DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	**Disciplinary Docket Nos.**
Michael D.J. Eisenberg, Esquire,	:	**2014-D318 (Glaab)** **2019-D058 (Swain)** **2019-D123 (Mitchell)**
Respondent	:	
A Member of the Bar of the District of Columbia Court of Appeals **Bar Number: 486251** **Date of Admission: May 10, 2004**	:	

PETITION FOR NEGOTIATED DISPOSITION

Under 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 Michael D.J. Eisenberg 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

This Petition reflects negotiations between the parties on multiple grievances

and/or inquiries opened by ODC between 2014 and 2021, culminating in formal charges (six Counts) initially served upon Respondent on or about April 9, 2024. The parties, by way of this negotiated compromise, seek approval of the stipulated facts and violations and agreed upon sanctions as further discussed and/or summarized below. The proposal is deemed to be in the mutual interests of the parties and fulfills the aspirational goals of these disciplinary proceedings, including the overriding mission of protection of the public, the courts and the legal profession.

II. STIPULATION OF FACTS AND RULE VIOLATIONS

Disciplinary Counsel and Respondent stipulate to the following:

COUNT 1: G. Faye Glaab
DDN 2014-D318

1. In 2011, G. Faye Glaab, was then a statistical clerk employed by the U.S. Census Bureau in Jeffersonville, Indiana. The Census Bureau is an agency of the U.S. Department of Commerce. Ms. Glaab alleged that her employer had impermissibly discriminated against her based upon age and sex, and then retaliated against her for engaging in EEOC-protected activities. Respondent initially agreed to represent her for two EEO claims that she had already initiated. The fee agreement was executed on or about July 16, 2012. The representation was expanded subsequently to include related claims that arose later. Respondent first appeared as her counsel of record on or about August 22, 2012.

2. During the EEO litigation, on September 10, 2012, the administrative judge (AJ) issued an order scheduling a settlement/status teleconference two months hence, for November 9, 2012, at 1 p.m. in the case (–0265).

3. Respondent did not receive a reply to a subsequent voicemail to the AJ. Respondent at 11:35 a.m. on the day of the teleconference sent the AJ a facsimile reminding him of Respondent's vacation, seeking a week's continuance, and advising that Respondent was personally unavailable that day. The AJ provided no response to this fax in advance of the scheduled 1 p.m. teleconference.

4. On November 9, 2012, the administrative judge, opposing counsel, and the employer were present for the 1 p.m. teleconference, as it had not been formally postponed by the AJ by notice and/or order.

5. Respondent was not present for the settlement teleconference.

6. The AJ called Ms. Glaab at work on November 9 when the Respondent did not appear for the settlement teleconference. Based on a conversation with Respondent days earlier, she believed he had spoken with the AJ and obtained a continuance.

7. Respondent sent the AJ a fax the same day of the missed teleconference apologizing to the AJ for Respondent's misunderstanding regarding whether a postponement was granted.

8. Respondent failed to timely submit Ms. Glaab's witness list for the

EEOC administrative hearing of her –0265 case. The due date for the witness list was tied to the settlement teleconference date of November 9.

9. As a result of missing that deadline, the AJ, on January 8, 2013, entered a witness limiting sanction that permitted only Ms. Glaab herself to testify at the hearing as well and those witnesses on the employer's witness list.

10. On May 2, 2013, Ms. Glaab's merits hearing in her –0265 case was held. Ms. Glaab was the only witness that testified at the hearing. The AJ personally examined Ms. Glaab while she was testifying. The AJ did not regard her to be a credible witness.

11. The AJ ruled against Ms. Glaab before Respondent was able to continue his direct examination, granting the employer's oral motion for a directed verdict without hearing the employer's cross of Ms. Glaab or permitting additional witnesses or evidence.

12. Respondent subsequently filed an appeal Respondent in Ms. Glaab's –0265 case that was unsuccessful.

13. Respondent violated the following D.C. Rules of Professional Conduct:

A. Rule 1.1(a), because Respondent failed to provide competent representation to Ms. Glaab; and,

B. Rule 1.3(c), because Respondent failed to act promptly.

COUNT 2: Shirley Swain
2019-D058

14. On April 5, 2011, Respondent agreed to represent Shirley Swain in an employment discrimination matter against the Veteran's Administration Medical Center in Salem, Virginia. Ms. Swain, a laundry machine operator living in Roanoke, Virginia, alleged her employer allowed her to be sexually harassed and retaliated against when she complained. Before Respondent represented her, Ms. Swain had help from a non-lawyer union representative to pursue the sexual harassment claim before the Equal Employment Opportunity Commission.

