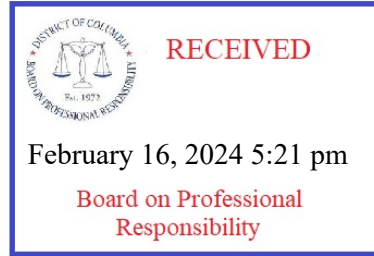


**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



In the Matter of :
:
:
THOMAS H. QUEEN, ESQUIRE, : Disciplinary Docket No. 2020-D223
:
Respondent :
:
:
A Member of the Bar of the District of :
Columbia Court of Appeals :
Bar Number: 146340 :
Date of Admission: 1/29/1968 :

RESPONSE TO SPECIFICATION OF CHARGES

First Defense

The Specification of Charges fails to state claims upon which discipline is warranted.

Second Defense

1. I was admitted to the Bar of the United States District Court for the District of Columbia on January 29, 1968.

COUNT I

2. Admitted.
3. I admit that Lesa Horton was the Personal Representative of the Estates of Maurice Toler and Vernice Steadman Toler. The remaining allegations of paragraph 3 are denied.

4. I admit that Barbara Mann filed new Petitions to Probate for the Estates of Maurice Toler and Vernice Steadman Toler. The remaining allegations of paragraph 4 are denied.

5. The allegations are denied.

6. The allegations of paragraph 6 are denied.

7. The allegations of paragraph 7 are denied.

8. I admit that Barbara Mann referred Tonja Bennett to me. The remaining allegations are denied.

9. The allegations of paragraph 9 are denied.

10. I admit to meeting with Tonja Bennett and her mother on or about September 21, 2017. I deny writing \$8,000 on a legal pad.

11. I deny stating or intimating that I would charge a flat fee of \$8,000.

12. I deny that there was any separate note written on a legal pad. I admit that the retainer letter included items “A” through “D”.

13. I admit that the retainer did not address how or whether Ms. Bennett would be sent invoices. I admit that the retainer agreement did not specifically authorize me to withhold any sums or payment of attorney’s fees. The applicable law authorized me to hold disputed funds in an escrow account, which I did by maintaining the funds in the office IOLTA. The “retainer” agreement specifies the

minimum attorney's fees and implicitly recognizes that there may be additional fees due to the attorney.

14. The allegations in paragraph 14 are denied.

15. The allegation in paragraph 15 is admitted.

16. On or about January 14, 2018, contacted Attorney Lyza DeLaCruz and asked her to prepare a Motion for Summary Judgment. We did not discuss her fee at that time. I assumed that it would be a reasonable fee. After she prepared the detailed Motion for Summary Judgment, she billed me \$1750 through inadvertence. I previously stated that the sum billed was \$2500. However, Ms. DeLaCruz had prepared a Motion for Summary Judgment in another case and had billed me \$2500. I did, at some point, during my representation of Ms. Bennett informed her of Ms. DeLaCruz's fee. I did not obtain Ms. Bennett's written consent to pay Ms. DeLaCruz. As a matter of fact, Ms. DeLaCruz has not been paid as of this date.

17. Admitted.

18. I provided Ms. Bennett a copy of the Confidential Settlement Statement and the Motion for Summary Judgment. She did not object to providing a copy of the Motion for Summary Judgment to the Mediator. As a reasonable person, I assumed she knew there would be a reasonable charge for the Motion. I did inform her of Ms. DeLaCruz's charge later.

19. The terms of the settlement are accurately set forth. I did not challenge Ms. Mann's attorney's fees because the other attorneys had done so and if I had challenged her attorney's fees it would have increased the attorney's fees to be charged to Ms. Bennett.

20. I admit that the last time that I saw Ms. Bennett was in the hallway after the April 30, 2018, meeting. I do not recall whether I spoke to her after the mediation. I did not tell her that I had spent over 40 hours working on her case and did not obtain her written consent to withhold any portion of her inheritance over the \$7,000 retainer. However, applicable law authorizes me to place in escrow any disputed fees, which I did, by maintaining all of the funds in the office IOLTA.

