted as the Personal Representative of both decedents and attempted to separately probate each estate *pro se* in 2015. In the petitions, she identified Ms. Bennett as a daughter of Maurice Toler and stepdaughter of Vernise Steadman-Toler, respectively. She kept Ms. Bennett apprised of what was happening in the cases.

4. In 2016, after Ms. Horton's petitions were dismissed without prejudice, Ms. Horton hired Barbara Mann, Esq., to represent her. On Ms. Horton's behalf, Ms. Mann filed new petitions to probate the estates. In the petitions, Ms. Horton continued to identify Ms. Bennett as a daughter of Maurice Toler and stepdaughter of Vernise Steadman-Toler.

5. Maurice Toler and Vernise Steadman-Toler had recognized Ms. Bennett as Mr. Toler's daughter and as far as Ms. Bennett was aware, no one questioned her paternity. Ms. Bennett did not hire an attorney because she did not believe that her paternity would be an issue and because she was named as an interested party in both petitions.

6. At first, Ms. Bennett communicated with Ms. Mann about the cases.

7. In the late summer or early fall of 2016, Ms. Mann told Ms. Bennett that Barbara Miller, counsel for another heir, was questioning Ms. Bennett's eligibility to inherit under the wills because Ms. Bennett was Mr. Toler's biological child born out of wedlock and not a child from either of his two marriages. Ms. Mann thereafter refused to talk directly with Ms. Bennett about the estates, instead insisting that Ms. Bennett hire a lawyer.

8. Ms. Bennett tried to find a lawyer on her own in Georgia, where she resided, but could not find someone to represent her. Ms. Bennett asked Ms. Mann for a recommendation and Ms. Mann recommended Respondent.

9. Respondent talked informally with Ms. Bennett many times. She told Respondent repeatedly that she did not want to hire a lawyer and have to pay him one-third of her inheritance; instead she wanted to pay a flat fee. Respondent assured her that, if she hired him, they would be able to work something out.

10. On or about September 21, 2017, while she was in the Washington, D.C., area for unrelated reasons, Ms. Bennett met in person with Respondent in his office. Ms. Bennett asked Respondent how much he would charge if she hired him. Respondent left the conference room where Ms. Bennett and her

mother were sitting and came back in with a legal pad on which he had written “\$8,000.”

11. Ms. Bennett understood this writing to mean that Respondent would charge her a flat fee of \$8,000 and she agreed to hire Respondent.

12. Ms. Bennett signed a retainer agreement dated September 21, 2017. The retainer was separate from the note Respondent wrote on the legal pad. According to the retainer agreement:

A. Respondent’s time would be charged at \$350 per hour.

B. Ms. Bennett would pay Respondent a “minimum retainer” of \$7,000. Respondent agreed to wait for payment of the “minimum retainer” out of the proceeds of Ms. Bennett’s portion of the Toler estate.

C. Respondent anticipated he would bill 20 hours to establish paternity and Ms. Bennett’s entitlement to a share of Mr. Toler’s estate.

D. Ms. Bennett would have to pay for costs as they were incurred.

13. The retainer agreement, which Respondent drafted, did not address how or whether Ms. Bennett would be sent invoices. Nor did it authorize Respondent to

withhold any of Ms. Bennett's inheritance other than the \$7,000 "minimum retainer."

14. Notwithstanding the terms of the signed retainer agreement, based on conversations she had with Respondent before their September 21, 2017 in-person meeting and Respondent's handwritten note on the legal pad during the meeting, Ms. Bennett believed that she had entered into an agreement with Respondent for representation for a flat fee of \$8,000. She did not notice the word "minimum" in front of the \$7,000 retainer amount in the agreement she signed. To the extent she considered any inconsistency between the signed retainer agreement and her belief that she had hired Respondent for a flat fee of \$8,000, she believed the \$8,000 that Respondent wrote down in the in-person meeting was consistent with the \$7,000 retainer fee and possible costs mentioned in the retainer agreement (which she assumed could be as high as \$1,000).

15. On November 24, 2017, Respondent filed his notice of appearance on behalf of Ms. Bennett in the *Toler* probate matter.

16. On or about January 14, 2018, Respondent agreed to pay Lyzka DeLaCruz, Esq., \$2,500 to draft a motion for summary judgment that he would file in Ms. Bennett's case. While Respondent verbally sought Ms. Bennett's

consent to hire another attorney to draft a brief if such a brief needed to be filed, he did not inform Ms. Bennett orally or in writing of Ms. DeLaCruz's fee. Nor did Respondent obtain Ms. Bennett's written consent to pay Ms. DeLaCruz.