15. Respondent provided Ms. Swain a retainer agreement charging a $3000 "non-refundable 'true retainer.'" He also charged Ms. Swain a 20% contingency fee, in addition to any fees he might attempt to recover from the employer directly under the Equal Access to Justice Act (EAJA) or other fee-shifting statutes, in the event Ms. Swain prevailed. The fee agreement provided that the client would not be personally liable for billable hours in the matter. Respondent's actual time was invoiced as support for fee reimbursement directly from the employer, not the client, should recovery of billable hours directly from the employer be possible later pursuant to the EAJA.

16. Under the agreement, Ms. Swain was responsible for out-of-pocket expenses, but she was not obligated to pay Respondent's attorney fees invoiced at

$305 an hour.

17. Ms. Swain signed Respondent's retainer agreement the day after he sent it, *i.e.,* on April 6, 2011. She paid Respondent $1500 in April 2011, $300 in January 2012, and another $400 by February 2012. Although this underpayment by $800 was a modification of the fee agreement, Respondent agreed to continue the representation under the presumption Ms. Swain would eventually pay the deficit amount.

18. On April 18, 2011, Respondent entered his appearance in Ms. Swain's EEO case.

19. Respondent pursued the claim, and took ten depositions, including of Ms. Swain. The depositions uncovered additional testimony supportive of Ms. Swain's claims. The employer conceded before the EEOC that a single occurrence of sexual harassment of Ms. Swain had occurred, but the depositions brought out testimony of other earlier offensive statements by the co-employee and retaliatory type behaviors by that co-employee toward Ms. Swain. The employer consistently defended the claim. There was a contested hearing on February 13-14, 2012, and after the hearing, the AJ indicated to the employer that she was inclined to rule in favor of Ms. Swain.

20. The parties settled on April 9, 2012, with the following key provisions:

A. $35,000 by check would be sent to Ms. Swain within 45

days for her damages, plus a grant of 64 hours of sick leave benefits plus invocation of new mandatory institutional educational measures to ensure more effective handling of future harassment complaints at the Salem VA Medical Center.

B. $48,500 by check sent to Respondent within 45 days: $45,000 as attorney's fees and $3500 for costs previously unpaid by Ms. Swain.

21. After the settlement, by letter dated May 8, 2012, Respondent wrote that he was returning "original documentation that [Ms. Swain] had provided" him. The letter further stated:

> Also, let this serve as your final bill for services. Pursuant to our agreement your outstanding bill for $800 regarding your true retainer (i.e. $3000 - $1500 - $300 - $400 = $800) and $7000 (i.e., 20% of your settlement [$35,000.00] is still due my office. The total is $7,800.

22. Ms. Swain did not pay the 20% contingency fee nor the outstanding $800 that remained from the original retainer because she asserts she did not understand why Respondent had received more in settlement than she had.

23. In August of 2012, Respondent filed a breach of contract action in D.C. Superior Court. Judge Herbert J. Dixon eventually entered a default judgment.

Ms. Swain later corresponded with the court challenging the default judgment. The earlier default entry was lifted, and the case continued on the merits.

24. Before the court entered a judgment, Ms. Swain filed for Chapter 13 bankruptcy in the Western District of Virginia on August 5, 2013. Once Ms. Swain's first bankruptcy attorney informed Respondent of the filing, Respondent filed a motion on August 15, 2013, to stay his breach of contract action due to the pending bankruptcy. The action was officially stayed by order on September 6, 2013.

25. On April 20, 2015, the Chapter 13 bankruptcy action was involuntarily dismissed. Subsequently, Judge Dixon lifted the bankruptcy stay.

26. On September 22, 2015, Judge Dixon granted summary judgment and ordered Ms. Swain to pay Respondent the $7800 in fees he ruled she still owed. Judge Dixon commented in the order that:

> [T]he defendant [Ms. Swain] has neither provided additional facts regarding when and how the plaintiff [Respondent] was paid $50,000 for his services nor presented the court with any evidence supporting her claim.