21. I admit that Ms. Bennett had several telephone conversations with my assistant, Patricia Chase, after Mediation and that she asked for the Mediator's contact information. Ms. Chase responded to her calls and her emails.

22. Denied.

23. I admit that Ms. Horton moved to resign as Personal Representative in September 2018 and that she wanted to purchase certain personal property from the estate, including the car and Ms. Mann agreed to a partial distribution of the estates.

24. Admitted.

25. Admitted.

26. I admit that on September 24, 2018, Ms. Mann wired \$128,665.84 to the office IOLTA at PNC Bank. I did not notify Ms. Bennett about the partial distribution or the total amount that was supposed to be distributed to her. At that time, the difference between \$133,334 and the available \$128,665.84 was reflected in the account that was provided to Ms. Bennett by Ms. Mann. The difference was for the moving expenses associated with the move of the furniture selected by Ms. Bennett to Atlanta, Georgia. The remaining allegations are denied.

27. I believe that the October 28 Petition filed by Vernice Steadman Toler challenging Ms. Mann's attorney's fees was provided to Ms. Bennett.

a. I believe that the Order of November 5, 2018, appointing Kimberly Edley as successor personal representative was provided to Ms. Bennett.

b. I believe that the 2019 objection to Ms. Mann's final invoice was for attorney's fees was provided to Ms. Bennett.

c. I attempted to obtain Ms. Bennett's written consent to sell the car and personal property in the estates to Ms. Horton, but she failed and refused to do so.

d. I believe that the sale of the Mr. Toler's home on July 25, 2019 was contained in the Account of Ms. Edley that she provided a copy to Ms. Bennett.

28. Admitted.

29. Admitted. Under the circumstances, I did not believe that Ms. Bennett wanted to incur the increased legal fees that would have resulted from my

joining in the challenge to Ms. Mann's attorney's fees inasmuch as the other attorneys had raised all of the pertinent objections regarding her fees.

30. I admit that I informed Ms. Bennett that I was holding \$128,311. This amount was a typographical error. The amount should have been \$128,664.84. The difference in the amount wired and the amount of the total disbursement was reflected in the Account provided by Ms. Mann to Ms. Bennett and the other heirs.

31. I admit that I agreed to provide Ms. Bennett \$100,000 of her inheritance if she signed an Indemnification Agreement. The Agreement was required by the stipulation that I was required to sign prior to the partial distribution. The stipulation had been previously submitted. The terms of the Indemnification Agreement are not fully set forth in Specification 31.

32. I admit that I informed Ms. Bennett that I would withhold the remaining \$28,311 to cover her expenses and that if the final fees amounted to less than \$28,311 then that amount would be refunded.

33. I admit that this was the first time that I had informed Ms. Bennett that I had generated more than \$7,000 in fees. I did ultimately provide her with a Statement of Services to support the fees in excess of \$7,000. Ms. Bennett never authorized me in writing to withhold fees from her inheritance in excess of \$7,000

retainer. However, applicable law allowed me to deposit the disputed fees in an escrow account, which I did by maintaining those fees in the office IOLTA.

34. The allegations are admitted, except that I do not recall that she offered to pay me \$5,000 for payment. However, applicable law authorized me to withhold the disputed funds in an escrow account, which I did, by maintaining the funds in the office IOLTA.

35. Patricia Chase, my legal assistant of twenty years responded to Ms. Bennett's calls to my office. As soon as I discovered that there had been a subsequent distribution to Ms. Bennett, I assumed, therefore, was no problem in releasing to her the undisputed portion of the \$128,000 plus that had been wired to my office. On the same day that I discovered that there had been a subsequent distribution to her, I mailed her a check in the amount of \$105,000. I subsequently mailed her a check for the remaining balance except for the sum of approximately \$20,000 which was the amount of my discounted bill.

36. I admit that Ms. Edley requested Ms. Bennett's written consent to the sale of the property, and I informed Ms. Edley that she should move forward without the written consent of Ms. Bennett and because I continued to represent Ms. Bennett. I did not consent to Ms. Edley contacting Ms. Bennett directly.

37. I deny that I did not tell Ms. Bennett about Ms. Edley's requests. My office had requested on several occasions that Ms. Bennett sign the consent form, which she never did.