17. On March 1, 2018, Judge Robert E. Morin consolidated the *Toler* and *Steadman-Toler* cases and ordered the heirs to mediate.

18. Prior to the mediation, Respondent submitted a Confidential Settlement Statement to the mediator and attached to it a draft Motion for Summary Judgment written by Ms. DeLaCruz. Respondent also provided the parties with a copy of the draft Motion. Respondent did not consult with Ms. Bennett about whether she wanted to incur the expense for drafting the Motion at that time, nor did he inform her of the cost of the draft Motion.

19. The mediation took place on April 30, 2018. Ms. Bennett attended in person as did Respondent. The parties settled the dispute over who would inherit, agreeing that Maurice Toler's heirs (including Ms. Bennett) would get 50% of the combined estates, and Vernice Steadman-Toler's heirs would get the other 50%. As part of the settlement agreement, all of the parties acknowledged Ms. Bennett's paternity. Counsel for all the heirs except Respondent challenged Ms. Mann's attorney's fees.

20. The last time that Ms. Bennett saw or spoke to Respondent was in the hallway after the April 30, 2018, mediation. Respondent told Ms. Bennett that she could expect to receive one-third of 50% of the estates. He did not tell her that he had allegedly spent over 40 hours working on her case instead of the 20 hours of work he had first estimated. Nor did he obtain her consent to withhold any portion of her inheritance in excess of the \$7,000 retainer.

21. Ms. Bennett tried to contact Respondent several times after the mediation because she had questions about whether she could collect certain personal property from the estates (rather than Ms. Mann incurring the cost of hiring a moving company) and the continued need for DNA testing in light of the settlement. She also asked for a copy of documents the other attorneys had distributed during the mediation that questioned Ms. Mann's attorney's fees, and she asked for the mediator's contact information because he made comments about Ms. Mann's fees. Respondent did not return her calls, respond to her emails, or provide her with the documents she requested.

22. Thereafter, Ms. Bennett tried to contact other attorneys involved in the cases to find out what was going on, but they referred her back to Respondent.

23. In September 2018, Ms. Horton moved to resign as Personal Representative, *inter alia*, because she wanted to purchase certain personal property from the estate, including a car. Ms. Mann, on Ms. Horton's behalf, also agreed to a partial distribution of the estates to the heirs.

24. Ms. Mann notified counsel for all the heirs, including Respondent, about the upcoming distribution. Each of Maurice Toler's heirs was to receive \$133,334. Respondent did not inform Ms. Bennett about the upcoming partial distribution.

25. On September 21, 2018, Respondent signed a stipulation stating that he would receive \$133,334 on Ms. Bennett's behalf.

26. On September 24, 2018, Ms. Mann caused \$128,665.84 to be wired to Respondent's firm's IOLTA account at PNC Bank, Account No. XXX8453. Respondent did not notify Ms. Bennett about the partial distribution or the total amount that was supposed to be distributed to her. Nor did he ever account to Ms. Bennett for the difference between the \$133,334 that was supposed to be distributed to her and the \$128,665.84 that was actually sent.

27. After the first partial distribution, Respondent failed to notify Ms. Bennett about important events in the case including, but not limited to:

A. An October 2018 petition filed by Vernise Steadman-Toler's heirs challenging Ms. Mann's attorney's fees;

B. The November 5, 2018 appointment of Kimberly Edley, Esq., a member of the Fiduciary Panel of the Probate Court, as Successor Personal Representative;

C. The February 2019 objection to Ms. Mann's final invoice for attorney's fees made by counsel for all the heirs, except for Respondent, and the ongoing negotiation over those fees;

D. Ms. Edley's attempts starting in June 2019 to get Respondent to provide Ms. Bennett's written consent to sell the car and other personal property in the estates to the former Personal Representative, Ms. Horton (all other heirs had already consented in writing); and

E. Ms. Edley's July 25, 2019, sale of the Toler's home.

28. On September 6, 2019, Respondent informed Ms. Bennett by email for the first time about events that had occurred in the consolidated cases since the mediation in April 2018. He told her that Ms. Horton had resigned, and Ms. Edley had been appointed as Successor Personal Representative. He also told her that

Ms. Horton wanted to purchase estate personal property, including the Tolers' car, and recommended that she consent to the sale in writing.