27. Ms. Swain did not pay any additional attorney fees because she did not have the funds to do so, and because she did not understand why they were owed.

28. In April 2016, Respondent filed for, and the D.C. Superior Court issued, a writ of attachment permitting Respondent to attach Ms. Swain’s paycheck. Funds began to be deducted from her paycheck.

29. In July of 2016, Ms. Swain filed for bankruptcy again, this time under Chapter 7.

30. On October 6, 2016, Ms. Swain's debts were discharged. Respondent was not listed as a creditor, as Ms. Swain's counsel listed Respondent's former collection agency as his agent. Ms. Swain's counsel reported the action to Respondent after the bankruptcy order was issued discharging her debts. Respondent filed a motion to terminate garnishment in Superior Court upon learning of the discharge.

31. On November 10, 2016, the Superior Court terminated garnishment. Respondent had received a total of $1499 in Ms. Swain's garnished wages. Respondent deposited the garnished funds in his trust account.

32. On January 27, 2017, Respondent filed a motion to stay the court's order, believing the termination of the garnishment order specifically directed him to refund Ms. Swain's prior garnished wages. The D.C. Superior Court denied the motion on February 23, 2017, stating:

> Plaintiff [Respondent] asserts that he should be permitted to hold in his trust account the money that the Court had ordered to be returned to defendant [Ms. Swain] because [Respondent] believes that he might prevail on a motion to dismiss defendant's bankruptcy. . . . Plaintiff is not entitled to garnishment at this time, and it would be unjust to allow plaintiff to retain defendant's money pending the outcome of defendant's bankruptcy matter. The Court is not in a position to evaluate the merits of plaintiff's motion to dismiss defendant's bankruptcy, and is not inclined to stay the Court's order

> for the purposes of awaiting resolution of that motion. The Court, therefore, denies plaintiff's motion to stay the order releasing garnishment.

33. Following the Superior Court's order, Respondent challenged the underlying bankruptcy finding discharging his creditor claim, but did not pay Ms. Swain the past garnished funds at that time.

34. On September 28, 2017, Respondent filed in bankruptcy court a "Motion to Dismiss Defendant's Fraudulent Bankruptcy Claim." On October 30, 2017, the bankruptcy court denied Respondent's motion to dismiss, stating that it "was not the Court's duty to attempt a guess as to what the movant is trying to accomplish. The Court cannot dismiss a case that is already dismissed . . . ."

35. The bankruptcy judge subsequently permitted refiling of the motion as a motion to reopen the bankruptcy action. Respondent was later directed, after filing a motion to reopen, to submit a brief in support of his position by May 21, 2018. Respondent sought and received multiple extensions before filing his brief.

36. In a July 5, 2018 opinion, the bankruptcy judge concluded the D.C. Superior Court had concurrent jurisdiction to determine if the Chapter 7 bankruptcy was valid as to Ms. Swain's debt to Respondent and the bankruptcy case remained closed.

37. On October 14, 2018, Respondent filed in D.C. Superior Court a

"Motion to Reopen." At a December 3, 2018 hearing on the motion, Judge Florence Pan, then of the Superior Court directed Respondent to show cause why he should not be held in contempt of court for failing to honor its order from February 23, 2017, to disgorge Ms. Swain's garnished funds. The judge directed the parties to submit briefs addressing whether the debt may not have been discharged in the bankruptcy matter because Respondent had not been listed as a creditor in those proceedings, only the prior collection agency he had retained to collect from Ms. Swain. Judge Pan invited Ms. Swain to submit any additional matters she regarded as relevant to whether she had a legal obligation to pay the debt. Both briefs were due by December 24, 2018.

38. By order dated March 1, 2019, the Superior Court held Respondent in contempt, vacated the Superior Court's September 2015 judgment, discharged Ms. Swain's $7800 debt to Respondent, directed Respondent to refund Ms. Swain's garnished wages of $1499, and ordered Respondent to pay Ms. Swain $978.22 in damages caused by Respondent's failure to return her wages sooner.

39. On March 6, 2019, Respondent filed a motion to stay the Superior Court's order. The judge denied the motion to stay on March 11.

