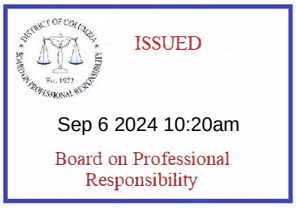
THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE



In the Matter of:	:	
	:	
William H. Brammer, Jr.,	:	
	:	Board Docket No. 23-ND-004
Respondent.	:	Disciplinary Docket No. 2022-D024
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 478206)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE APPROVING AMENDED PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before an Ad Hoc Hearing Committee on September 6, 2023, for a limited hearing on an amended petition by the Office for Disciplinary Counsel and William H. Brammer, Jr., for negotiated discipline. The Hearing Committee consists of lawyer members Joshua D. Rogaczewski (chair) and Patricia Millerioux and public member Adam Kaufman. The Office for Disciplinary Counsel was represented at the hearing by Assistant Disciplinary Counsel Traci M. Tait; Mr. Brammer was represented by McGavock D. Reed, Jr.

The Hearing Committee has carefully considered the amended petition, Mr. Brammer's supporting declaration (and errata), and the representations during the

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* Consult the "Disciplinary Decisions" tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

limited hearing made by Mr. Brammer and his counsel and Disciplinary Counsel. The Hearing Committee also has fully considered the written statement submitted by the complainant, conducted an in camera review of Disciplinary Counsel's files and records, and communicated ex parte with Disciplinary Counsel.

The parties have agreed that the sanction to be imposed for Mr. Brammer's misconduct is a ninety-day suspension, with all but sixty days stayed in favor of one year of unsupervised probation, with conditions. (*See infra* ¶ 43.)

For the reasons set forth below, the Hearing Committee finds that the negotiated discipline described above is justified and recommends that it be imposed by the Court. Mr. Kaufman dissents from the committee's report, and his statement follows the report.

II. FINDINGS PURSUANT TO D.C. BAR R. XI, § 12.1(C)AND BOARD RULE 17.5

A. Findings of Fact.

The Hearing Committee, after full and careful consideration, finds that:

1. The amended petition and Mr. Brammer's declaration (with the errata) are full, complete, and in proper order.

2. Mr. Brammer is aware that there is currently pending against him a proceeding involving allegations of misconduct. (Tr. 27; Decl. ¶ 4.)[1]

3. The allegations that were brought to the attention of Disciplinary Counsel are that, among other things, that Mr. Brammer engaged in neglect and was dishonest with his clients when communicating about their matter. (Am. Pet. 1–2.)

4. Mr. Brammer has freely and voluntarily acknowledged that the material facts and misconduct reflected in the amended petition are true. (Tr. 28, 33; Decl. ¶¶ 3, 5.) Mr. Brammer specifically acknowledged the facts set forth below. (*See infra* ¶¶ 5–34.)

5. Pursuant to section 1(a) of D.C. Bar Rule XI, Disciplinary Counsel has jurisdiction to prosecute because Mr. Brammer is a member of the Bar of the District of Columbia Court of Appeals. The Court admitted Mr. Brammer on July 8, 2002, and he was assigned bar number 478206.

6. On July 1, 2021, Patricia Easley Whearty and her brother Craig Easley retained Mr. Brammer to represent them in their efforts to obtain information about expenditures made by the trustee of their mother's trust. The trustee was their sister, who lived in Virginia with their mother. The siblings' parents had lived in Maryland

[1] The Hearing Committee uses "Tr." to cite the transcript of the September 6 limited hearing; "Decl." to cite Mr. Brammer's declaration, as modified by the errata; and "Am. Pet." to cite the amended petition for negotiated disposition.

before their father's death and certain assets remained in that state. The trustee had not responded to Ms. Whearty's and Mr. Easley's questions about how their mother's assets were being spent. They were concerned that the trustee was spending trust assets inappropriately while refusing to provide information about her expenditures.

7. Ms. Whearty and Mr. Easley first interviewed Mr. Brammer on or about June 8, 2021, by teleconference because of the pandemic. They have never met with him in person. Ms. Whearty and Mr. Easley informed Mr. Brammer that they sought an attorney familiar with the relevant law in both Maryland and Virginia. They chose to retain Mr. Brammer after he led them to believe that his law firm had the requisite expertise to handle their matter, even though the trust was formed in Maryland and the trustee and beneficiary lived in Virginia.

8. The initial telephone conference was followed by a videoconference on June 17, 2021. Participants in this virtual meeting were Ms. Whearty, Mr. Easley, Mr. Brammer, and a Maryland-licensed attorney.

9. Mr. Brammer did not disclose that he was not licensed in Virginia or Maryland in either the June 8 teleconference or the June 17 videoconference. He explained, however, that he would need to bring in a Maryland attorney to assist him in the representation.

10. Mr. Brammer informed Ms. Whearty and Mr. Easley that he had a team that included a Maryland attorney. Though Mr. Brammer shared that the Maryland attorney worked for "Lincoln Park Associates," he failed to disclose that the attorney was not an associate, partner, or otherwise employed at his firm. Ms. Whearty and Mr. Easley believed that Mr. Brammer's team consisted only of members of Mr. Brammer's own law firm.

11. Mr. Brammer's law firm did not have a Maryland or Virginia attorney. In fact, Mr. Brammer was the only lawyer at his firm. He did not disclose these facts to Ms. Whearty and Mr. Easley.

12. Ms. Whearty and Mr. Easley would not have retained Mr. Brammer if they had known he was the firm's only attorney and lacked a license to practice in either relevant jurisdiction.

13. Around the time they initially met with him, Ms. Whearty and Mr. Easley asked Mr. Brammer about projected fees to handle their matter. Mr. Brammer estimated that legal fees could range from $6,000 to $30,000 or more for the representation, depending on whether the trustee would provide the information they sought without forcing Ms. Whearty and Mr. Easley to engage in prolonged litigation.

14. Mr. Brammer agreed to bill Ms. Whearty and Mr. Easley hourly and agreed to alert them to replenish the retainer as fees were earned. He explained the

concept of an "evergreen deposit" and agreed that they could replenish the retainer in $3,000 increments as the fees were earned.

15. Ms. Whearty and Mr. Easley paid Mr. Brammer $6,000 to begin the representation.

16. On June 30, 2021, Mr. Easley signed Mr. Brammer's retainer agreement; Ms. Whearty signed it the next day. The retainer agreement identified the Maryland attorney as local counsel but did not clearly state his billing rate, and the agreement did not set forth the division of responsibility or give any more details about the effect of the association of lawyers outside the firm on the fee to be charged.

17. At some point early in the representation, Mr. Brammer informed Ms. Whearty and Mr. Easley that the Maryland-licensed attorney was going to travel out of the country for an extended period. He mentioned that another person would be brought in to perform some of the same duties the Maryland attorney would have performed if he had not been traveling. Mr. Brammer did not explain what these duties were or to what degree the new person would be involved.

18. Mr. Brammer contends that the duties he expected the new person to complete were proofreading, document compiling, and other basic paralegal functions. This was not explained to Ms. Whearty and Mr. Easley.

19. The new person Mr. Brammer identified was H. Franklin Green, whom Mr. Brammer knew or should have known was a convicted felon and former member of the D.C. Bar who had been disbarred for financial misconduct.

20. Mr. Brammer explained to Ms. Whearty and Mr. Easley that Mr. Green possessed a law degree but was not a practicing attorney. Mr. Brammer did not disclose Mr. Green's criminal or disciplinary history.

21. Ms. Whearty and Mr. Easley would not have retained Mr. Brammer or his firm if they had known about Mr. Green's criminal and disciplinary history.

22. As the representation progressed, Mr. Green, Mr. Brammer, the Maryland attorney, Ms. Whearty, and Mr. Easley had teleconferences and exchanged emails.

23. On August 6, 2021, the Maryland attorney filed (a) a motion for preliminary injunction and (b) a petition to account for trust assets, modify the trust, and replace the trustee on behalf of Ms. Whearty and Mr. Easley in the Circuit Court of Maryland for Montgomery County. The Maryland attorney, Mr. Brammer, and Mr. Green worked together in preparing the court papers and supporting affidavits. Mr. Brammer and the Maryland attorney both signed the substantive pleadings and the relevant documents to admit Mr. Brammer pro hac vice in the Maryland proceeding.

24. Ms. Whearty and Mr. Easley were unclear about Mr. Green's role in their case and believed he was an attorney working in Mr. Brammer's law office. Mr. Brammer never explicitly told them that Mr. Green was not an attorney in his law firm. Ms. Whearty and Mr. Easley reasonably concluded that Mr. Green was an attorney.

25. Although Ms. Whearty and Mr. Easley had been prepared for the Maryland attorney to be less involved because of his foreign travel, the Maryland attorney stayed as involved in the representation as Mr. Brammer.

26. From the perspective of Ms. Whearty and Mr. Easley, Mr. Green's role in the representation was indistinguishable from that of the Maryland attorney and Mr. Brammer. Mr. Brammer concedes that he did not adequately explain to his clients Mr. Green's role in the representation.

27. About seven weeks after retaining Mr. Brammer, Ms. Whearty and Mr. Easley received their first invoice for legal services. It exceeded the initial estimate of $30,000, and they were surprised by the amount. Despite Mr. Brammer's explanation of the evergreen deposit, they had expected to be charged in $3,000 increments. Though he had provided some updates to Ms. Whearty and Mr. Easley about the work that was being performed, Mr. Brammer had never revised his initial estimate of the litigation cost. And Mr. Brammer did not provide billing updates or regular invoices, because he had not had time to compile them. Mr. Brammer also

did not make sure that Ms. Whearty and Mr. Easley understood the difference between an evergreen-deposit concept and their billing schedule.

28. It was only after Ms. Whearty and Mr. Easley reviewed the invoice that they learned that the Maryland attorney was not part of Mr. Brammer's law firm. Mr. Brammer concedes that his designation of the Maryland attorney as "local counsel" was not sufficient to inform Ms. Whearty and Mr. Easley of the salient facts.

29. Ms. Whearty and Mr. Easley disputed the amount of the legal fees, stating they believed Mr. Brammer overcharged them. Ms. Whearty and Mr. Easley expressed their disappointment at the lack of communication and failure to advise them when the initial retainer was exhausted.

30. Ms. Whearty and Mr. Easley directed Mr. Brammer to cease further work except to move to dismiss the petition that had been filed.

31. The trustee filed a responsive court paper, and Ms. Whearty and Mr. Easley obtained successor counsel to respond.

32. Ms. Whearty and Mr. Easley discovered Mr. Green's criminal and disciplinary background after Ms. Whearty filed a disciplinary complaint.

