

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



In the Matter of :
 :
TINA D. GREENE, ESQUIRE, : **Disciplinary Docket No. 2020-D034**
 :
Respondent :
 :
Member of the Bar of the District of: :
Columbia Court of Appeals :
 :
(Bar Registration No. 991933) :
 :

PETITION FOR NEGOTIATED DISPOSITION

Pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondent Tina D. Greene, Esquire (“Respondent”) respectfully submit this Petition for Negotiated Disposition in the above-captioned matter. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because Respondent is a member of the Bar of the District of Columbia Court of Appeals.

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

In January 2020, Jamie Bishop, Respondent’s former client, filed a complaint against Respondent alleging that Respondent never provided her a fee agreement, charged her an unreasonable fee, and disclosed confidential information or secrets

about her legal matter to third parties. In April 2020, Ms. Bishop's counsel filed a complaint against Respondent based on Respondent's offer to forgive any claim for legal fees in Ms. Bishop's matter in exchange for Ms. Bishop abandoning her disciplinary complaint.

II. STIPULATION OF FACTS AND RULE VIOLATIONS

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on September 10, 2010, and assigned Bar number 991933. Respondent is also licensed to practice law in Maryland.

2. In September 2015, Jamie Bishop filed a complaint against her employer, the Department of Health and Human Services, alleging discrimination. Ms. Bishop initially had counsel but by early 2016, she was proceeding *pro se* before the EEOC.

3. In March 2017, Respondent agreed to represent Ms. Bishop in her discrimination matter before the EEOC.

4. Respondent did not tell Ms. Bishop what she would charge her for the representation. Respondent never provided Ms. Bishop anything in writing setting forth the basis or rate of the fee, the scope of the representation, and the expenses Ms. Bishop would be responsible to pay.

5. On March 22, 2017, Respondent entered her appearance as counsel for Ms. Bishop.

6. In March 2017 and the months that followed, the parties engaged in discovery relating to the discrimination claims.

7. During this same time, Ms. Bishop continued to pursue a retaliation claim against HHS. On June 30, 2017, HHS issued its report of investigation on the retaliation claim.

8. On July 3, 2017, Respondent entered her appearance as counsel for Ms. Bishop on her retaliation claim.

9. The discrimination and retaliation claims were consolidated and the parties sought and were granted an extension of the discovery deadlines previously set by the Administrative Judge (AJ) in the discrimination matter.

10. On August 28, 2017, counsel for HHS sent Respondent additional discovery requests for information and documents relating to Ms. Bishop's retaliation claims. Respondent emailed Ms. Bishop the discovery requests, and thereafter Ms. Bishop provided additional information and documents to Respondent.

11. On September 26, 2017, Respondent served discovery requests on HHS relating to the retaliation claim.

12. The following day, September 27, 2017, counsel for HHS reminded Respondent of the agency's outstanding discovery requests sent on August 28, 2017, and requested responses before Ms. Bishop's deposition, which was scheduled for

October 10, 2017.

13. Counsel for HHS sent Respondent another email on October 3, 2017 requesting Ms. Bishop's responses to the discovery requests and notifying Respondent that the agency would file a motion to compel if the responses were not received.

14. In the first few days of October 2017, Ms. Bishop sent Respondent additional information and documents responsive to the agency's discovery requests.

15. On October 5, 2017, counsel for HHS sent Respondent the agency's responses to Ms. Bishop's September 26, 2017 discovery requests.

16. Also on October 5, 2017, counsel for HHS filed a motion to compel that he emailed to Respondent that day.

17. On October 5, 2017, Respondent sent counsel for HHS the answers for Ms. Bishop to the outstanding requests for information. Respondent, however, failed to provide responsive documents.

18. Upon receiving the answers, counsel for HHS advised Respondent that they did not include the documents the agency had requested. On October 6, 2017, counsel for HHS told Respondent that it was still waiting for the requested documents and would not withdraw the motion to compel until they were received.

19. Respondent did not supplement Ms. Bishop's discovery responses. Nor

did Respondent file an opposition or otherwise respond to HHS's motion to compel.

20. Respondent did not tell Ms. Bishop about HHS's motion to compel. Nor did she tell Ms. Bishop that she had failed to respond to it.

21. On October 10, 2017, counsel for HHS deposed Ms. Bishop. Respondent attended the deposition and asked some "clarify[ing] questions" after counsel for HHS examined Ms. Bishop. The deposition was completed in one and a half hours.

22. On October 31, 2017, Respondent deposed three HHS employees. The depositions began at 9:30 a.m. and concluded by 3:40 p.m.

23. In November 2017, Respondent told Ms. Bishop that she would withdraw from the representation.

24. On December 11, 2017, Respondent filed an uncontested motion to extend discovery an additional 60 days.

25. On December 13, 2017, Respondent notified counsel for HHS and the AJ that she was withdrawing as Ms. Bishop's counsel.

26. When Respondent delivered the file to Ms. Bishop in early January 2018, she did not give Ms. Bishop a bill for her services or make a claim for any fees.