29. Respondent informed Ms. Bennett that the attorneys for the other heirs had challenged Ms. Mann's attorney's fees and that he would "let [her] know the outcome." He did not ask her about her position or whether she would want to join in objecting to Ms. Mann's attorney's fees.

30. Respondent also told Ms. Bennett that he was holding \$128,311.00¹ for her in his office trust account as a partial disbursement from the estates. He did not tell her that he had received the funds in September 2018, a year earlier, or why he had received less than the \$133,334.00 that was supposed to be disbursed to Ms. Bennett.

31. Respondent offered to provide Ms. Bennett with \$100,000 of her inheritance if she signed an Indemnification Agreement that provided:

I agree to repay the Estates of Maurice T. Toler and Vernise Y. Steadman-Toler \$100,000 . . . of the advance distribution that is being forwarded to me if repayment to the estate is required for any reason. In the same vain [sic], **I agree to indemnify and hold harmless Thomas H. Queen, Esq. and**

¹ This amount was less than the \$133,334 Respondent stipulated he would receive in September 2018; and less than the \$128,664.84 that was wired to the firm's IOLTA on September 24, 2018. Respondent has never accounted to Ms. Bennett for these discrepancies.

Thomas H. Queen and Associates from any and all claims and liabilities made against them on behalf of the Estates of Maurice T. Toler and Vernise Steadman-Toler.

(Emphasis added.)

32. Respondent told Ms. Bennett that he would withhold the remaining \$28,311 to cover legal fees. He stated, “If upon the conclusion of this administration, legal fees and expenses are less than \$28,311.00, then that amount will be refunded to you. We have expended in excess of \$20,000 . . . in billable time as of the present [September 6, 2019].”

33. This was the first time that Respondent told Ms. Bennett that he had generated more than \$7,000 in fees. Respondent did not provide an invoice or statement of services to support his claim for fees in excess of \$7,000. Ms. Bennett never authorized Respondent to withhold fees from her inheritance in excess of the \$7,000 retainer.

34. Ms. Bennett disputed Respondent’s entitlement to over \$20,000 in fees, demanded an accounting of his billable hours, and refused to sign the indemnification agreement. She offered to pay Respondent up to \$5,000 for his services. She refused to sign any additional documents until the fee issue was settled.

35. In her emails, Ms. Bennett asked Respondent to call her. She also called Respondent's office and asked that he return her calls. Respondent did not return Ms. Bennett's calls or respond to her emails. He also did not provide her with any portion of her inheritance.

36. From late September to the end of October 2019, Ms. Edley continued to ask Respondent to provide Ms. Bennett's written consent for the sale of estate personal property to Ms. Horton. Respondent replied that Ms. Edley should move forward with the sale because Ms. Bennett had consented to the sale, just not in writing. Ms. Edley asked if she could contact Ms. Bennett directly, but Respondent never replied to her requests.

37. Respondent did not tell Ms. Bennett about Ms. Edley's requests. On November 5, 2019, Respondent's assistant emailed Ms. Bennett asking her to sign the consent form.

38. On November 7, 2019, Ms. Bennett fired Respondent. In her email, she said: "With paternity being accepted, I wish to end my relationship with the Law Office of Thomas Queen. . . . [P]lease forward my contact information to all reaching out in regard to me[.] After that small courtesy, I wish for your offices not to lift a finger. Our time is complete."

39. Respondent did not inform the Probate Court, the Personal Representative, or counsel for the other heirs that he was no longer representing Ms. Bennett.

40. Respondent also did not return Ms. Bennett's file to her. He did not provide her with any portion of the \$128,665.84 partial distribution he had received in September 2018. He did not account for the hours he allegedly worked on her case. He did not return any unearned portion of his attorney's fees or unincurred costs.

41. On November 12, 2019, Respondent emailed Ms. Edley. Instead of notifying her that he had been discharged and that Ms. Bennett was now *pro se*, he stated,

I suggest that you file the motion indicating that you have the consents of all parties except Tonja Bennett and that based upon communications with her attorney, you do not expect that she will object to the motion. In this way, you will be able to move the matter along. Unless she specifically instructs me to do so, and I do not believe that she will, I will not file any objection to the motion. Hopefully this will allow you to proceed.

42. On November 13, 2019, Ms. Edley informed the counsel for all heirs, including Respondent, that, because Ms. Bennett would not sign the consent form, she would have to file a petition to obtain court approval for the sale.