33. Ms. Whearty and Mr. Easley ultimately paid Mr. Brammer $26,000 in fees.

34. At the onset of the representation, Mr. Brammer created a DropBox folder for Ms. Whearty and Mr. Easley to use to view all the documents in the case. Mr. Brammer uploaded all of the court papers to this folder, including the August 6, 2021 motion for special admission for Mr. Brammer to practice in Maryland. Although this document was available to Ms. Whearty and Mr. Easley, Mr. Brammer never made any efforts to confirm that they had read it. (Am. Pet. 2–9.)

B. Mr. Brammer's Rule Violations.

35. Mr. Brammer violated the following District of Columbia Rules of Professional Conduct:

a. Rule 1.4(a), because Mr. Brammer failed to keep his clients apprised of the status of the matter, specifically around fees;

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

c. Rule 1.5(e), because Mr. Brammer worked with an attorney who was not in the same firm as him without advising his clients in writing of the contemplated division of responsibility, advising them of the effect of the association of lawyers outside the firm on the fee to be charged, obtaining his clients' informed consent, and ensuring that the total fee was reasonable;[2] and

d. Rule 8.4(c), because Mr. Brammer engaged in reckless conduct rising to dishonesty by misleading his clients to believe that more than one attorney worked for his law firm, that his firm had expertise in representing clients seeking the relief they sought

[2] Ultimately, Disciplinary Counsel did not charge Mr. Brammer with billing his clients an unreasonable fee.

> and so could handle their matter efficiently, and that Mr. Green was an attorney who worked for his firm.

(Am. Pet. 9–10.)

36. Mr. Brammer agrees to the disposition because he believes that he cannot successfully defend against discipline based on the stipulated misconduct. (Tr. 26; Decl. ¶ 6.)

37. Disciplinary Counsel has made no promises to Mr. Brammer other than what is contained in the amended petition. (Decl. ¶ 3.) Those promises are that Disciplinary Counsel will not pursue any other charges arising out of the conduct described in the amended petition and will not seek a sanction other than that set forth in the amended petition. (Am. Pet. 10.) Mr. Brammer confirmed during the limited hearing that there were no other promises or inducements other than those set forth in the amended petition. (Tr. 32–33.)

38. Mr. Brammer has conferred with his counsel. (Tr. 19; Decl. ¶ 2.)

39. Mr. Brammer freely and voluntarily acknowledges the facts and misconduct reflected in the amended petition and agrees to the sanction set forth therein. (Tr. 28, 33; Decl. ¶¶ 3, 5–6, 13.)

40. Mr. Brammer is not being subjected to coercion or duress. (Tr. 33; Decl. ¶ 3.)

41. Mr. Brammer is competent and was not under the influence of any substance or medication that would affect his ability to make informed decisions at the limited hearing. (Tr. 19–20.)

42. Mr. Brammer is fully aware of the implications of entering into the disposition, including, but not limited to, the following:

a. he has the right to assistance of counsel if he is unable to afford counsel;

b. he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;

c. he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;

d. he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;

e. the negotiated disposition, if approved, may affect his present and future ability to practice law;

f. the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and

g. any sworn statement by him in his affidavit or any statements made by him during the proceedings may be used to impeach his testimony if there is a subsequent hearing on the merits.

(Tr. 22–25; Decl. ¶¶ 2, 9–10.)

43. Mr. Brammer and Disciplinary Counsel have agreed that the sanction in this matter should be a ninety-day suspension, with all but sixty days stayed in favor of one year of unsupervised probation. The period of suspension will begin thirty days after the Court issues its order (or on a date otherwise specified by the

Court). The period of probation will begin on the day that Mr. Brammer completes the served portion of the suspension. The probation is subject to the following conditions:

a. that Mr. Brammer 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;

b. that Mr. Brammer will notify Disciplinary Counsel promptly of any disciplinary complaint filed against him and its disposition;

c. that Mr. Brammer will consult with the D.C. Bar's Practice Management Advisory Service to conduct a review of his prior discipline and his law practice to avoid continuing to commit the same ethics breaches, with particular emphasis on clear and effective communication;

d. that Mr. Brammer waives confidentiality regarding the PMAS consultation process and will provide proof within ten days of its completion; and

e. that, within thirty days of the Court's order suspending him, Mr. Brammer will notify Disciplinary Counsel in writing of all jurisdictions in which he is or has been licensed to practice and all tribunals before which he has appeared as legal counsel.

(Am. Pet. 11–12; Tr. 31–32.) Mr. Brammer is aware that he will be required to notify clients of his suspension under section 14 of D.C. Bar Rule XI and Board Rule 9.9. (Am. Pet. 17.)

44. The amended petition sets forth the following aggravating circumstances, which the Hearing Committee has taken into consideration:

> Aggravating factors are that [Mr. Brammer]'s misconduct includes dishonesty, and he has a significant disciplinary history (a negotiated stayed 30-day suspension with probation for incompetence, neglect, and failure to communicate, and a prior informal admonition for incompetence and failure to communicate). The Court's order approving the earlier petition for negotiated discipline, the petition for negotiated disposition, and the informal admonition are attached [to this amended petition] at the labeled appendices. Further, [Mr. Brammer] failed to complete his probation during his prior (fully) stayed suspension before the disciplinary complaint giving rise to these charges was filed.

(Am. Pet. 16; *see also* Tr. 35–36.)

45. The amended petition sets forth the following mitigating circumstances, which the Hearing Committee has taken into consideration:

> In mitigation, [Mr. Brammer] has taken responsibility for his misconduct, in that he acknowledges that he violated the Rules as set forth above, has cooperated fully with Disciplinary Counsel's investigation, agrees that a served suspension incorporating the original 30 days served and the added 30 days served, is appropriate given his failure to complete probation in his prior negotiated disposition, and seeks to learn strategies to avoid further ethics breaches.

(Am. Pet. 17; Decl. ¶ 14; *see also* Tr. 34–35.)

46. The complainant provided a written statement to the Hearing Committee prior to the limited hearing that had been scheduled on an initial petition for negotiated discipline. That petition recommended that Mr. Brammer be required to serve only thirty days of the ninety-day period of suspension (with the other sixty

days stayed).[3] Ms. Whearty objected to the agreed-upon sanction and asserted that Mr. Brammer had been dishonest. She also stated that she was forced to abandon her investigation into the trustee's alleged mismanagement—for which she had hired Mr. Brammer—because she did not have sufficient funds to hire another lawyer after paying Mr. Brammer. Ms. Whearty was notified of the September 6 limited hearing on the amended petition, but she neither submitted another written statement nor appeared at the hearing. (Tr. 15–17, 37–38.)[4]

III. DISCUSSION

The Hearing Committee recommends approval of the parties' amended petition for negotiated discipline because, as explained below, it finds:

> (1) [Mr. Brammer] has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition and agreed to the sanction set forth therein;
>
> (2) The facts set forth in the petition or as shown at the hearing support the admission of misconduct and the agreed upon sanction; and
>
> (3) The sanction agreed upon is justified . . . .

[3] The Hearing Committee cancelled the limited hearing scheduled on the original petition. The parties subsequently filed the amended petition that is the subject of this report.

[4] Because Ms. Whearty failed to register her views on the amended petition and proposed sanction, the dissent assigns undue value to her objection to the earlier proposed sanction. (Dissent 15–16, 29–31.) The sanction of which the Hearing Committee recommends approval is not the same as—and is more severe than—the one sought in the original petition and to which Ms. Whearty objected.

D.C. Bar R. XI, § 12.1(c); *see also* Bd. R. 17.5(a)(i)–(a)(iii).

A. Mr. Brammer Has Knowingly and Voluntarily Acknowledged the Facts and Misconduct and Agreed to the Stipulated Sanction.

The Hearing Committee finds that Mr. Brammer has knowingly and voluntarily acknowledged the facts and misconduct reflected in the amended petition and agreed to the sanction therein. Mr. Brammer, after being placed under oath, admitted the stipulated facts and charges set forth in the amended petition, and denied that he is under duress or has been coerced into agreeing to this disposition. (*See supra* ¶¶ 39–40.) Mr. Brammer understands the implications and consequences of his negotiated discipline. (*See supra* ¶ 42.)

Mr. Brammer has acknowledged that all promises that have been made to him by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the amended petition and that there are no other promises or inducements that have been made to him. (*See supra* ¶ 37.)

B. The Stipulated Facts Support the Admissions of Misconduct and the Agreed-Upon Sanction.

The Hearing Committee has carefully reviewed the facts set forth in the amended petition and established during the limited hearing and concludes that they support the admission of misconduct and the agreed-upon sanction. Moreover, Mr. Brammer agrees to this negotiated discipline because he believes that he could not

successfully defend against the misconduct described in the amended petition. (*See supra* ¶ 36.)

First, Mr. Brammer admits that he violated Rule of Professional Conduct 1.4(a): "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Specifically, Mr. Brammer failed to keep his clients apprised of the status of the matter, especially around fees. The evidence supports Mr. Brammer's admission that he violated Rule 1.4(a) in that the stipulated facts describe that he failed to provide billing updates or invoices, because he did not have time to prepare them, and that he did not otherwise inform his clients of the actual cost of the representation, even when that cost exceeded the upper-bound estimate he provided the clients. Given that he originally estimated that legal fees could range from $6,000 to $30,000 or more for the representation (depending on whether the trustee would provide the information they sought or force the clients to litigate their rights to the information) and told the clients that they would be asked to replenish the retainer in $3,000 increments as fees were earned, Mr. Brammer should have informed them of the amounts being incurred and should not have surprised them with a bill for over $30,000, just seven weeks into the representation.

Second, Mr. Brammer admits that he violated Rule 1.4(b): "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make

informed decisions regarding the representation." Mr. Brammer did not explain to his clients how he intended to handle their representation to the extent necessary to permit them to make informed decisions. The evidence supports Mr. Brammer's admission that he violated Rule 1.4(b) in that the stipulated facts describe that he led the clients to believe that his law firm had the requisite expertise to handle their matter and that Mr. Brammer would not need to bring in local counsel because he was not licensed to appear in Maryland courts, where the clients' matter would be litigated. Indeed, Mr. Brammer failed to disclose that the "team" that he described to the clients consisted of individuals who were neither associates, partners, nor otherwise associated with his firm. Nor could they be, because his firm had only one lawyer—him. And Mr. Brammer did not inform the clients that he would enlist the assistance of H. Franklin Green, what Mr. Green's duties would be, or that Mr. Green was a convicted felon and former lawyer who had been disbarred for financial misconduct.

