



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

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**In the Matter of** :  
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 : **Disciplinary Docket No. 2023-D069**  
**BRIAN V. LEE, ESQUIRE** :  
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 :  
 : **Respondent,** :  
 :  
 :  
 : **Member of the Bar of** :  
 : **the District of Columbia Court of** :  
 : **Appeals** :  
 : **Bar Number 978834** :  
 : **Date of Admission: January 11, 2008** :

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**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 Brian V. Lee 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 MATTER  
BROUGHT TO DISCIPLINARY COUNSEL’S ATTENTION**

Disciplinary Counsel received a disciplinary complaint from Kevin L.

Whited, alleging that Respondent Brian V. Lee had failed to represent his interests sufficiently in defending against foreclosure of his house, both in D.C. Superior Court and in federal bankruptcy court.

## **II. STIPULATION OF FACTS AND RULE VIOLATIONS**

Disciplinary Counsel and Respondent stipulate to the following:

### **The Facts**

1. In May 2017, Respondent agreed to defend Kevin L. Whited in an action seeking to foreclose on his house. When Mr. Whited signed Respondent's retainer agreement, a motion for default had been pending against him for more than two months.

2. Two days after Mr. Whited signed the engagement letter, the plaintiff bank withdrew the default motion at a scheduling conference where Respondent appeared on Mr. Whited's behalf.

3. In the ensuing six months, Respondent missed six of at least 14 scheduled appearances in D.C. Superior Court in Mr. Whited's matter. Mr. Whited states that he was not aware of the Superior Court status hearings, that Respondent did not tell Mr. Whited about them, that he did not consult with Mr. Whited about his decision not to appear, and that he did not direct his client to appear on his own behalf. Mr. Whited did not attend the scheduled court dates either.

4. In January 2018, after Respondent failed to appear for yet another status hearing, the Superior Court entered a default in open court. Mr. Whited lost legal possession of his house. The Superior Court held another status hearing in May 2018, at which neither Respondent nor his client appeared.

5. Respondent chose not to appear at the hearings because he did not believe Mr. Whited had any path forward to retain his house and believed that he was only “buying time” for Mr. Whited to remain as long as possible. Mr. Whited did not understand that Respondent believed there was no way to prevail.

6. After mutual dissatisfaction regarding how the professional relationship had been conducted, Mr. Whited discharged Respondent in November 2022.

7. Respondent moved to withdraw from the foreclosure case in Superior Court in December 2022 in advance of the scheduled status hearing.

8. The presiding judge granted Respondent’s motion in open court during a hearing five weeks later, in January 2023. Both Respondent and Mr. Whited were present.

9. Respondent had not explained to Mr. Whited when he was discharged that Respondent was required to file a motion to be released from the case, and that the discharge would not be effective until the presiding judge granted his motion. Respondent also did not explain why he took more than a month to file the motion.

10. Because Respondent had not explained the withdrawal process to his client, Mr. Whited was surprised that Respondent was present at a hearing in January 2023, two months after he believed Respondent had been discharged. He did not understand Respondent's role at the hearing.

11. Mr. Whited thereafter filed a disciplinary complaint.

12. During Disciplinary Counsel's investigation, the office asked Respondent to explain his failures to appear in Superior Court on Mr. Whited's behalf.

13. Respondent initially claimed that he had not received notice of the Superior Court appearances he missed, with the exception of one, in which he conceded his choice was deliberate. Respondent relied on docket entries indicating that notices of the hearings were returned as undeliverable, without reviewing the client file or his law firm's calendar.

14. However, Respondent's own client file and the hearing transcripts showed that he had received actual notice of every court appearance.

15. When called upon to explain the discrepancy between his initial response to Disciplinary Counsel and the documentary record, Respondent then conceded that he had always intended not to appear for the hearings he missed.

16. Respondent acknowledges that his strategy to represent Mr. Whited's interests in regaining possession of his home was highly inappropriate.

## **The Rule Violations**

17. Respondent agrees that he violated the following District of Columbia Rules of Professional Conduct:

A. Rule 1.1(b), because Respondent failed to serve his client with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters;

B. Rule 1.4(a), because Respondent failed to keep his client reasonably informed about the status of the matter;

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

D. Rule 8.1(a), because in connection with a disciplinary matter, Respondent knowingly made a false statement of fact; and,

E. Rule 8.4(d), because Respondent seriously interfered with the administration of justice.

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

##### **A. Agreed-Upon Sanction**

Disciplinary Counsel and Respondent agree that: (a) beginning 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, 60 days stayed in favor of probation, *i.e.*, 30 days served;
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 all clients of his suspension and provide written proof to Disciplinary Counsel within 30 days of the Court's order, unless the Court provides otherwise;

4. that, after he resumes the practice of law, Respondent notify all clients that he is on probation and provide written proof to Disciplinary Counsel within 30 days of the Court's order, unless the Court provides otherwise;