43. On November 19, 2019, Ms. Edley asked counsel for all heirs, including Respondent, for their approval of a second distribution of \$450,000 from the estates. Respondent did not notify Ms. Bennett about the impending distribution, nor did he tell Ms. Edley to notify Ms. Bennett directly.

44. After learning from a third party that Ms. Bennett had fired Respondent, Ms. Edley talked to Ms. Bennett. Ms. Bennett confirmed that she was *pro se*. On December 5, 2019, Ms. Edley paid the second distribution of \$75,000 directly to Ms. Bennett.

45. In further conversations that took place in January 2020, Ms. Edley told Ms. Bennett that Ms. Horton had made a partial distribution to the heirs in 2018. Not understanding that this distribution was the \$128,311.84 Respondent had referred to in his September 6, 2019, email, Ms. Bennett called Respondent's office demanding the funds from the first distribution. She asked Respondent to return her call.

46. Respondent's assistant sent Ms. Bennett another copy of Respondent's September 6, 2019, email which contained the offer of \$100,000 in exchange for indemnification. However, Respondent did not call Ms. Bennett back. Nor did he provide her with any portion of the first distribution.

47. On August 14, 2020, Ms. Edley sent Respondent an email stating:

A very serious accusation has been made against you by your former client, Tonja Bennett. She states that you never gave her the first partial distribution issued by the estates of Maurice and Vernise Steadman Toler. If true, this may have serious implications for the prior estate administrator and her attorney. Please let me know if the distribution was made so that the estates can be closed.

Ms. Edley also left Respondent a similar voicemail message.

48. Respondent did not return Ms. Edley's telephone call or reply to her email. Instead, on August 14, 2020, he mailed Ms. Bennett a check for \$103,000, stating in the cover letter that he would send a "fully itemized Statement of Services" within 10 days. "Any portion of the remaining \$20,000 . . . which is unearned shall be distributed to you at that time."

49. Respondent did not account for the \$133,334 that he stipulated he had received on Ms. Bennett's behalf, or the \$128,665.84 that he actually received on September 24, 2018.

50. On September 4, 2020, Respondent sent Ms. Bennett a letter, a Statement of Services, and a check for \$5,000. In the letter, Respondent stated that the \$5,000 was intended to reimburse Ms. Bennett for the interest she could have earned in the 23 months he had kept her inheritance in the firm's IOLTA.

51. In the Statement of Services, Respondent claimed that he had provided 67.8 hours of legal services, which amounted to \$23,730 in attorney's fees.

These fees included:

- A. Fees generated for work Respondent performed before Ms. Bennett actually hired him and for which he had never told her he would seek payment;
- B. Fees generated for work Respondent claimed to have performed after Ms. Bennett fired him; and
- C. Inflated fees for other work, including the March 1, 2018, hearing and the April 30, 2018 mediation.

52. The Statement of Services also included a charge of \$2,500 for Ms. DeLaCruz to prepare a Motion for Summary Judgment that was never finalized or filed. Respondent had not previously told Ms. Bennett about the charge or obtained her consent to pay Ms. DeLaCruz \$2,500. Nor had Respondent told Ms. Bennett that he would have Ms. DeLaCruz draft the motion for use at the mediation. In total, Respondent charged Ms. Bennett \$26,230 for the work on her case. He claimed that he was reducing his attorney's fee by providing her with the \$5,000 interest reimbursement.

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

- A. Rule 1.2(a), in that he failed to seek Ms. Bennett's objectives;
- B. Rule 1.3(b)(2), in that he intentionally prejudiced Ms. Bennett during the course of the representation;
- C. Rule 1.4(a) and (b), in that he failed to keep Ms. Bennett reasonably informed about the status of the case, failed to comply with her reasonable requests for information, and failed to explain to the extent reasonably necessary to permit Ms. Bennett to make informed decisions about the representation;
- D. Rule 1.5(a) and (e), in that he charged unreasonable fees and failed to obtain Ms. Bennett's written and informed consent to fee splitting;
- E. Rule 1.15(c), in that he failed to promptly notify Ms. Bennett when he received partial disbursement of her inheritance, failed to promptly deliver it, and failed to promptly account for it when asked;
- F. Rule 1.16(d), in that he failed to take steps to protect Ms. Bennett's interest after she terminated the representation;

G. Rule 8.4(c), in that he was dishonest with Ms. Bennett about his fees and his continued involvement in her case after she terminated the representation; and was dishonest with the Personal Representative and other participants in the case about his continued authority to speak on Ms. Bennett's behalf after she fired him; and

H. Rule 8.4(d), in that he engaged in conduct that seriously interfered with the administration of justice.

COUNT II

Failure to Cooperate

54. During the course of the investigation of this matter, Disciplinary Counsel sought information from Respondent including his answer to Ms. Bennett's bar complaint, a copy of his client file in the Bennett matter, a description of his representation of Ms. Bennett, a copy of his retainer agreement, and documents reflecting his communications with Ms. Bennett about certain issues.