Third, Mr. Brammer admits that he violated Rule 1.5(e), which prohibits the division of a fee between lawyers who are not in the same firm unless certain conditions are met.[5] Mr. Brammer did not violate the rules of professional conduct

[5] "A division of a fee between lawyers who are not in the same firm may be made only if: (1) The division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation[;] (2) The client is advised, in writing, of the identity of the lawyers who will participate in the representation, of the contemplated division of responsibility, and of the effect of the

by working with a Maryland lawyer. Indeed, he was arguably required to do so given that he needed that lawyer's assistance to handle the clients' matter. *See* D.C. R. Prof'l Conduct 1.1 cmt. [2] ("Competent representation can also be provided through the association of a lawyer of established competence in the field in question."). But Mr. Brammer needed to make his clients aware that he would need to work with a Maryland-licensed lawyer who was not in the same firm as him and obtain their informed consent to the arrangement. The stipulated facts support Mr. Brammer's admission that he violated Rule 1.5(e). Mr. Brammer did not advise the clients in writing of the necessary association, much less the contemplated division of responsibility, the Maryland lawyer's billing rate, or the effect of using lawyers outside his firm on the fee to be charged. In short, Mr. Brammer did not obtain his clients' informed consent to the arrangement. *See id.* R. 1.0(e) (" 'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."); *id.* R. 1.0 cmt. [2] ("The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision.").

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association of lawyers outside the firm on the fee to be charged; (3) The client gives informed consent to the arrangement; and (4) The total fee is reasonable." D.C. R. Prof'l Conduct 1.5(e).

Finally, Mr. Brammer admits that he violated Rule 8.4(c), which prohibits dishonesty, fraud, deceit, or misrepresentation. The stipulated facts establish that Mr. Brammer recklessly failed to disclose to the clients material facts. He did not disclose that he was the sole lawyer in his law firm and allowed them to believe otherwise. He did not disclose that he was not licensed to practice in Maryland or Virginia and allowed them to believe that his firm had expertise in representing clients seeking the relief they sought and so could handle their matter efficiently. And Mr. Brammer did not disclose that Mr. Green was not his employee or that Mr. Green had been disbarred and convicted of a felony, allowing them to believe that Mr. Green was a lawyer in good standing and Mr. Brammer's employee. Mr. Brammer admits that these omissions were reckless.[6]

[6] The Hearing Committee notes, however, that several of these facts—Mr. Brammer's licensure status and Mr. Green's disciplinary history and bar status—were knowable had the clients done any due diligence. Contrary to the dissent's assertion, the Hearing Committee does not point this out to "blame the victim." (Dissent 26–27 n.7.) It does so to support its conclusion that Mr. Brammer was reckless in not keeping his clients informed about with whom he was associating and why. That is, the Hearing Committee does not agree with the dissent's conclusion that Mr. Brammer defrauded his clients. Indeed, Mr. Brammer did not affirmatively misrepresent his or Mr. Green's credentials. And it is unreasonable to conclude that Mr. Brammer would have intentionally concealed facts his clients could have easily learned. In any event, Disciplinary Counsel reasonably assessed the litigation risk associated with pursuing an intentional-misrepresentation case against Mr. Brammer in a contested hearing.

C. The Agreed-Upon Sanction Is Justified.

The third factor the Hearing Committee must consider is whether the sanction agreed upon is justified. D.C. Bar R. XI, § 12.1(c); Bd. R. 17.5(a)(iii) (explaining that hearing committees should consider "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"); *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam) (providing that a negotiated sanction may not be "unduly lenient"). Based on the entire record, including the stipulated circumstances in aggravation and mitigation, the Hearing Committee's in camera review of Disciplinary Counsel's investigative file, the Hearing Committee's ex parte discussion with Disciplinary Counsel, and the Hearing Committee's review of relevant precedent, the Hearing Committee concludes that the agreed-upon sanction is justified and not unduly lenient, for the following reasons, and for those set forth in the attached confidential appendix.

First, although this case involves dishonesty, the central issue is Mr. Brammer's failure to communicate adequately with his clients. There is nothing wrong with a D.C. lawyer agreeing to represent Virginia clients in a Maryland

proceeding.[7] But Mr. Brammer needed to explain to his clients his specific limitations and, more important, his proposal to work with lawyers outside his firm to act as the anchor counsel in Maryland. How Mr. Brammer represented his clients did not constitute misconduct. Indeed, nothing in the record suggests any fault in Mr. Brammer's legal advice or work product. His failure to communicate with the clients about how he represented them, however, ran afoul of Rules 1.4 and 1.5. He was sufficiently reckless in his communications that he was dishonest, but this is not a matter in which the lawyer engaged in malicious fraud. Moreover, Disciplinary Counsel conducted a full investigation upon receiving Ms. Whearty's complaint and, as explained in the confidential appendix, Disciplinary Counsel did not unreasonably leave uncharged any offense, much less a serious one. The agreed-upon disposition recognizes this and sanctions Mr. Brammer—any time away from one's practice is serious—but also includes training to correct what occurred in this instance.[8]

Second, Mr. Brammer's conduct at the limited hearing and agreeing to discipline supports the agreed-upon sanction. Mr. Brammer stipulates that he does not believe he could successfully defend against Disciplinary Counsel's charges, but he had the right to force Disciplinary Counsel to prove up its charges at a full

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[7] Nor is it misconduct for a lawyer to work with a disbarred lawyer such as Mr. Green. Mr. Green cannot practice law, but he is allowed to work. Mr. Brammer's error was not letting his clients know the material facts about Mr. Green.

[8] The dissent complains that Mr. Brammer faces no fitness requirement, but the requirement that Mr. Brammer obtain practice-management assistance achieves the same end: improving the lawyer's ability to serve his clients.

evidentiary hearing, expending resources of Disciplinary Counsel and the Hearing Committee that could have been deployed elsewhere. He did not do that. Instead, Mr. Brammer accepted responsibility for what he did in this matter, and he appeared genuinely remorseful at the limited hearing.

Finally, the agreed-upon sanction is a fair result that reflects an arm's-length compromise between Disciplinary Counsel and Mr. Brammer. Had Disciplinary Counsel prevailed after a hearing, Mr. Brammer could have received a harsher penalty. But in the unlikely event that he prevailed, Mr. Brammer would have received no sanction. The agreed-upon sanction guarantees that Mr. Brammer receives a significant sanction and cuts off the risk that he receives none. And it ensures that Mr. Brammer serves his suspension sooner. Had this matter gone to a hearing, and had Mr. Brammer appealed an adverse result, it could have been months—or years—after the misconduct before Mr. Brammer received his sanction. The agreed-upon sanction—which is well within the range of sanctions issued for violations like Mr. Brammer's—deters Mr. Brammer from further misconduct, and protects the public, sooner than after a potentially protracted adjudicative process (including appeals).[9]

[9] The dissent elides over these issues, but they are important factors that further justify the result here. The proposed disposition in this matter necessarily resulted from a negotiation between Disciplinary Counsel and Mr. Brammer, and neither side is likely content with the result, but both sides likely have concluded that the risk of proceeding justifies accepting a less severe sanction (in the case of

D. Disciplinary Counsel Appropriately Did Not Charge Mr. Brammer with Intentional Misrepresentation.

At bottom, the dissent sees this case as one in which Mr. Brammer intentionally concealed facts from his prospective clients to secure the engagement. It follows, according to the dissent, that Mr. Brammer should receive a far greater sanction and disgorge the fees he earned in preparing his clients' litigation. (*See* Dissent 20–28, 34.) The Hearing Committee, however, believes the dissent overestimates Disciplinary Counsel's ability to prove by clear and convincing evidence that Mr. Brammer was intentionally dishonest. Accordingly, the Hearing Committee should "not reject a negotiated discipline because it declines to stipulate a violation if, after reasonable factual investigation, there is a substantial risk that

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Disciplinary Counsel) or a more severe sanction (in the case of Mr. Brammer). Consideration of "litigation risk" is entirely appropriate when assessing a negotiated disposition. *In re Teitelbaum*, 303 A.3d 52, 57 (D.C. 2023). And, in the case of Disciplinary Counsel, the result protects the public sooner and allows Disciplinary Counsel to deploy its resources investigating and prosecuting lawyers posing more serious risk to the public. The disciplinary system may sanction lawyers for violations of the Rules of Professional Conduct, but it does not broadly "seek justice for [Mr. Brammer's clients]" (Dissent 2), who have other avenues to pursue claims against Mr. Brammer. *See In re Bailey*, Bd. Dkt. No. 18-BD-054, at 38 (BPR Jul. 9, 2021) ("[D]isciplinary proceedings are an 'inappropriate forum' for 'reliance or expectation damages under contract doctrine or from reasonably foreseeable damages under tort doctrine,' . . . .") (citing *In re Robertson*, 612 A.2d 1236, 1239–41 (D.C. 1992)), *adopted*, 283 A.3d 1199 (D.C. 2022). Rather, the Hearing Committee's role in this matter is to assess whether the parties' agreement is justified and not unduly lenient. The Hearing Committee has done that.

[Disciplinary Counsel] would not be able to establish the violation by clear and convincing evidence." *Teitelbaum*, 303 A.3d at 57–58.

In this case, the Hearing Committee is convinced that Disciplinary Counsel conducted a reasonable factual investigation of Mr. Brammer. This was apparent in the multiple ex parte communications between the Hearing Committee and Disciplinary Counsel. That Disciplinary Counsel reached a different conclusion than the dissent regarding Mr. Brammer's conduct does not make the proposed sanction unjustified or unduly lenient. To the contrary, Disciplinary Counsel "can assess litigation risks vis-à-vis what would happen in a contested case when determining which charges to stipulate." *Id.* at 57.