5. that Respondent will take two continuing legal education courses approved by Disciplinary Counsel: *Ethics and Lawyer Trust Accounts* and *Mandatory Course on the D.C. Rules of Professional Conduct and D.C. Practice*;

6. that Respondent will provide proof of attendance at each CLE within 10 days of completion, waiving confidentiality regarding any consultations associated with training advice and materials, including the materials themselves;

7. that Respondent will notify Disciplinary Counsel promptly of any disciplinary matters against him and their dispositions;

8. that within 30 days of the Court's order suspending Respondent, he will notify Disciplinary Counsel in writing of all jurisdictions in which he has been

licensed to practice, and all tribunals before which he has appeared as legal counsel;  
and,

9. that Respondent need not show fitness, provided that he successfully completes probation and the other conditions set forth in this Petition.

If Respondent fails to meet any of the conditions set forth above, he agrees that the Court should suspend him for that number of days that were to be stayed – 60 days – and require that he demonstrate his fitness to practice law before he can be reinstated.

Disciplinary Counsel and Respondent agree that the foregoing sanction is justified under our jurisprudence for his false statements to Disciplinary Counsel, and incompetence and failures to communicate with Mr. Whited.

## **B. Relevant Precedent**

A 90-day suspension, with 30 days served, falls within the broad range of sanctions for misconduct seriously interfering with the administration of justice, including false statements to a tribunal. In a number of cases, the Court has suspended an attorney for 90 days for false statements involving false documents or evidence; for misrepresentations to clients, other parties, and tribunals; for making false statements to cover up prior misconduct; and for failing to appear in court on



clients' behalf. For example, in *In re Owens*, 806 A.2d 1230 (D.C. 2002), the attorney made false statements to an administrative law judge, one under oath, pertaining to her attempts to eavesdrop on testimony in violation of the judge's sequestration order. The Court suspended her for 30 days based on her violation of Rules 3.3(a)(1), 8.4(c), and 8.4(d). *Id.* at 1231.

In *In re Alexander*, 466 A.2d 447, 449 (D.C. 1983), the attorney failed to appear in court on multiple occasions in connection with two unrelated clients. The Court suspended him for 90 days based on his neglect of a legal matter and conduct prejudicial to the administration of justice (under Disciplinary Rules 6-101(A)(3) and 1-102(A)(5), respectively – predecessors to the current Rules). Alexander's failure to appear in court on his clients' behalf "evidenced not only gross neglect but also an unenviable lack of appreciation of, and respect for, the judicial process and the Court itself." *Alexander*, 466 A.2d at 450 (internal punctuation and footnote omitted). *See also In re Askew*, 96 A.3d 52 (D.C. 2014) (60-day served suspension, four months stayed, for incompetently and negligently representing incarcerated indigent client in appeal of denial of post-conviction motion, and failing to communicate sufficiently with client and protect his interests on termination, knowingly disobeying tribunal's rules, and conduct seriously interfering with the administration of justice); *In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002) (30-day suspension for improperly signing and notarizing documents that were substantively

accurate and benefitted clients); *In re Phillips*, 705 A.2d 690, 691 (D.C. 1998) (60-day suspension for filing false petition in court); *In re Waller*, 573 A.2d 780, 782-83 (D.C. 1990) (60-day suspension for multiple misrepresentations to court and uncharged misconduct).

**C. The Sanction is Justified Considering Relevant Precedent and the Record as a Whole**

Because a 30-day served suspension, staying 60 days, falls within the range of sanctions for conduct violating Rules addressing conduct similar to that found here, the sanction is not unduly lenient. As such, it is justified.

Further, Respondent agrees to serve the full suspension and demonstrate fitness to resume the practice of law if he fails to comply with his probation.

Additional factors to be considered are set forth immediately below.

1. Evidence in Aggravation to Be Considered

An aggravating factor is that Respondent's misconduct includes false statements to Disciplinary Counsel.

2. Evidence in Mitigation to Be Considered

In mitigation, Respondent: (a) has taken responsibility for his misconduct in that he acknowledges that he violated the Rules as set forth above, (b) has corrected false statements made during Disciplinary Counsel’s investigation, (c) was experiencing emotional problems while making health care decisions for his husband on his deathbed while responding to Disciplinary Counsel’s investigation of this matter, and (d) has not been the subject of other discipline, here or elsewhere.

**V. RESPONDENT’S DECLARATION<sup>1</sup>**



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



Brian V. Lee, Esquire  
Respondent



Julia L. Porter  
Deputy Disciplinary Counsel

  
Justin Flint, Esquire  
Respondent’s Counsel  
Traci M. Tait  
Assistant Disciplinary Counsel

<sup>1</sup> Although Rule XI, § 12.1(b)(2) uses the term “affidavit,” under D.C. Superior Court Rule of Civil Procedure 9-I(e), a signed and dated declaration under penalty of perjury applies with the “same force and effect” as an affidavit.