27. Respondent also failed to advise Ms. Bishop of the outstanding motion to compel, or that Respondent had failed to oppose or respond to it.

28. On February 3, 2018, the AJ issued an order granting HHS's motion to compel. The AJ sent the order to Ms. Bishop and counsel for HHS. Respondent also received a copy of the order, although she was no longer representing Ms. Bishop.

29. On February 4, 2018, Respondent emailed Ms. Bishop the AJ's order with no explanation. Prior to receiving the AJ's order, Ms. Bishop had no knowledge of HHS's motion to compel or Respondent's failure to respond to it.

30. In the Spring of 2018, Ms. Bishop retained Gerald Gilliard to represent her in her EEOC matter.

31. In the summer of 2018, HHS and Ms. Bishop were involved in settlement negotiations. In connection with the negotiations, Mr. Gilliard asked Respondent what her legal fees were.

32. Respondent provided Ms. Bishop and Mr. Gilliard an invoice for \$187,423.34. She claimed she had worked 724.6 hours on Ms. Bishop's matter and her fees, based on a billing rate of \$255/hour, were \$184,773. The balance of \$2,650.34 consisted of 82.1 hours (at \$21/hour) for a legal assistant who Ms. Bishop had never met, and expenses of \$926.24.

33. When Respondent was asked to provide support for her invoice, she produced two documents: (1) a spreadsheet of approximately 26 hours of the assistant's time without dates or descriptions of the services the assistant provided;

and (2) a spreadsheet of Respondent's alleged time for a six-week period beginning March 21, 2017, and ending April 30, 2017, which she previously had provided to Ms. Bishop. Respondent's bill for the six-week period was \$59,827.50 – \$17,000 more than the alleged time charges for Respondent (164.6 hours at \$255/hour or \$41,973) and her assistant (26.46 hours at \$21/hour or \$555.66).

34. Between March 21 and April 30, 2017, the only activity in Ms. Bishop's case was finalizing and serving Ms. Bishop's responses to the HHS's outstanding discovery response and receiving HHS's responses to Ms. Bishop's *pro se* discovery requests.

35. Respondent did not intend to charge or collect from Ms. Bishop the amount of fees set forth in her invoice. Nor did Respondent seek to charge or collect this amount from HHS.

36. When Ms. Bishop and Mr. Gilliard advised counsel for HHS and the AJ of Respondent's legal fees, the AJ and counsel for HHS said there had to be a mistake. After they were told that it was not a mistake, they opined that the amount of fees sought was an attempt to defraud the agency.

37. In April 2019, Mr. Gilliard, as counsel for Ms. Bishop, filed a request for fee arbitration of Respondent's fee with the D.C. Bar's Attorney-Client Arbitration Board.

38. After receiving the ACAB request, Respondent told Mr. Gilliard that

she had forgiven the debt. However, when Mr. Gilliard asked for written confirmation that no fee was due, Respondent failed to provide it.

39. In the summer of 2019, HHS agreed to settle Ms. Bishop's claims. The settlement included payments for the legal fees of Mr. Gilliard and Ms. Bishop's initial counsel, but not Respondent.

40. Respondent did not withdraw her requests for fees and the ACAB arbitration remained pending.

41. In January 2020, Ms. Bishop filed a disciplinary complaint against Respondent.

42. On February 10, 2020, Disciplinary Counsel sent Respondent a letter enclosing a copy of Ms. Bishop's complaint and asked her to respond to the allegations. Disciplinary Counsel also enclosed a subpoena directing Respondent to provide a copy of Ms. Bishop's client file and any bills, invoices, time sheets, and documents related to the representation.

43. On March 1, 2020, Respondent emailed Mr. Gilliard proposing a "resolution." Respondent offered a "dismissal" of any claims for fees for the work she did for Ms. Bishop and asked that "ANY AND ALL proceedings through arbitration and actions via the disciplinary board be abandoned."

44. Mr. Gilliard did not respond to Respondent. Instead, he contacted the D.C Bar ethics hotline and thereafter reported Respondent's offer to Disciplinary

Counsel.

45. In September 2020, Respondent agreed to forgive any fees that Ms. Bishop might owe for the representation.

46. Respondent's conduct violated the following Rules of the District of Columbia Rules of Professional Conduct:

a. Rule 1.5(b), in that Respondent failed to provide her client a writing setting forth the basis or rate of her fee, the scope of the representation, and the expenses for which the client would be responsible;

b. Rules 1.3(a) and 1.4(a), in that Respondent failed to represent her client diligently and keep her reasonably informed about the status of the matter when she failed to respond to the motion to compel, provide documents in response to the discovery requests, or tell Ms. Bishop about the motion to compel and Respondent's failure to respond to it; and engaged in a further violation of Rule 1.4(a) when she failed to advise her client of the hours she was spending on the employment matter and the fees that she would charge based on her time;

c. Rule 1.5(a), in that Respondent charged an unreasonable fee; and

d. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice by seeking to condition the forgiveness of any fees that might be owed to the client's withdrawing her disciplinary complaint.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL TO RESPONDENT

In connection with this Petition for Negotiated Disposition, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II, *supra*, other than the Rule violations set forth above, or any sanction other than that set forth below.