There is substantial risk that Disciplinary Counsel would not have been able to sustain a charge of intentional dishonesty. The dissent maintains that Mr. Brammer fraudulently induced his clients to retain him and intentionally misled them. (Dissent 20–24.) But the record does not provide clear and convincing evidence for this conclusion. As noted, Mr. Brammer did not misrepresent his licensure status when dealing with his prospective clients, and he identified local Maryland counsel in his retention agreement. The dissent argues that Mr. Brammer should have informed the prospective clients that he would need to work with a Maryland lawyer to litigate their claims and that he would be using a disbarred lawyer as a consultant or paralegal. Mr. Brammer (and the Hearing Committee)

agrees. But that does not mean he intentionally hid facts from them. Rather, Mr. Brammer was approached by potential clients with an issue, and he agreed to represent them and assembled a team to competently do that work. Indeed, it makes little sense for Mr. Brammer to hide from his prospective clients things they could easily locate in the public record. The more likely conclusion is the one to which Disciplinary Counsel and Mr. Brammer stipulated: he was reckless in not providing his clients with more disclosure.[10]

The dissent compares this case to *In re Harris*, but the facts of that case include intentional dishonesty. Bd. Dkt. 19-BD-004, slip op. at 26–29 (BPR May 10, 2021), *recommendation adopted where no exceptions were filed*, 257 A.3d 1037 (D.C. 2021). In *Harris*, the respondent lawyer made unwarranted, outcome-based promises to induce the client to retain him and the lawyer "had no intention of pursuing their case." *Id.* at 33. In this case, Mr. Brammer underestimated the costs of litigating the clients' case, but he made no affirmative misstatements to the clients that induced them to retain him, and, unlike the lawyer in *Harris*, Mr. Brammer did the work necessary to prosecute his clients' claims. *Harris* provides no shelter for

[10] The dissent also believes Mr. Brammer committed other violations of the rules of professional conduct. The Hearing Committee addresses these issues in its confidential appendix.

the dissent's rejection of the discipline negotiated by Disciplinary Counsel and Mr. Brammer.[11]

IV. CONCLUSION AND RECOMMENDATION

For the reasons stated above, the Hearing Committee recommends that the negotiated discipline be approved and that the Court suspend Mr. Brammer for ninety days, with all but sixty days stayed in favor of one year of unsupervised probation. The period of suspension will begin thirty days after the Court issues its order (or on a date otherwise specified by the Court). The period of probation will begin on the day that Mr. Brammer completes the served portion of the suspension. The probation is subject to the following conditions:

(a) that Mr. Brammer 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;

(b) that Mr. Brammer will notify Disciplinary Counsel promptly of any disciplinary complaint filed against him and its disposition;

(c) that Mr. Brammer will consult with the D.C. Bar's Practice Management Advisory Service to conduct a review of his prior

[11] The dissent believes that Mr. Brammer should have to disgorge the fees paid by his clients. (Dissent 23–25, 34.) But no basis for restitution exists in this matter. The dissent does not—and cannot—dispute that Mr. Brammer did the work for which he billed the clients. That leaves the dissent with an argument that Mr. Brammer's pre-engagement conduct constitutes fraud and renders the engagement subject to rescission. As discussed, however, Mr. Brammer's reckless omissions of publicly available facts do not support a claim of fraudulent inducement. It follows that, as Disciplinary Counsel concluded, there was no basis to charge Mr. Brammer with misconduct sufficient to support restitution.

discipline and his law practice to avoid continuing to make the same ethics breaches, with particular emphasis on clear and effective communication;

(d) that Mr. Brammer waives confidentiality regarding the PMAS consultation process and will provide proof within ten days of its completion; and

(e) that within thirty days of the Court's order suspending him, Mr. Brammer will notify Disciplinary Counsel in writing of all jurisdictions in which he is or has been licensed to practice, and all tribunals before which he has appeared as legal counsel.

The Hearing Committee further recommends that Mr. Brammer's attention be directed to the requirements of section 14 of D.C. Bar Rule XI and their effect on his eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Joshua D. Rogaczewski, Chair

Patricia B. Millerioux
Attorney Member

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
William H. Brammer, Jr.,	:	
	:	Board Docket No. 23-ND-004
Respondent.	:	Disciplinary Docket No. 2022-D024
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 478206)	:	

DISSENT OF
AD HOC HEARING COMMITTEE PUBLIC MEMBER ADAM KAUFMAN

INTRODUCTION

I am forced to dissent from the Ad Hoc Hearing Committee's Report and Recommendation because I feel strongly that the proposed sanction is unduly lenient and does not take into account significant, uncharged potential misconduct. My dissent is based on my consideration of the facts set forth in Disciplinary Counsel's Amended Petition for Negotiated Discipline, the supporting affidavit submitted by Respondent, Disciplinary Counsel's investigative file, statements made by the Complainants, a review of comparable disciplinary decisions, the limited hearing, the Hearing Committee's *ex parte* Zoom meetings with Disciplinary Counsel, and a supplemental *ex parte* submission by Disciplinary Counsel.

Under the terms of the Amended Petition for Negotiated Discipline, Respondent would, in effect, serve a suspension of only 30 days with unsupervised probation for his admitted misconduct in this case. The additional 30 days of served

suspension set forth in the Amended Petition are for a prior disciplinary proceeding in which Respondent violated the terms of his probation. Respondent will not have any restitution obligation to the Complainants, and there will not be any fitness requirement for Respondent to be reinstated. A served suspension of only 30 days in this matter is unduly lenient in light of Respondent's recidivism, the seriousness of Respondent's admitted misconduct, potential additional serious misconduct for which Respondent has not been charged, the absence of significant mitigating factors, and the presence of numerous aggravating factors.

This is Respondent's third disciplinary proceeding. Respondent's admitted misconduct in this action includes dishonesty. The misconduct took place while Respondent was on probation for other admitted ethical violations, and the misconduct is increasing in seriousness with each new violation. The Complainants were prejudiced by the misconduct, as they were required to abandon a potential claim against a fiduciary because of Respondent's actions. Further, it appears from the record and the information in the attached Dissent Confidential Appendix that Respondent may have committed additional serious ethical violations for which he has not been charged.

None of the mitigating factors that were present in Respondent's prior negotiated discipline (in which he received a 30-day stayed suspension, contingent on the successful completion of probation) are present here, apart from Respondent's acceptance of responsibility and cooperation with Disciplinary Counsel. But those mitigating factors are not persuasive here, as Respondent accepted responsibility for

his misconduct and cooperated with Disciplinary Counsel in two previous disciplinary matters and then went on to commit additional, more serious, misconduct, including misconduct during a period when he was on probation.

Though I have worked with many fine attorneys, I am not myself an attorney. As the public member on the Hearing Committee, it would be much easier for me to go along with the majority. In making this dissent I am guided by the precept expressed in the Report and Recommendation of the Board on Professional Responsibility in *In re Justo de Pomar*, Board Docket No. 20-ND-002 (BPR Feb. 4, 2022), *recommendation approved*, 273 A.3d 870 (D.C. 2022) (per curiam), which states that "the hearing committee must determine whether Disciplinary Counsel's analysis is objectively reasonable. . . . This review must not be a 'rubber stamp,' but instead a thorough, objective analysis of Disciplinary Counsel's evaluation." *Justo de Pomar*, Board Docket No. 20-ND-002, at 13-14. Unfortunately, the Hearing Committee majority has elected to rubber stamp Disciplinary Counsel's decision to accept an extremely lenient sanction in this matter without conducting a meaningful objective review of the record. A thorough, objective analysis of the record and the investigative file, as well as my sense of duty to seek justice for the victims, compels me to conclude that the proposed sanction is unduly lenient for many reasons.

STATEMENT OF FACTS

A. Respondent's First Disciplinary Matter – *Saucedo*.

Respondent's first disciplinary matter was a 2011 Informal Admonition for misconduct that occurred in 2009-2010. *See Brammer* Petition for Negotiated Discipline, Appendix, May 13, 2011 Letter from Office of Bar Counsel to William H. Brammer, Jr. ("Informal Admonition"). Respondent had been retained to represent a husband and wife in immigration proceedings seeking permanent resident status for the husband. Respondent erroneously advised his clients that the husband was eligible for an adjustment of status. He also failed to include required documents on the application to adjust status and failed to respond to a written request from the United States Customs and Immigration Service ("USCIS") for required supporting evidence and information.

The husband's application was denied and USCIS initiated removal proceedings against the husband. As Disciplinary Counsel explained in the Informal Admonition, the husband "was plainly not eligible to adjust status, and your advice to the contrary was deeply flawed." Informal Admonition at 2. "Moreover, by pursuing adjustment of status for [the husband], it appears that you drew attention to his undocumented status, and prompted USCIS to initiate removal proceedings against him." *Id*. Respondent was found to have violated D.C. Rules of Professional Conduct ("Rules") 1.1(a) (competence) and (b) (skill and care) and Rule 1.4(b) (explaining matter to client to permit informed decisions). *Id*.

In "deciding to issue [a] letter of Informal Admonition rather than institute formal disciplinary charges against [Respondent]," Disciplinary Counsel took into consideration that Respondent "took [the] matter seriously," "cooperated with our investigation," had "no prior discipline," and "accepted responsibility" for his conduct. Informal Admonition at 2. In addition, Respondent agreed to refund $2,210 to his former clients and to attend six hours of immigration continuing legal education provided by the D.C. Bar. Informal Admonition at 3.

B. Respondent's Second Disciplinary Matter – *Mgana*.

Respondent's second disciplinary proceeding involved events from 2005-2007 and resulted in a Negotiated Discipline approved by the D.C. Court of Appeals in 2021. *In re Brammer*, 243 A.3d 863 (D.C. 2021) (per curiam). In that proceeding, the Complainant, Neema Mgana, reported the matter to Disciplinary Counsel in 2012. *See* Brammer Petition for Negotiated Discipline, Appendix, *In re Brammer*, Petition for Negotiation Discipline, No. 2012-D74, May 24, 2019 ("*Mgana* Petition") ¶ 12. Ms. Mgana engaged Respondent to assist her in pursuing a contract breach claim against her employer. *Mgana* Petition ¶ 1. Respondent failed to "file an action on behalf of his client before the statute of limitations on her claim expired." *Mgana* Petition ¶ 8. He also failed to "regularly communicate with Ms. Mgana during the representation, due to his relocation to California and a disability." *Mgana* Petition ¶ 4. Respondent violated Rule 1.1(a) by failing to provide competent representation to his client (the same rule violated in the previous disciplinary action), Rule 1.3(c) by failing to act with reasonable promptness in representing his

client, and Rule 1.4(a) by failing to keep his client reasonably informed about the status of the matter. *Mgana* Petition ¶ 9.

In *Mgana*, the agreed upon sanction was "a 30-day suspension, stayed upon the successful completion of a one-year period of probation during which Respondent will not engage in any ethical misconduct, and conditioned upon Respondent making restitution in the amount of $5,000 to Ms. Mgana within one year of the approval of this Petition by the Court." *In re Brammer*, Board Docket No. 19-ND-007, ¶ 12 (HC Rpt. Sep. 15, 2020) ("*Mgana* Report"), *recommendation approved*, 243 A.3d 863 (D.C. 2021).