40. Pursuant to the Superior Court's March 11 order, Respondent owed Ms. Swain $2,477.22.

41. In April 2019, Respondent paid Ms. Swain $1499 in past garnished

funds but retained the $978.22. Respondent then appealed the D.C. Superior Court decision, which the D.C Court of Appeals denied on July 30, 2020. Respondent's *writ of certiorari* to the U. S. Supreme Court was denied on May 31, 2021.

42. In March 2022, Respondent paid Ms. Swain the $978.22 in damages.

43. Respondent violated Rule 8.4(d), because he seriously interfered with the administration of justice by failing to comply with the February 23, 2017 order, resulting in the subsequent finding of contempt by Judge Pan.

COUNT 4: Tammy Mitchell
2019-D123

44. In September 2013, Respondent agreed to represent Tammy Mitchell regarding already pending EEO related claims. Mrs. Mitchell alleged that her employer, the VA Medical Center in Beckley, West Virginia, had impermissibly discriminated against her, then retaliated against her for engaging in activities protected under anti-discrimination and whistleblower statutes. Mrs. Mitchell was a registered nurse with the Home-Based Primary Care program of the VA.

45. Mrs. Mitchell's claims potentially involved multiple agencies, including the Office of Workers' Compensation Programs. She had been on medical leave when her employer eventually terminated her, effective November 2, 2015. Mrs. Mitchell disputed her employer's grounds for termination. She asserted a whistleblower claim in which Respondent also agreed to represent her.

46. On October 1, 2013, Mrs. Mitchell had signed the first retainer agreement with Respondent (for her EEOC-related claims). Mrs. Mitchell would later sign two additional fee agreements, one in October 2014 related to her federal worker's compensation claim (OWCP) and another in November 2014.

47. Mrs. Mitchell had multiple federal claims pending during the representation.

48. When she hired Respondent in the OWCP matter on October 10, 2014, Mrs. Mitchell had already lost her *pro se* claim. In March 2014, Mrs. Mitchell filed a *pro se* request for reconsideration. On June 27, 2014, the OWCP denied Mrs. Mitchell's request in OWCP matter –4212. Mrs. Mitchell subsequently sought to have Respondent represent her in pursuing relief to which she may be entitled to related to OWCP claims. On September 26, 2014, Respondent presented Mrs. Mitchell with the second fee agreement to represent her in the OWCP matters.

49. Respondent's second fee agreement – relating to Mrs. Mitchell's OWCP claims – was signed by the client on October 10, 2014, and charged Mrs. Mitchell a $4000 "advance fee." Pursuant to the agreement, no additional attorney's fees beyond the $4000 would be charged as billable time. The fee agreement included a 15% contingency fee upon success of her OWCP claims (the matter was not successful so no contingency fee was paid). It also referenced attorney fee recovery under federal fee-shifting statutes. Mrs. Mitchell remained

responsible for out-of-pocket costs and expenses necessary to prosecute the relevant claims. Contingency fees are not permitted in OWCP cases.

50. Mrs. Mitchell had agreed under the October 10, 2014 contract to send Respondent a check for $4000. Respondent told Mrs. Mitchell that he had not received it and asked her to send a replacement check. Mrs. Mitchell placed a stop payment on the first check. Respondent received Mrs. Mitchell's second $4000 check, and it was deposited on November 15, 2014.

51. Approximately three and a half years later, in late February 2018, Respondent deposited Mrs. Mitchell's original $4000 check in his trust account. Respondent then issued an invoice dated March 6, 2018, to Mrs. Mitchell that acknowledged receipt of the $4000 check.

52. Mrs. Mitchell's bank honored the first $4000 check, causing an overdraft on her account.

53. Respondent later refunded Mrs. Mitchell the $4000.

54. Respondent violated the following Rules in Mrs. Mitchell's case:

A. Rule 1.5(a), because the inclusion of the 15% contingency fee provision in the representation agreement dated October 10, 2014, was a violation of OWCP fee prohibitions, as contingency fees per CFR are not permitted; and,

B. Rule 1.15(a), because Respondent negligently misappropriated

$4000 by depositing the original canceled check three and a half years later.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

Disciplinary Counsel agrees not to pursue any charges other than those set forth in Section II above, or any sanction other than that set forth below – contingent on the District of Columbia Court of Appeals' approval of this Petition.

Upon the Court of Appeal's approval, Respondent has agreed to make remunerations or refunds to these former clients, as well as others whose matters were part of the Specification of Charges but are not included in the Petition for Negotiated Disposition.