IV. AGREED UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed in this matter is a 60-day suspension, with all 60 days stayed in favor of a one-year period of probation. The Court's order should include a condition that if probation is revoked, Respondent will be required to serve the 60-day suspension. During the year she is on probation, Respondent shall (1) not engage in any misconduct in this or any other jurisdiction; and (2) attend the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond courses and the Ethics and Trust Accounts CLE.

If Disciplinary Counsel has probable cause to believe that Respondent has violated the terms of her probation, Disciplinary Counsel may seek to revoke Respondent's probation pursuant to D.C. Bar R. XI, § 3 and Board Rule 18.3, and request that Respondent be required to serve the 60-day suspension.

Respondent and Disciplinary Counsel have agreed that there are no additional conditions attached to this negotiated disposition that are not expressly agreed to in writing in this Petition.

Relevant Precedent

Under Board Rule 17.5(a)(iii), the agreed-upon sanction in a negotiated discipline case must be “justified, and not unduly lenient, taking into consideration the record as a whole.” However, a justified sanction “does not have to comply with the sanction appropriate under the comparability standard set forth in D.C. Bar Rule XI, § 9(h).” Bd. R. 17.5(a)(iii).

A failure to provide a written fee agreement, standing alone, would warrant only an informal admonition. *See, e.g., In re Terrell*, DDN 2015-D237 (July 8, 2016); *In re Connelly*, DDN 2015-D286 (Oct. 12, 2016). Similarly, an isolated instance of neglect and a failure to communicate would normally result in a non-suspensory sanction. *See In re Bryant*, Bar Docket No. 2013-D241 (January 3, 2014) (informal admonition); *In re Schlemmer*, 870 A.2d 76 (D.C. 2005) (public reprimand); *see also In re Chapman*, 962 A.2d 922 (D.C. 2009) (60-day suspension, 30 days stayed; lawyer’s dishonesty in disciplinary process a significant aggravating factor). Sanctions for unreasonable fees range from a non-suspensory sanction to a lengthy suspension, although the cases in which the Court has imposed a suspensory sanction involve additional misconduct including dishonesty. *See, e.g., In re Baird*, Bar Docket No. 571-02 (BPR, Nov. 10, 2004) (informal admonition); *In re Shaw*, 775 A.2d 1123 (D.C. 2001) (public censure for charging excessive or unreasonable fee; misconduct also included failure to notify an interested party of receipt of funds

in violation of Rule 1.15(b)); *In re Bernstein*, 774 A.2d 309 (D.C. 2001) (nine-month suspension for charging an unreasonable fee in workers' compensation case, commingling and dishonesty); *In re Martin*, 67 A.3d 1032 (D.C. 2013) (18-month suspension with reinstatement subject to disgorgement of fees that ACAB found should be refunded; misconduct included not only charging and collecting excessive fees, but commingling, dishonesty, and conduct seriously interfering with the administration of justice by extracting agreement from the client/complainant to withdraw his disciplinary complaint). The range of sanctions for violations of Rule 8.4(d) range from informal admonitions to lengthy suspensions depending on the nature of the misconduct.

Mitigating and Aggravating Factors

Mitigating circumstances include that Respondent: 1) acknowledges her misconduct; 2) has cooperated with Disciplinary Counsel; 3) has expressed remorse; 4) has no prior discipline (or prior disciplinary complaints); and (5) has forgiven any fees that Ms. Bishop may owe for the representation.

Aggravating factors include: (1) the amount of the fees that Respondent claimed given the nature of the work she performed during the nine months she represented Ms. Bishop, and (2) the lack of time records or other support for the amounts that Respondent charged.

Justification of Recommended Sanction

A 60-day suspension fully stayed and one year of probation is justified because Respondent has acknowledged her misconduct, cooperated with Disciplinary Counsel, and expressed remorse. Respondent has agreed to attend the D.C. Bar Practice Management Advisory Service's Basic Training and Beyond course and Ethics and Trust Accounts CLEs. These courses will address Respondent's billing practices, her treatment of entrust fund, and her obligation to maintain complete financial records.

Disciplinary Counsel has considered the resources required to prosecute the case and the likelihood of prevailing on the merits if this case went to hearing and believes that a negotiated disposition is warranted. Respondent has considered the resources necessary to defend the case and the possibility of a greater sanction if these matters were to go to hearing.

Considering the misconduct along with the mitigating and aggravating factors, the parties submit that the agreed-upon sanction is appropriate.

V. RESPONDENT'S AFFIDAVIT

In further support of this Petition for Negotiated Discipline, attached is Respondent's Affidavit pursuant to DC. Bar R. XI, § 12.1(b)(2).

CONCLUSION

Wherefore, Respondent and Disciplinary Counsel request that the Executive Attorney assign a Hearing Committee to review the petition for negotiated discipline

pursuant to D.C. Bar R. XI § 12.1(c).

Dated: October ^{13th} 2020



Hamilton P. Fox, III
Disciplinary Counsel



Tina D. Greene, Esquire
Respondent



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