In approving the agreed-upon sanction, the *Mgana* hearing committee cited the following substantial, persuasive mitigating factors:

> a) Respondent [had] cooperated with Disciplinary Counsel's investigation of [that] matter and [had] accepted responsibility for his misconduct;
>
> b) Respondent's misconduct did not involve dishonesty;
>
> c) Respondent's misconduct in [that] matter dates to events that began in 2005, and Ms. Mgana reported this matter to Disciplinary Counsel in 2012;
>
> d) In or about October 2006, Respondent relocated his residence to the State of California, and unsuccessfully attempted to find successor counsel for his client's case;
>
> e) During the time that Respondent was living in California, he was experiencing troubles in his marriage which culminated in a divorce from his wife in 2011;
>
> f) During the time relevant to his representation of Ms. Mgana, Respondent was suffering from alcohol addiction, but the agreed sanction in [that] matter [was] not materially impacted by the principles

> set forth in *In re Kersey*, 520 A.2d 321 (D.C. 1987), because the sanction agreed [there] would be within the range of proper sanctions even if there were no *Kersey* issues. Thus, there [was] no need for the disciplinary system to determine whether Respondent could meet his burden of proof on *Kersey* in a contested case;
>
> g) The combination of his personal issues and his relocation to California contributed significantly to Respondent's mishandling of Ms. Mgana's case;
>
> h) In June 2011, Respondent voluntarily sought and received assistance for his alcohol addiction from the District of Columbia Bar's Lawyer's Assistance Program ("LAP");
>
> i) Respondent had successfully remained sober since his involvement with LAP;
>
> j) Disciplinary Counsel [was] not aware that Respondent had engaged in any other misconduct since the filing of Ms. Mgana's ethical complaint in 2012; and
>
> k) Respondent . . . agreed to make restitution in the amount of $5,000 to Ms. Mgana, within one year of the approval of [that] petition by the Court.

Mgana Report ¶ 14.

In addition, "[t]here were legal problems with the client's claims, which were not discussed at the time of engagement that seriously impacted the merits of the claims and accordingly mitigated the potential harm done by the lack of competence and diligence, without excusing such misconduct." *Mgana* Report at 12. Further, Ms. Mgana agreed with the proposed sanction. As the hearing committee explained in accepting the proposed discipline,

> [t]here are substantial persuasive mitigating factors, including no involvement of dishonesty; relocation, marital difficulties and an addiction issue for which Respondent sought the assistance of the D.C. Bar's LAP; the dated nature of the representation and client complaint;

> Respondent's agreement to make full restitution of the fees within one year and having already taken steps to make partial restitution; and the complainant has no objection to approval of the sanction and has acknowledged receipt of partial restitution.

Mgana Report at 11. The hearing committee found only one "relatively more limited aggravating factor, the May 13, 2011 prior admonishment, which has the specific impact of making Respondent ineligible for an admonishment in this case but does not in our opinion, based upon the relevant cases invoked, justify a sanction harsher than proposed." *Id.*

The D.C. Court of Appeals affirmed on January 7, 2021, at which time Respondent's one-year probationary period began. *Brammer*, 243 A.3d at 864.

C. The Present Proceeding – Respondent's Third Disciplinary Matter.

The events at issue in this proceeding took place between June and August 2021, during Respondent's one-year probationary period in the *Mgana* matter. *See* Amended Petition for Negotiated Discipline (Jul. 19, 2023) ("Amended Petition") ¶¶ 2-30. Respondent admits that he violated the terms of his probation in *Mgana* by committing additional ethical violations during the probationary period. Decl. ¶ 14.[1] Because Respondent violated the terms of his probation in *Mgana*, Respondent was not entitled to a stay of the 30-day suspension imposed in *Mgana* and was required to serve the full 30-day suspension.

Disciplinary Counsel and Respondent agree that 30 days of Respondent's proposed 60-day served suspension in this matter are "designed to capture the 30

[1] "Decl." refers to Respondent's declaration as modified by the errata; "Tr." refers to the transcript from the limited hearing on Sep. 6, 2023.

days Respondent should have served for failing to complete probation." Amended Petition at 15. Therefore, the proposed sanction for the "dishonest conduct at issue in this case" is only a 30-day served suspension. *Id.*; *see* Amended Petition at 17 (proposing sanction as "a served suspension incorporating the original 30 days [from the *Mgana* matter]" given Respondent's "failure to complete probation in his prior negotiated disposition" and "the added 30 days served" for this matter).

The instant proceeding includes admitted dishonesty by Respondent, and none of the mitigating factors cited by the *Mgana* hearing committee is present (other than acceptance of responsibility and cooperation with Disciplinary Counsel). Instead, numerous aggravating factors are present, including: (1) this is Respondent's third disciplinary matter; (2) the Rule violations took place during Respondent's one-year probationary period; (3) Respondent's misconduct involved dishonesty; (4) Respondent's clients were prejudiced by his misconduct; (5) Respondent's misconduct is escalating in seriousness; and (6) Respondent's misconduct is very recent. Notwithstanding the presence of numerous aggravating factors that were not present in *Mgana*, and almost no mitigating factors (apart from Respondent's acceptance of responsibility and cooperation with Disciplinary Counsel) the proposed sanction in this matter is effectively only a 30-day served suspension.

Respondent has admitted all of the allegations in the Amended Petition. The representation in this proceeding involved Patricia Easley Whearty and her brother Craig Easley ("the Easleys"), who retained Respondent on July 1, 2021, to deal with suspected financial fraud and mismanagement by the trustee of their mother's trust.

Amended Petition ¶ 2. "The trustee was their sister, who lived in Virginia with their mother." *Id.* "[T]he trust was formed in Maryland." Amended Petition ¶ 3. In addition, certain assets of the trust were located in Maryland. Amended Petition ¶ 2.

Respondent first met with the clients on June 8, 2021, only five months after the Court of Appeals approved a negotiated discipline and placed Respondent on probation for his misconduct in *Mgana*. Amended Petition ¶ 3. Before the Easleys retained Respondent, they interviewed him by telephone and held a Zoom conference with him. Amended Petition ¶¶ 3-4. They informed Respondent "that they sought an attorney who was familiar with the relevant law in both Maryland and Virginia." Amended Petition ¶ 3. Respondent was not licensed in either Maryland or Virginia, but he failed to disclose this to the Easleys. Amended Petition ¶ 5.

Nor did Respondent disclose to the Easleys that he was a solo practitioner. Amended Petition ¶ 7. Instead, Respondent led the Easleys to believe that "his law firm had the requisite expertise to handle their matter." Amended Petition ¶ 3. "Respondent informed Ms. Whearty and Mr. Easley that he had a team that included a Maryland attorney." Amended Petition ¶ 6. He "failed to disclose that the [Maryland] attorney was not an associate, partner, or otherwise employed at his firm," and "Ms. Whearty and Mr. Easley believed that Respondent's team were members of Respondent's own law firm." *Id.* "Respondent's law firm did not have a Maryland or Virginia attorney;" instead, "Respondent was the only lawyer at his firm." Amended Petition ¶ 7. "He did not disclose these facts" to the Easleys. *Id*.

The Easleys "would not have retained Respondent if they had known that he was the firm's only attorney without a license in either relevant jurisdiction." Amended Petition ¶ 8. Thus, the record and Respondent's admissions suggest that Respondent induced the Easleys to retain him by creating the false impression that he had a "team" at his firm that included a Maryland attorney and by not disclosing the fact that he was a solo practitioner who had no "team" and who was not admitted in either Maryland or Virginia.

"At some point early in the representation, Respondent informed Ms. Whearty and Mr. Easley that the attorney with the Maryland license was going to travel out of the country for an extended period." Amended Petition ¶ 13. "He mentioned that another person would be brought in to perform some of the same duties the Maryland attorney would have performed if he had not been traveling." *Id*.[2] "The new person identified was H. Franklin Green, whom Respondent knew or should have known was a convicted felon and former member of the D.C. Bar disbarred for financial misconduct." Amended Petition ¶ 15. "Respondent did not disclose Mr. Green's criminal and disciplinary history" to the Easleys. Amended Petition ¶ 16.

The Easleys believed "and reasonably concluded" that Mr. Green "was an attorney working in Respondent's law office." Amended Petition ¶ 20. "From the perspective of Ms. Whearty and Mr. Easley, Mr. Green's role in the representation

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[2] The original Specification of Charges filed in this matter alleged that Respondent represented to the Easleys that Mr. Green would "*fill in*" for the Maryland attorney "to *perform the same duties the Maryland attorney would have performed* if he had not been traveling." Specification of Charges, Nov. 3, 2022, Board Docket No. 22-BD-080, ¶ 12 (emphasis added).

was indistinguishable from that of the Maryland attorney and Respondent." Amended Petition ¶ 22.

The Easleys "would not have retained Respondent or his firm if they had known about Mr. Green's criminal and disciplinary history." Amended Petition ¶ 17. Thus, the record and Respondent's admissions reflect that Respondent induced the Easleys to continue with the representation and allow Mr. Green to work on their case by concealing the fact that Mr. Green was a convicted felon who had been disbarred for financial misconduct. Unbeknownst to the Easleys, they had a disbarred convicted felon who had committed financial misconduct working for them on a matter involving alleged financial misconduct by a trustee. *See In re Green*, 136 A.3d 699, 699 (D.C. 2016) (per curiam) (respondent disbarred for misappropriation and other misconduct).

Further, despite Respondent's representation that Mr. Green was brought in because the Maryland attorney would be traveling out of the country, "the Maryland attorney stayed as involved in the representation as Respondent." Amended Petition ¶ 21. As a result, the Easleys ended up paying for the work of three people on the matter based upon Respondent's misrepresentation that a new person had to be brought in to replace the Maryland attorney, whom Respondent claimed "was going to travel out of the country for an extended period." Amended Petition ¶ 13.

"Around the time they initially met with Respondent, Ms. Whearty and Mr. Easley asked Respondent about projected fees to handle their matter." Amended Petition ¶ 9. They paid Respondent $6,000 to begin the representation. Amended

Petition ¶ 11. "Respondent agreed to bill Ms. Whearty and Mr. Easley hourly and agreed to alert them to replenish the retainer as fees were earned." Amended Petition ¶ 10. "He explained the concept of an evergreen deposit and agreed that they could replenish it in $3000 increments as the fees were earned." *Id.* "Respondent estimated that legal fees could range from $6000 to $30,000 or more for the representation, depending on whether the trustee would provide the information they sought without need of prolonged litigation." Amended Petition ¶ 9.