The parties agree that if this Petition is unsuccessful and they cannot agree on a subsequent Petition, Disciplinary Counsel will bring charges as originally drafted and approved, which comprise a total of six counts.

The parties further agree that if Respondent does not successfully complete the Petition's terms and conditions after approval by the Court of Appeals and is found by a hearing committee to have breached or violated the agreed upon sanctions at a contested fitness hearing, Disciplinary Counsel would seek to require Respondent to demonstrate his fitness to resume practice.

Disciplinary Counsel would be able to present evidence of non-adjudicated matters that were dismissed or not admitted to as part of the negotiated compromise

to challenge any petition for reinstatement Respondent may file, should these circumstances arise subsequently following execution and final approval of this compromise agreement.

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, relevant precedent, and any circumstances in aggravation and mitigation (including Respondent's cooperation, and the length of time Disciplinary Counsel took to file the charges). 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 the sanction to be imposed is:

1. Respondent will serve a nine-month active suspension.

2. Following his suspension, Respondent will be placed on unsupervised probation lasting for two years and three months and the D.C. Bar's Practice Management Advisory Service will conduct a full audit of Respondent's practice.

3. Respondent will follow PMAS directives and PMAS will provide quarterly reports to Disciplinary Counsel until Respondent has completed PMAS's corrective plan.

4. Respondent will take continuing legal education course(s) on trust account management as directed by PMAS in connection with a corrective plan.

5. Respondent will provide proof of completion of each probation condition within 30 days of completion.

6. Respondent waives confidentiality as to the Bar regarding his practice's review, audit, CLE attendance, and all corrective measures, including all reports prepared, and materials and resources (such as videos, pamphlets, textbooks, course materials, website links, etc.) that PMAS and/or Respondent relied upon to address practice management issues identified in a corrective plan.

7. Respondent will notify Disciplinary Counsel promptly of any new disciplinary complaint(s) filed against him and the disposition(s).

8. During his probation, Respondent will not be the subject of any new disciplinary complaint that results in a finding that he violated the disciplinary rules of any jurisdiction for acts and/or omissions that occur after imposition of these

compromise sanctions. Also, no conduct or occurrences formally charged and addressed in this Petition will be asserted as a basis to find a subsequent violation of probation terms against Respondent. However, those violations and sanctions approved by the Court of Appeals pursuant to this Petition may be taken into account as prior discipline to determine sanction in any subsequent D.C. disciplinary action unrelated to the matters disposed of in connection with this Petition for Negotiated Disposition.

9. 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 where Respondent is counsel of record.

10. Respondent need not show fitness, provided that he successfully completes probation.

11. Respondent's suspension goes into effect 30 days from the date of the Court's order, unless the Court specifies another date.

12. Respondent will comply with the requirements of D.C. Bar R. XI, § 14, including the client notice requirements.

V. RELEVANT PRECEDENT

Disciplinary Counsel and Respondent agree that the foregoing sanction is justified and not unduly lenient under our jurisprudence for his violation of

Rules 1.1(a) (competence), 1.3(c) (failing to act promptly), 1.5(a) (improper fee), 1.15(a) (negligent misappropriation), and 8.4(d) (conduct seriously interfering with the administration of justice). "No two cases are alike," *In re Lopes*, 770 A.2d 561 (D.C. 2001), and the parties discovered no cases involving this precise combination of violations. However, a nine-month suspension with a lengthy probation period is consistent with the Court's jurisprudence. The agreed upon sanction includes cumulative sanctions lasting three years. We set forth several relevant cases below.

In *In re Travers,* 764 A.2d 242 (D.C. 2000), the attorney assisted the personal representative with executing real estate transactions essential for probating an intestate estate and was found at a contested committee hearing to have violated Disciplinary Rule 2-106(A) (illegal fee, the predecessor to current Rule 1.5(a)), Rule 1.15(a) and 8.4(d) for taking a fee that had not been approved by the probate court as required, for not paying the funds back despite repeated demands and later not honoring a judgment against him for the illegal fees. Travers was suspended for 90 days conditioned upon payment of the judgment, which had never been paid either before or during earlier disciplinary processes. The Court of Appeals had been involved in the matter previously when it denied Travers's appeal of the judgment requiring that he refund the fees. Travers had a prior disciplinary history.