38. I deny receiving an email on or about November 7, 2019, terminating my service. My first alert to the fact that she had terminated my services was after the disciplinary matter was instituted. Had I received the email at any time, I would have promptly filed a Motion to Withdraw my appearance.

39. I admitted that I was not aware that my services had been terminated.

40. Ms. Bennett never asked for her file. I did provide her with the undisputed portion of the \$128,665.84 promptly after I discovered that there had been a subsequent distribution to her which alerted me to the fact there was no longer a need to withhold the sum that had been wired to me. I provided her with a Statement of Services in support of the discounted fee charged. I did return to her the sum withheld per the arbitrator's award.

41. I admit to receiving an email from Ms. Edley. I was not aware that I had been discharged at any time prior to the conclusion of the administration of the estates.

42. Admitted.

43. Denied.

44. Denied.

45. Denied.

46. Admitted. The undisputed portion of the initial distribution was made to Ms. Bennett promptly upon my finding out there had been a subsequent distribution to her. The remaining allegations are denied.

47. I admit receiving the email of August 14, 2020. On the same date when I was made aware that there had been a subsequent distribution to Ms. Bennett, I promptly forwarded to her a check in the amount \$103,000 and subsequently sent her a check in the amount of the undisputed fee. I retained in the office IOLTA approximately \$20,000 of my discounted fees subject to a final Order of the Court or as it turns out the arbitrator's award.

48. Admitted.

49. The explanation was set forth in the Statement of Account. A copy of which was provided directly to Ms. Bennett by Ms. Mann. The difference between the \$133,334 that I stipulated to receive on behalf of Ms. Bennett and the \$128,665.84 that I actually received

50. Admitted. The funds were maintained in the office IOLTA.

51. The Statement of Services actually reflected time expended in the amount of 67.8 hours times \$350 which equals \$23,730. These fees included:

A. Minimal fees for work performed before Ms. Bennett signed the retainer agreement of September 21, 2017. Prior to her signing the retainer

agreement of September 21, 2017, I informed her that all of my time expended prior to being formally retained would be billed to her at the conclusion of the administration of the estate.

B.I was never aware Ms. Bennett fired me.

C.The fees were in no way inflated and represented actual time expended in representing Ms. Bennett.

52. The Statement of Services included a charge for \$2500 for Ms. DeLaCruz to prepare a Motion for Summary Judgment. The Motion was finalized and provided to the Mediator and I strongly believe that the Motion contributed to the settlement of the case. The charge by Ms. DeLaCruz was \$1750. Through inadvertence, I indicated that the amount was \$2500. However, Ms. DeLaCruz had charged \$2500 for preparation of a Motion for Summary Judgment in another matter and the actual charge she billed me for was \$1750. I deny that I did not tell Ms. Bennett about Ms. DeLaCruz drafting the Motion. The Motion was intended to be filed with the Court and was provided to the Mediator. If it had not been a settlement then I intended to file the Motion for Summary Judgment with the Court. The total sum billed was \$26,230. However, the final billing was \$20,000 approximately.

53. Denied.

COUNT II

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. I agree that my counsel produced financial records relating to the firm's IOLTA.

59. Denied.

60. Denied.

61. Respondent's counsel did not oppose the Motion to Compel, but had long complied with the request with the earlier second submission of documents.

62. Admitted.

63. Denied

64. Admitted in part.

65. Denied.

66. Denied.

Further responding to the Specification of Charges, Respondent denies any and all charges not specifically admitted or otherwise answered.

Respectfully submitted,
HOUSTON & HOWARD

By: Johnny M. Howard

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Attorney for Thomas H. Queen, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response the Specification of Charges was served by electronic mail on Assistant Disciplinary Counsel Jerri Dunston, 515 - 5th Street, NW, Building A, Room 117, Washington, DC 20001 and James T. Phalen, Esquire, Executive Attorney, Board on Professional Responsibility, 430 E Street, NW, Suite 138 Washington, DC 20001, this 16th day of February 2024.

/s/ Johnny M. Howard
Johnny M. Howard