"About seven weeks after retaining Respondent, Ms. Whearty and Mr. Easley received their first invoice for legal services. It was for more than the initial estimate of $30,000." Amended Petition ¶ 23. Indeed, the initial estimate was for a range of $6,000 to $30,000 or more for the *entire representation*, with the higher estimate in the event of "prolonged litigation." Amended Petition ¶ 9.

"Respondent concedes that he had not provided billing updates or regular invoices because he had not had time to compile them." Amended Petition ¶ 23. He did not alert the Easleys to replenish the retainer as fees were incurred, as he had agreed to do. The Easleys "expressed their disappointment at the lack of communication and failure to advise them when the initial retainer was exhausted." Amended Petition ¶ 25. They believed Respondent had overcharged them and "directed Respondent to cease further work except to move to dismiss the petition that had been filed." Amended Petition ¶ 26.

The Easleys "ultimately paid Respondent $26,000 in fees." Amended Petition ¶ 29. They "discovered Mr. Green's criminal and disciplinary background after Ms. Whearty filed a disciplinary complaint." Amended Petition ¶ 28.

The Amended Petition alleges (and Respondent concedes) that Respondent violated:

> A. Rule 1.4(a), because Respondent failed to keep his clients apprised of the status of the matter, specifically around fees;
>
> B. 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;
>
> C. Rule 1.5(e), because Respondent worked with an attorney who was not in the same firm without advising his clients in writing of the contemplated division of responsibility and of the effect of the association of lawyers outside the firm on the fee to be charged, obtaining his clients' informed consent, and ensuring that the total fee was reasonable; and
>
> D. Rule 8.4(c), because Respondent engaged in reckless conduct rising to dishonesty by misleading his clients to believe that more than one attorney worked for his law firm, that his firm had expertise in representing clients seeking the relief they sought and so could handle their matter efficiently, and that Mr. Green was an attorney who worked for the firm.

Amended Petition ¶ 31.

As discussed above, *see supra* pp. 8-9, the proposed sanction in this matter is only a 30-day served suspension (because 30 days of the proposed 60-day served suspension are for the *Mgana* matter). Respondent also has agreed to one year of unsupervised probation and a consultation with the D.C. Bar's Practice Management Advisory Service. Amended Petition at 11 ¶ 4.

In email dated June 2, 2023, to Disciplinary Counsel, Ms. Whearty commented on the proposed sanction in the original proposed negotiated discipline as follows:

> I am disappointed that Mr. Brammer will yet again receive another 30-day suspension with unsupervised probation on the condition that he not be 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. Is that not what he has done here, again? The first one could be an accident. The second could be construed as coincidence. Three times would seem to give evidence of a pattern of conduct. As a Human Resource professional, this would be more than grounds for termination. Why then is he still allowed to practice law in the District of Columbia where he flaunts his rights and privileges and takes for granted the trust and responsibility that this Counsel affords him?
>
> Mr. Brammer will not change his behavior. He will continue to abuse the trust of his clients.
>
> ****
>
> I would like to also add how Mr. Br[a]mmer's conduct has impacted us. We retained his counsel to assist us in determining if there was an ongoing case of financial fraud/mismanagement and elder abuse as related to my sister's management of my mother's financial affairs. We were forced to abandon this investigation, despite our well-founded suspicions, when presented with the outrageous bill by Mr. Brammer. We simply could not afford to continue. We fear this situation is still ongoing, and were it not for the financial predation of Mr. Brammer, we could potentially have put a stop to it. We're out thousands of dollars at this time and fear that the financial abuse of my mother continues and could render her completely out of money when she will need it most.

Statement of Complainant (Jun. 2, 2023) (Email of Tricia Whearty) (underlining in original), received pursuant to Board Rule 17.4(a) (the hearing committee may consider unsworn written comments from a complainant).[3]

STANDARD OF REVIEW

D.C. Bar Rule XI, Section 12.1(c) provides that a petition for negotiated discipline will be approved if: (1) The attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition and agreed to the sanction set forth therein; (2) The facts set forth in the petition or as shown at the hearing support the admission of misconduct and the agreed upon sanction; and (3) The sanction agreed upon is justified. Board Rule 17.5(a) provides that, in determining whether the agreed-upon sanction is justified, a hearing committee should take 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."

> When, as here, Disciplinary Counsel's subjective assessments of factors are at issue, . . . the hearing committee must not only have a robust *ex parte* discussion with Disciplinary Counsel to fully understand its case evaluation, but the hearing committee must also review Disciplinary Counsel's file to determine if its understanding of the case bears out based on its evidence. Then the hearing committee

[3] The Easleys did not provide additional comments in response to the Amended Petition.

> must determine whether Disciplinary Counsel's analysis is objectively reasonable, considering Disciplinary Counsel's expertise in prosecuting disciplinary cases and its responsibility "to allocate the investigative and prosecutorial resources of Disciplinary Counsel's office." Board Rule 2.12 (addressing Contact Member review).

Justo de Pomar, No. 20-ND-002, at 13. "This review must not be a 'rubber stamp,' but instead, a thorough, objective analysis of Disciplinary Counsel's evaluation. *Id.* at 13-14.

A negotiated sanction may fall outside the range of sanctions that might be imposed in a contested case. *In re Mensah*, 262 A.3d 1100, 1103-04 (D.C. 2021) (per curiam). Nevertheless, the D.C. Court of Appeals often looks to the range of sanctions imposed in similar contested cases as a frame of reference when considering whether a sanction in a negotiated discipline case is justified. *See Brammer*, 243 A.3d at 864 (finding that the agreed-upon sanction was "not unduly lenient or inconsistent with dispositions imposed for comparable professional misconduct"); *In re Brown*, 200 A.3d 229, 230 (D.C. 2019) (per curiam) (finding that the agreed-upon sanction was "not unduly lenient considering the existence of mitigating factors and the discipline imposed by this court for similar actions").

The Court has cautioned that sanctions in negotiated discipline cases should not become "completely unmoored" from the range of sanctions that might otherwise be imposed. *Mensah*, 262 A.3d at 1104. The D.C. Court of Appeals also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)). The

appropriate sanction is one that is necessary to protect the public and the courts, maintain the integrity of the profession and deter other attorneys from engaging in similar misconduct. *See In re White*, 11 A.3d 1226, 1248-49 (D.C. 2011) (per curiam) (citing *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc)).

DISCUSSION

The proposed sanction in this matter is unduly lenient for several reasons.

First, a review of the record and the information in the Dissent Confidential Appendix suggests that Disciplinary Counsel's analysis of Respondent's conduct is not objectively reasonable. The facts alleged in the Amended Petition and the original Specification of Charges filed in this matter, and the documents in the investigative file referenced in the Dissent Confidential Appendix, suggest that there is significant uncharged potential misconduct. There is a strong case that Respondent intentionally fraudulently induced the Easleys to retain him, made intentional misstatements to the Easleys during the course of the representation regarding Mr. Green, intentionally concealed important information from the Easleys regarding Mr. Green, and committed additional potential misconduct involving Mr. Green, as set forth in the Dissent Confidential Appendix.

Second, there are numerous aggravating factors present here that were not present in Respondent's two prior disciplinary actions: (i) the fact that Respondent's misconduct involved dishonesty; (ii) the fact that there were two prior disciplinary proceedings involving Respondent; (iii) the fact that Respondent committed the misconduct at issue here during his probationary period following the *Mgana* matter;

(iv) the escalating nature of Respondent's misconduct; (v) the fact that Respondent's misconduct occurred over a period of 16 years; (vi) the number of rules violated over that period (ten, including seven discrete rules); (vii) the number of people directly affected by the misconduct, culminating in a finding of dishonesty; and (viii) prejudice to the Complainants.

Third, the mitigating factors that were present in *Saucedo* and *Mgana* are not present here, apart from Respondent's acceptance of responsibility and cooperation with Disciplinary Counsel.

Fourth, in his two prior disciplinary cases Respondent made restitution in the amount of $2,210 (*Saucedo*) and $5,000 (*Mgana*). Respondent does not offer to make restitution in this matter, although there are good grounds for requiring restitution as a condition of Respondent's reinstatement.

A. This Matter Involves Significant Uncharged Potential Misconduct.

Where a petition's stipulated facts raise questions "as to whether" Respondent committed additional uncharged misconduct, the D.C. Court of Appeals has rejected proposed petitions for negotiated discipline. *In re Lumaj*, No. 23-BG-0680, at 1-2 (D.C. Oct. 6, 2023); *In re Fykes*, No. 23-BG-626, at 1, 4 (D.C. Sep. 18, 2023). Where "the limited information in the record" potentially "implicate[s] other Rules violations," *Lumaj*, No. 23-BG-0680, at 2, and the record does not reflect whether "Disciplinary Counsel or the Hearing Committee considered these issues, which are latent in the record," *id.*, a proposed petition for negotiated discipline may be rejected. *Id.*; *see also In re Fykes*, No. 23-BG-626, at 1, 4 (rejecting petition for

negotiated discipline where "the amended petition's stipulated facts give us pause as to whether Respondent committed four other serious Rules violations"; "the lack of a record that the Hearing Committee or Disciplinary Counsel considered these additional Rules violations, including how any evidence of them should factor into the appropriateness of the negotiated discipline, prevents us from concluding that the agreed upon sanction is justified") (internal quotation marks omitted); *In re Mance*, Board Docket Nos. 11-BD-039 & 11-ND-006, at 19 (HC Rpt. Oct. 26, 2011) ("In determining whether the sanction is justified, the Hearing Committee may give some consideration to what charges might have been brought, but only to ensure that Bar Counsel is not offering an unduly lenient sanction.") (quoting *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam)) (internal quotation marks omitted).

1. Uncharged Potential Intentional Fraudulent Inducement and Intentional Misrepresentations/Omissions.

The Amended Petition's stipulated facts and the attached Dissent Confidential Appendix raise significant questions as to whether Respondent committed additional uncharged misconduct, namely (i) intentional dishonesty by fraudulently inducing the Easleys to retain Respondent; (ii) intentional dishonesty by fraudulently representing to the Easleys that H. Franklin Green had to be brought in to replace the Maryland attorney, who purportedly would be unavailable because he was supposedly traveling overseas for an extended period; (iii) intentional dishonesty by fraudulently concealing Mr. Green's criminal history and disbarment for financial misconduct from the Easleys; (iv) intentional dishonesty by leading the Easleys to

believe that Mr. Green was an attorney; and (v) additional misconduct involving Mr. Green's work on the case. *See* Dissent Confidential Appendix.