In *In re Evans,* 187 A.3d 554 (D.C. 2018), the Court of Appeals agreed with the Board on Professional Responsibility that the attorney violated Rules 1.1 (a) and

(b), 1.3(a) and (c), 1.4(a) and (b), 1.16(d), and 8.4(d) when he accepted a flat fee to represent a client in a criminal matter, failed to do the work and mishandled the matter such that his client's appeal was dismissed, and then failed to immediately pay the money back. The Court of Appeals adopted the Board's recommendation for a 30-day suspension, which was stayed with a one-year probation period.

In *In re Zamora,* 310 A.3d 1074, 1082 (D.C. 2024), the Court of Appeals, accepted the hearing committee's "careful analysis," imposed a six-month suspension for negligent misappropriation of unearned flat fees, plus an additional one-month suspension each for additional violations of Rule 1.3 (a) (lack of diligence) and 1.16(d) (terminating representation), for a total suspension of eight months. It did not require a showing of fitness but imposed restitution and mandatory CLE on flat fee billing practices. A significant mitigating factor was recognition of difficulties confronting solo attorneys with very busy practices focused on assisting clients typically underserved in the legal community.

In *In re Robinson*, 635 A. 2d 352 (D.C. 1993), the Court imposed a stayed 30-day suspension and one year's unsupervised probation with conditions for a solo practitioner working out of her residence who was found to have committed two separate violations of 8.4(d) by seriously interfering with the administration of justice with an additional violation for refusing to comply with an order of the Board on Professional Responsibility. Robinson missed or was late for court commitments,

was subsequently held in contempt and fined, then failed to pay the contempt fine in a timely matter. She compounded the situation by not fully cooperating with the disciplinary process. Robinson had prior discipline comprising two informal admonitions for similar misconduct.

In *In re Bailey*, 283 A.3d 1199 (D.C. 2022), the Court imposed a one-year suspension with reinstatement conditioned on proof of fitness where the attorney charged an unreasonable fee supported by false invoices in a matter in which he served as local counsel, failed to communicate with his client, and failed to respond to Disciplinary Counsel's requests for information, in violation of Rules 1.4(a) and (b) (failure to communicate), 1.5(a)(unreasonable fee) and (e) (improper division of fees between lawyers), 8.4(c) (dishonesty), and (d)). Bailey had serious prior discipline comprising a nine-month suspension for negligent misappropriation, among other violations, and two informal admonitions.

In *In re Marks*, 252 A.3d 887 (D.C. 2021), the Court imposed a one-year suspension requiring CLE after the attorney negligently misappropriated entrusted funds while serving as trustee, failed to cooperate with the beneficiary's attorney and guardian, made false statements to a court, and failed to protect the beneficiary's interests, in violation of Rules 1.1(a), 1.3(a), 1.3(b)(1) (intentional failure to represent client properly), 1.3(c), 1.15(a) and (c) (failure to notify interested party of funds in trust), and 8.4(c) and (d)).

In *In re Bernstein*, 774 A.2d 309 (D.C. 2001), the Court imposed a nine-month suspension with restitution and CLE after, *inter alia*, he took a higher fee than the amount awarded by the government, failed to inform his client, commingled entrusted funds with non-entrusted funds, in violation of Rules 1.5(a), 1.15(a), 8.4(c), and 1.17(a) (sale of law practice). Bernstein's misconduct was aggravated by his prior discipline and lack of remorse.

In *In re Hargrove*, 155 A.3d 375 (D.C. 2017), the Court imposed a 60-day suspension with fitness after the attorney neglected and incompetently handled an estate as personal representative, refused to turn over the estate's file for more than a year after she was removed, and failed to pay the estate a judgment and award of attorney's fees, in violation of Rules 1.1(a) and (b), 1.3(c), 1.16(d) (failure to take prompt, practicable steps to protect client interests), and 8.4(d). Hargrove's misconduct was aggravated when she failed to meaningfully participate in the disciplinary proceedings, resulting in a default judgment.

Given the cases cited above, a nine-month suspension without a fitness requirement followed by two years and three months of probation falls within the range of sanctions for Respondent's misconduct in negligently misappropriating a client's funds (Rule 1.15(a)) and charging her an improper fee (Rule 1.5(a)) in **Mitchell**, neglecting (Rule 1.3(c)) and incompetently handling (Rule 1.1(a)) specific matters in **Glaab**, and seriously interfering with the administration of justice (Rule

8.4(d) in **Swain**. The sanction is justified considering the relevant precedent and the record as a whole. It is thus, not unduly lenient.