55. After five months of requesting and receiving multiple enlargements to answer Ms. Bennett's bar complaint, Respondent and his counsel failed to answer. Disciplinary Counsel had to seek an order from the Board requiring Respondent to answer. The Board issued such an order on May 21, 2021.

56. More recently, on May 8, 2023, Disciplinary Counsel sent Respondent through his counsel a request for information and a subpoena seeking the following:

A. Explanations for why he demanded that Ms. Bennett indemnify him and why he kept her inheritance;

B. An explanation for Respondent's previous responses that were incomplete or inaccurate or both;

C. An explanation about certain transactions in the IOLTA that Respondent used to deposit Ms. Bennett's funds and the financial records for the transactions into and out of the IOLTA; and

D. Respondent's written verification that the information and documents his counsel produced were accurate and complete.

The deadline for compliance was May 22, 2023.

57. Thereafter, Respondent through counsel repeatedly delayed his response. Several times Disciplinary Counsel agreed to enlarge the time for Respondent to respond, but Respondent consistently failed to comply.

58. On Monday, June 12, 2023, Respondent's counsel produced what appeared to be financial records relating to the firm's IOLTA, but the records did

not respond fully to the written requests and subpoena, contained redactions (based on a claim of attorney-client privilege), contained correspondence that referred to attachments that had not been produced, and contained unsigned documents (e.g., settlement statements or disbursement sheets). Respondent's counsel indicated that other documents and responses would be produced on June 13, 2023.

59. On June 13, 2023, Respondent did not provide the remaining documents and information as promised.

60. On that same day, Disciplinary Counsel asked that Respondent verify the partial response that had been provided on June 12th. On June 15, 2023, Disciplinary Counsel also asked that Respondent explain the redactions in the June 12th production, supplement the financial records provided, and provide the remaining information, documents, and verifications sought. Respondent did not comply with these requests.

61. On June 26, 2023, Disciplinary Counsel filed with the Board a Motion to Compel Respondent to respond to its written inquiries and subpoena, setting forth the facts provided above. Respondent did not oppose or otherwise respond to the Motion.

62. On July 14, 2023, the Board issued an Order granting Disciplinary Counsel's Motion and compelling Respondent to respond to the outstanding requests in ten (10) days.

63. On July 24, 2023, Respondent did not comply with the Order.

64. Instead, counsel for Respondent twice attempted to file motions with the Board for further enlargements of time, which the Board did not accept for filing.

65. As of the date this Specification of Charges was signed, Respondent has not produced the information the Board ordered him to provide. Nor has he provided the documents, information, or verifications requested.

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

A. Rule 8.1(b), in that he knowingly failed to respond to Disciplinary Counsel's lawful demand for information; and

B. Rule 8.4(d), in that seriously interfered with the administration of justice.

Respectfully submitted,

Julia L. Porter

Julia L. Porter
Deputy Disciplinary Counsel²

Jerri U. Dunston

Jerri Dunston
Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
515 5th Street, N.W.
Building A, Room 117
Washington, D.C. 20001
(202) 638-1501

VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that I verily believe the facts stated in the Specification of Charges to be true and correct.

Executed on this 8th day of September 2023.

Jerri U. Dunston

Jerri U. Dunston
Assistant Disciplinary counsel

² Disciplinary Counsel Hamilton P. Fox, III, is recused.

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



In the Matter of

THOMAS H. QUEEN, ESQUIRE,

Respondent,

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Disciplinary Docket No. 2020-D223

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.

(2) **Filing Answer** – Respondent must respond to the Specification 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) **Content of Answer** – 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.

(5) **Process** – Respondent is entitled to fifteen days’ notice of the 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, III

Hamilton P. Fox, III
Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
515 Fifth Street, N.W.
Building A, Room 117
Washington, D.C. 20001
Telephone: (202) 638-1501
Fax: (202) 638-0862