"Evidence of intent will almost always be circumstantial and can be inferred by a respondent's behavior." *See In re Harris*, Board Docket No. 19-BD-004, at 29-30 (BPR May 10, 2021) (citing *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) ("Intent must ordinarily be established by circumstantial evidence, and in assessing intent, the court must consider the entire context . . . . [I]t is generally in the interests of justice that the trier of fact consider the entire mosaic." (internal citation and quotation marks omitted))).

Here, the "entire context," *Ukwu*, 926 A.2d at 1116, strongly suggests that Respondent may have engaged in intentional misconduct. The Amended Petition alleges facts that strongly suggest that Respondent fraudulently induced the Easleys to retain him by leading them "to believe that his law firm had the requisite expertise to handle their matter." Amended Petition ¶ 3. Respondent was a solo practitioner not admitted in either of the jurisdictions relevant to the Easleys' matter. But "Respondent informed Ms. Whearty and Mr. Easley that he had a team that included a Maryland attorney." Amended Petition ¶ 6. He "failed to disclose that the [Maryland] attorney was not an associate, partner, or otherwise employed at his firm," and "Ms. Whearty and Mr. Easley believed that Respondent's team were members of Respondent's own law firm." *Id.* "Respondent's law firm did not have a Maryland or Virginia attorney"; instead, "Respondent was the only lawyer at his firm." Amended Petition ¶ 7. "He did not disclose these facts" to the Easleys. *Id.*

The Easleys "would not have retained Respondent if they had known that he was the firm's only attorney without a license in either relevant jurisdiction." Amended Petition ¶ 8.

The Hearing Committee majority asserts that "[t]here is nothing wrong with a D.C. lawyer agreeing to represent Virginia clients in a Maryland proceeding." Report and Recommendation at 21. But that is not the point. The Easleys made clear that they "would not have retained Respondent if they had known that he was the firm's only attorney without a license in either relevant jurisdiction." Amended Petition ¶ 8.[4]

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[4] The Hearing Committee majority suggest that the Easleys should have known that Respondent was not admitted in Maryland because

> [a]t the onset of the representation, Mr. Brammer created a DropBox folder for Ms. Whearty and Mr. Easley to use to view all the documents in the case. Mr. Brammer uploaded all of the court papers to this folder, including the August 6, 2021 motion for special admission for Mr. Brammer to practice in Maryland. Although this document was available to Ms. Whearty and Mr. Easley, Mr. Brammer never made any efforts to confirm that they had read it.

Hearing Committee Report and Recommendation ¶ 34. The majority's reasoning is fundamentally flawed. The Easleys retained Respondent on June 30, or July 1, 2021, *more than a month before the motion for special admission was uploaded to the DropBox folder*. *See* Amended Petition ¶¶ 12, 30. A disclosure of information on August 6, 2021, did nothing to change the fact that Respondent induced the Easleys to retain him in *June* 2021 by misleading them about his qualifications. As the Amended Petition alleges, and Respondent admits, the Easleys "would not have retained Respondent if they had known that he was the firm's only attorney without a license in either relevant jurisdiction." Amended Petition ¶ 8. By the time the motion for special admission was added to the DropBox folder, Respondent had already been representing the Easleys for approximately six weeks. That disclosure was too little, too late.

Thus, the record suggests that Respondent fraudulently induced the Easleys to retain him by creating a false impression that he had a "team" at his firm that included a Maryland attorney and by concealing the fact that he was a solo practitioner who had no "team" and who was not admitted in either Maryland or Virginia. The information in the attached Dissent Confidential Appendix strongly supports the conclusion that this misconduct was intentional. *See Harris*, Board Docket No. 19-BD-004, at 30-31 (finding that attorney engaged in intentional fraud by fraudulently inducing the Complainant to retain him), *recommendation adopted where no exceptions were filed*, *In re Harris*, 257 A.3d 1037, 1039 (D.C. 2021). The Dissent Confidential Appendix also contains additional information concerning other misrepresentations Respondent may have made to the Easleys to induce them to retain him.

2. Uncharged Potential Basis for Restitution on the Ground That Respondent's Fee Was Void *Ab Initio*.

Under D.C. Bar R. XI, § 3(b), "the Court or the Board may require an attorney to make restitution . . . to persons financially injured by the attorney's conduct . . . as a condition of probation or of reinstatement." Restitution is designed to restore to the client any unearned benefit that the client has conferred on the attorney. *See In re Brown*, 310 A.3d 1036, 1051 (D.C. 2024) (ordering restitution as a condition of reinstatement, noting that "attorneys may not unjustly enrich themselves off their

client's fees"); *In re Hager*, 812 A.2d 904, 923 (D.C. 2002) (restitution prevents unjust enrichment).

When an attorney fraudulently induces a client to retain him, the attorney's fee is void *ab initio* and may be ordered refunded in full as restitution. In those circumstances, no evidence of overbilling is required and no expert testimony is necessary. The fee is void from the outset as fraudulently induced and should be refunded in full.

As the Board explained in *Harris*:

> the $2,500 advanced fee the [clients] paid was an unreasonable fee *ab initio*. Respondent obtained the funds through dishonest and fraudulent means with the intent of using the funds for his own purposes, violating Rules 1.15(a) and 8.4(c). . . . Under these circumstances, we recommend that the Court require Respondent to pay restitution to Mrs. Bailey in the amount of $2,500 with interest at the statutory rate of 6% per annum, accruing from January 3, 2017, . . . as a condition of reinstatement."

Harris, Board Docket No. 19-BD-004, at 37.

Here, as in *Harris*, there is a potential claim that Respondent's fee is void *ab initio* and should be refunded in full as restitution because the facts alleged in the Amended Petition and information in the Dissent Confidential Appendix suggest that Respondent may have fraudulently induced the Easleys to retain him.

Disciplinary Counsel did not consider whether Respondent's fee is void *ab initio* and should be refunded to the Easleys as restitution because Respondent fraudulently induced the Easleys to retain him. Instead, Disciplinary Counsel limited her consideration to whether Respondent's fee was excessive. When the

issue of restitution was raised at the limited hearing, Disciplinary Counsel stated that she "only seek[s] restitution when [she] can establish that the attorney didn't do the work he was engaged to do." Tr. 46; *see also* Tr. 44 (Disciplinary Counsel asserts restitution not appropriate because "[t]here is no dispute that they did the work that they were hired to do"); Tr. 43-46 (discussion of issue of restitution).

3. Uncharged Potential Additional Intentional Misrepresentations/Omissions to the Easleys.

"At some point early in the representation, Respondent informed Ms. Whearty and Mr. Easley that the attorney with the Maryland license was going to travel out of the country for an extended period." Amended Petition ¶ 13. "He mentioned that another person would be brought in to perform some of the same duties the Maryland attorney would have performed if he had not been traveling." *Id.*[5] "The new person Respondent identified was H. Franklin Green, whom Respondent knew or should have known was a convicted felon and former member of the D.C. Bar disbarred for financial misconduct." Amended Petition ¶ 15.

Despite Respondent's representation to the Easleys that Mr. Green was brought in because the Maryland attorney would be traveling out of the country, "the Maryland attorney stayed as involved in the representation as Respondent."

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[5] The original Specification of Charges filed in this matter alleged that Respondent represented to the Easleys that Mr. Green would "*fill in*" for the Maryland attorney "to *perform the same duties the Maryland attorney would have performed* if he had not been traveling." Specification of Charges, Nov. 3, 2022, Board Docket No. 22-BD-080, ¶ 12 (emphasis added).

Amended Petition ¶ 21. As a result, the Easleys ended up paying for the work of three people based upon Respondent's misrepresentation that a new person had to be brought in to replace the Maryland attorney, whom Respondent claimed "was going to travel out of the country for an extended period." Amended Petition ¶ 13. The Dissent Confidential Appendix contains additional information on this subject.

This potential misconduct is in addition to Respondent's concealment of Mr. Green's criminal history and disbarment. Respondent retained Mr. Green, a disbarred convicted felon who had committed financial misconduct, to work on the Easley matter—which involved potential financial misconduct by a fiduciary—without disclosing that important fact to the Easleys.[6] The record strongly suggests that this concealment was intentional, not merely reckless. The Easleys "would not have retained Respondent or his firm if they had known about Mr. Green's criminal and disciplinary history." Amended Petition ¶ 17.[7] The circumstances strongly

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[6] The Hearing Committee majority asserts that "Mr. Brammer's error was not letting his clients know the material facts about Mr. Green." Report and Recommendation at 21 n.7. But the record strongly suggests this was not a mere "error." It appears that Respondent concealed the fact that Mr. Green was a convicted felon disbarred for financial misconduct from the Easleys because the Easleys "would not have retained Respondent or his firm if they had known about Mr. Green's criminal and disciplinary history." Amended Petition ¶ 17. Further, as discussed above, Respondent misrepresented to the Easleys that he needed Mr. Green to work on the matter because the Maryland attorney would purportedly be traveling overseas. That representation was untrue, and further suggests a pattern of intentional dishonesty by Respondent. *See also* Dissent Confidential Appendix at 8-9.

[7] The Hearing Committee majority asserts that "several of these facts—Mr. Brammer's licensure status and Mr. Green's disciplinary history and bar status—were knowable had the clients done any due diligence." Report and

suggest that Respondent understood that the Easleys would not want a convicted felon who was disbarred for financial misconduct to work on a sensitive matter involving potential financial misconduct by a fiduciary, and that Respondent concealed this fact intentionally. *See also* Dissent Confidential Appendix at 8-12.

4. Additional Uncharged Potential Misconduct Addressed in Dissent Confidential Appendix.

Finally, the Dissent Confidential Appendix contains information regarding additional uncharged potential misconduct by Respondent involving Mr. Green.

Because this matter involves significant uncharged potential misconduct, the proposed negotiated discipline should be rejected.

B. This Matter Involves Serious Misconduct, Multiple Significant Aggravating Factors, and Only Two Mitigating Factors.

The proposed negotiated discipline also should be rejected because of the seriousness of Respondent's misconduct, the presence of numerous aggravating factors, and the presence of only two mitigating factors.

Recommendation at 20 n.6. But the Easleys should not have been required to conduct an investigation into their attorney's licensure status or whether a person retained by the attorney to work on their case is a convicted felon disbarred for financial misconduct. Respondent was and is a fiduciary with ethical duties to tell his clients the truth and to not conceal material information about himself, his firm, and the individuals working on the case. "Lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law." *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987). The majority's "blame the victim" approach is consistent with the unduly lenient sanction it seeks to approve.

1. Respondent's Misconduct Involves Dishonesty.

The 30-day served suspension proposed here[8] is unduly lenient because Respondent's conduct involves dishonesty. Respondent's two prior disciplinary proceedings did not involve a dishonesty charge.