VI. OTHER CONSIDERATIONS

A. Evidence in Aggravation to Be Considered

An aggravating factor is that Respondent's misconduct involves several clients, which led to multiple complaints over a number of years, and the admitted misconduct includes negligent misappropriation of client funds.

B. Evidence in Mitigation to Be Considered

In mitigation: (1) Respondent has taken responsibility for the misconduct set forth above in that he acknowledges that he violated the Rules as set forth in this petition; (2) he has cooperated with Disciplinary Counsel's investigation; (3) he has offered remunerations to all the former clients who filed complaints, including those not being pursued in this Petition; (4) Respondent has produced numerous letters of support, including letters and e-mails from former clients (5) the substantial delay that exists prior to formal disposition of the charges by the Office of Disciplinary Counsel regarding certain Counts, and (6) all of Respondent's former clients but one (who is not currently responding to Disciplinary Counsel's correspondence and cannot be reached by telephone), agree that this negotiated disposition, should

Respondent comply with it, is an acceptable outcome to bring these open matters to a close.[1]

V. RESPONDENT'S DECLARATION[2]

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).

Michael D.J. Eisenberg, Esquire
Respondent

Hamilton P. Fox, III
Disciplinary Counsel

David W. Sumner
David W. Sumner (Oct 8, 2024 13:28 PDT)

David Sumner, Esquire
Respondent's Co-counsel

Traci M. Tait
Assistant Disciplinary Counsel

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1 Disciplinary Counsel has not heard from one of Respondent's former clients, Shirley Swain; she has stopped responding to our letters and her voice mailbox is full, so we have been unable to leave a message. Disciplinary Counsel has made Ms. Swain aware of the terms of the settlement and Respondent's proposed offer of partial restitution.

2 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.

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
Michael D.J. Eisenberg, Respondent,	:	**2014-D318 (Glaab)** **2019-D058 (Swain)** **2019-D123 (Mitchell)**
Member of the Bar of the District of Columbia Court of Appeals Bar Number: 486251 Date of Admission: May 10, 2004	:	

DECLARATION OF RESPONDENT MICHAEL D.J. EISENBERG

I, **Michael D.J. Eisenberg**, pursuant to D.C. Bar R. XI, §12.1(b)(2) and Board Rule 17.3(b), and in furtherance of my wish to enter into a negotiated disposition, declare as follows:

Respondent Has Reviewed the Petition for Negotiated Disposition

1. I have stipulated to the nature of the misconduct and violations of the Rules of Professional Conduct, all of which are set forth in the accompanying Petition for Negotiated Disposition.

2. I am aware of my right to confer with counsel and have in fact so conferred. I have carefully reviewed both the Petition for Negotiated Disposition and this Declaration.

Required Averments Under D.C. Bar R. XI, §12.1(b)(2)

3. I freely and voluntarily enter into this negotiated disposition, am not being subjected to coercion or duress, and am fully aware of the implications of the disposition, and Disciplinary Counsel has made no promises to me other than what is contained in the Petition for Negotiated Disposition.

4. I am aware that investigations into, or a proceeding involving allegations of misconduct are currently pending against me in the above-captioned matters.

5. The material facts upon which the misconduct in the above-captioned matter is predicated, as described in the accompanying Petition for Negotiated Disposition, are true.

6. I agree to the disposition because I believe that I could not successfully defend against all of the charges in these disciplinary proceedings based upon the misconduct I have admitted to in the accompanying Petition for Negotiated Discipline.

7. I understand that this Petition for Negotiated Disposition does not encompass or affect any future investigations in other matters except as provided in the Petition in Section IV, paragraph A8.

Additional Averments

8. I understand that (a) the Petition for Negotiated Disposition and (b) this Declaration will become public once they are filed with the Board on Professional Responsibility, that all proceedings before the assigned Hearing Committee will be open to the public, and any exhibits introduced into evidence, any pleadings filed by the parties, and any transcript of the proceeding will be available for public inspection.

9. I am fully aware of the implications of this negotiated disposition including, but not limited to, that by entering into this negotiated disposition I am giving up the following rights:

A. my right to a contested hearing before a Hearing Committee at which I could cross-examine adverse witnesses and compel witnesses to appear on my behalf;

B. my right to require that Disciplinary Counsel prove each and every charge by clear and convincing evidence at a contested hearing;

C. my right to seek review of an adverse determination by a Hearing Committee by filing exceptions to the Hearing Committee's report and recommendations with the Board after a contested hearing; and

D. my right to appeal to the District of Columbia Court of Appeals by filing exceptions to any report and recommendation filed by the Board after a contested hearing.

10. I understand that the negotiated disposition, if approved, may affect:

A. my present and future ability to practice law, and

B. my bar memberships in other jurisdictions, if any.

11. I understand that this negotiated disposition could be rejected by the Hearing Committee pursuant to D.C. Bar R. XI, §12.1(c) and Board Rule 17.7, or by the Court pursuant to D.C. Bar R. XI, §12.1(d).

12. I understand that any sworn statement made by me in the Petition for Negotiated Disposition, the accompanying Declaration, or the limited hearing may be used for purposes of impeachment at any subsequent hearing on the merits.

13. I understand that the negotiated disposition consists of the agreed-upon sanction set forth below:

A. A nine-month active suspension.

B. Following my suspension, I will be placed on unsupervised probation lasting for two years and three months and the D.C. Bar's Practice Management Advisory Service will conduct a full audit of my practice.

C. I will follow PMAS directives and PMAS will provide quarterly reports to Disciplinary Counsel until I have completed PMAS's corrective plan.

D. I will take continuing legal education course(s) on trust account management as directed by PMAS in connection with a corrective plan.

E. I will provide proof of completion of each probation condition within 30 days of completion.

F. I waive confidentiality as to the D.C. Bar regarding my practice's review, audit, CLE attendance, and all corrective measures, including all reports prepared and materials and resources (such as videos, pamphlets, textbooks, course materials, website links, etc.) that PMAS

and/or I relied upon to address practice management issues identified in a corrective plan.

G. I will notify Disciplinary Counsel promptly of any disciplinary complaint(s) filed against me and the disposition(s).

H. During my probation, I will not be the subject of any new disciplinary complaint that results in a finding that I violated the disciplinary rules of any jurisdiction for acts and/or omissions that occur after imposition of these compromise sanctions. Also, no conduct or occurrences formally charged and addressed in this Petition will be asserted as a basis to find a subsequent violation of probation terms against me. However, those violations and sanctions approved by the Court of Appeals pursuant to this Petition may be taken into account as prior discipline to determine sanction in any subsequent D.C. disciplinary action unrelated to the matters disposed of in connection with this Petition for Negotiated Disposition.

I. Within 30 days of the Court's order suspending me, I will notify Disciplinary Counsel in writing of all jurisdictions in which I am or have been licensed to practice, and all tribunals where I am counsel of record.

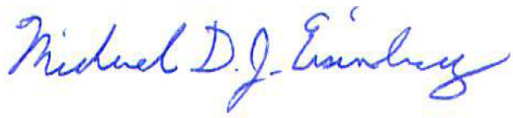
J. I need not show fitness, provided that I successfully complete probation.

K. My suspension goes into effect 30 days from the date of the Court's order, unless the Court specifies another date.

L. I will comply with the requirements of D.C. Bar R. XI, § 14, including the client notice requirements.

14. If I am subsequently adjudicated at a contested committee hearing to have violated any of the conditions set forth above, I understand that the Court may require that I demonstrate my fitness to practice law before I am reinstated.

15. In mitigation of my misconduct, I submit the following: (a) I have taken responsibility for and acknowledge the Rule violations set forth in this Petition; (b) I have cooperated with Disciplinary Counsel's investigation; (c) I have offered remunerations to all the former clients who filed complaints, including those not being pursued in this Petition; (d) I have produced numerous letters of support, including letters and e-mails from former clients (e) the substantial delay that exists prior to formal disposition of the charges by the Office of Disciplinary Counsel regarding certain Counts, and (f) all of my former clients but one (who is not currently responding to Disciplinary Counsel's correspondence and cannot be reached by telephone), agree that this negotiated disposition, should I comply with it, is an acceptable outcome to bring these open matters to a close.



Michael D.J. Eisenberg
Respondent