As the hearing committee explained in *Mgana*, "[m]ore severe sanctions of greater than a 30-day suspension are imposed where the neglect is accompanied with violations involving dishonesty, fraud, misrepresentation, or deceit." *Mgana* Report at 13; *see In re Outlaw*, 917 A.2d 684 (D.C. 2007) (per curiam) (60-day suspension); *In re Schoeneman*, 891 A.2d 279 (D.C. 2006) (per curiam) (four-month suspension for misconduct including dishonesty and serious interference with the administration of justice); *In re Chisholm*, 679 A.2d 495 (D.C. 1996) (six-month suspension for misconduct including persistent intentional dishonesty and significant prejudice); *In re Steele*, 868 A.2d 146, 153 (D.C. 2005) (three-year suspension with fitness requirement for pattern of intentional neglect and dishonesty spanning several years and five clients). For this reason alone, the proposed 30-day suspension for this matter with unsupervised probation is unduly lenient.

2. This Is Respondent's Third Disciplinary Matter.

The 30-day served suspension proposed here also is unduly lenient because this is Respondent's third disciplinary matter.

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[8] As discussed above, *see supra* pp. 8-9, 30 days of the proposed 60-day served suspension in this matter are for Respondent's ethical violations in *Mgana*. The 30-day suspension in *Mgana* initially was stayed but now must be served because Respondent violated the terms of his probation by committing additional ethical violations during the probationary period.

"Where the misconduct at issue arises in multiple matters or there is prior similar misconduct, . . . the Court has typically imposed a significant suspension of a year or less." *Mance*, Board Docket Nos. 22-BD 039 & 11-ND-006, at 20-21 (H.C. Rpt. Oct. 26, 2011) (citing cases) (recommending six-month suspension in matter that did not involve dishonesty "in light of Respondent's history of neglecting clients, the two years over which the misconduct at issue took place, the multiple clients involved and the injury to both [his clients] resulting from Respondent's neglect."), *recommendation approved*, 35 A.3d 1125, 1127 n.6 (D.C. 2012) (negotiated sanction falls within the range of discipline imposed for similar misconduct). Here, there is prior similar misconduct and Respondent has admitted to multiple Rule violations in three separate proceedings involving multiple clients. This is the third proceeding in which Respondent has been found to have violated Rule 1.4(a).

As Ms. Whearty stated in her email to Disciplinary Counsel, "The first one could be an accident. The second could be construed as coincidence. Three times would seem to give evidence of a pattern of conduct. As a Human Resource professional, this would be more than grounds for termination." Statement of Complainant (Jun. 2, 2023) (Email of Tricia Whearty).

3. Respondent's Misconduct Took Place When He Was on Probation and Is Escalating in Seriousness.

The proposed 30-day served suspension for this matter also is unduly lenient because the misconduct at issue in this proceeding took place during the one-year probationary period in *Mgana* and is increasing in severity. In *Mgana*, Respondent

received leniency because he admitted his misconduct and expressed remorse. He agreed to a one-year probationary period "during which Respondent will not engage in any ethical misconduct." *Mgana* Report ¶ 12. Respondent could not even get through the one-year probationary period before engaging in additional, more serious misconduct. As the Complainant Ms. Whearty aptly noted:

> Respondent's misconduct during the probationary period of his last disciplinary action offers no comfort to the public or the legal profession that Respondent has learned the error of his ways and will cease engaging in ethical violations. To the contrary, Respondent's misconduct is escalating. As Ms. Whearty stated in her email to Disciplinary Counsel, "I am disappointed that Mr. Brammer will yet again receive another 30-day suspension with unsupervised probation on the condition that he not be 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. Is that not what he has done here, again?

Statement of Complainant (underlining in original).

4. The Clients Were Prejudiced.

The 30-day served suspension proposed for this proceeding also is unduly lenient because the clients were prejudiced by Respondent's misconduct. *See Mance,* Board Docket Nos. 22-BD 039 & 11-ND-006, HC Rpt. at 21 (recommending six-month suspension where clients were injured as a result of respondent's conduct). As discussed above, *see supra* pp. 20-23, the allegations in the Amended Petition and the information in the Dissent Confidential Appendix suggest that Respondent may have fraudulently induced the Easleys to retain his firm and to agree to Mr. Green to work on the matter, resulting in a bill to the Easleys in excess of

$30,000 for about six weeks of work.[9] The Easleys were forced to abandon their potential claim against a fiduciary as a result of Respondent's actions.

As Ms. Whearty explained,

> We retained [Respondent's] counsel to assist us in determining if there was an ongoing case of financial fraud/mismanagement and elder abuse as related to my sister's management of my mother's financial affairs. We were forced to abandon this investigation, despite our well-founded suspicions, when presented with the outrageous bill by Mr. Brammer. We simply could not afford to continue. We fear this situation is still ongoing, and were it not for the financial predation of Mr. Brammer, we could potentially have put a stop to it. We're out thousands of dollars at this time and fear that the financial abuse of my mother continues and could render her completely out of money when she will need it most.

Statement of Complainant.

5. Respondent Has Violated Multiple Ethical Rules.

The 30-day served suspension proposed here also is unduly lenient because Respondent has committed ten ethical violations spanning a period of 16 years involving multiple clients and seven discrete rules (Rules 1.1(a) and (b) and Rule 1.4(b) in *Saucedo*; Rule 1.1(a), Rule 1.3(c), and Rule 1.4(a) in *Mgana*; and Rules 1.4(a), 1.4(b), 1.5(e), and 8.4(c) in this matter).

6. There Are Only Two Mitigating Factors.

In *Saucedo* the mitigating factors included the fact that it was Respondent's first disciplinary case, and a host of substantial mitigating factors were cited in

[9] The Easleys ultimately paid Respondent $26,000 in fees. Amended Petition ¶ 29.

Mgana. *See supra* pp. 4-7, above. The only mitigating factors set forth in this action are Respondent's acceptance of responsibility for the misconduct charged and his cooperation with Disciplinary Counsel.

Respondent has now admitted wrongdoing in three separate actions. But despite admitting wrongdoing in both *Saucedo* and *Mgana*, Respondent went on to commit additional, more serious violations, and to do so during a period when he was on probation. Respondent's admission and Respondent's agreement to the proposed amended petition for negotiated discipline may save a hearing committee, the Board and the Court the effort and expense of a contested hearing, but it does little to serve as a deterrent for future misconduct. It appears that Respondent has learned to "game" the system by committing misconduct, admitting that he committed misconduct, and then receiving little to no sanction in return.

7. The Combination of Aggravating Factors Present Here Makes the Proposed Sanction Unduly Lenient.

Disciplinary Counsel has not identified any case in which a respondent received only a 30-day served suspension with unsupervised probation where the respondent's conduct involved dishonesty, this was the respondent's third disciplinary proceeding, there were several aggravating factors including misconduct during a probationary period, and the only mitigating factors were the respondent's acceptance of responsibility and cooperation with Disciplinary Counsel.

In *In re Avery*, 189 A.3d 715 (D.C. 2018), cited by Disciplinary Counsel (Amended Petition at 14), the sanction was, in effect, suspension for 30 days (a 60-day suspension with 30 days stayed). However, there was a lack of aggravating factors in *Avery* that are present here, and there were mitigating factors in *Avery* that are not present in the current matter, including the fact that: (i) it was the second disciplinary matter for Avery, not the third, as is the case here; (ii) there was no violation during a period of probation; (iii) Avery was deemed unlikely to repeat the misconduct; (iv) there was no prejudice to the client; and (v) there was no charge of dishonesty. *Avery*, 189 A.3d at 719-721.

In re Bailey, 283 A.3d 1199 (D.C. 2022), cited by Disciplinary Counsel (Amended Petition at 15), was closer in two important aspects to this case: there was a charge of dishonesty, and it was the fourth disciplinary matter involving the respondent (preceded by two informal admonitions and a suspension). *Bailey*, 283 A.3d at 1209, 1211. For Bailey, the sanction was a *one-year* suspension, along with a fitness requirement. *Id*. at 1212. *Bailey* supports a conclusion here that the proposed sanction against Respondent is unduly lenient.

Other cases also support the conclusion that the proposed sanction here is unduly lenient. *See Mance* at 21, *supra* (six month suspension in matter that did not involve dishonesty "in light of Respondent's history of neglecting clients, the two years over which the misconduct at issue took place, the multiple clients involved and the injury to both Mr. Garrett and Mr. Riley resulting from Respondent's neglect."); *In re Schoeneman*, 891 A.2d 279 (D.C. 2006) (per curiam) (four month

suspension for, *inter alia*, dishonesty and serious interference with the administration of justice); *In re Chisholm*, 679 A.2d 495 (D.C. 1996) (six month suspension for, *inter alia*, persistent intentional dishonesty and significant prejudice).

C. Restitution May Be Appropriate.

In his two prior disciplinary cases Respondent made restitution in the amount of $2,210 (*Saucedo*) and $5,000 (*Mgana*). Respondent does not offer to make restitution in this matter, which would amount to $26,000. As discussed above, *see* s*upra* pp. 20-23, restitution may be warranted in this matter as a condition of reinstatement based on a potential charge that Respondent fraudulently induced the Easleys to retain him, rendering his fee void *ab initio*. The Dissent Confidential Appendix contains information supporting a second potential basis for restitution in this matter.

D. A Fitness Requirement May Be Appropriate.

Finally, a fitness requirement for reinstatement for Respondent may be appropriate in this matter. A fitness requirement "is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run." *In re Cater*, 887 A.2d 1, 22 (D.C. 2005).

> In determining whether there is a serious doubt as to an attorney's fitness, the Court of Appeals has looked to the following five factors: (1) the nature and circumstances of the misconduct for which the attorney was disciplined; (2) whether the attorney recognizes the seriousness of the misconduct; (3) the attorney's conduct since discipline was imposed, including the steps taken to remedy past

> wrongs and prevent future ones; (4) the attorney's present character; and (5) the attorney's present qualifications and competence to practice law.

In re Roundtree, 503 A.2d 1215, 1217 (D.C.1985).

Here, several of the relevant factors support a fitness requirement, including the nature and circumstances of the misconduct, the attorney's conduct since discipline was imposed, including committing additional misconduct while on probation for earlier misconduct, the attorney's character, and two matters in which Respondent was found to have violated the competence Rules.

The Hearing Committee majority believes that Respondent should have to serve only a thirty-day suspension for the current matter, plus thirty days for violation of probation in the previous matter, *Mgana*, and that he should be reinstated without proof that he has changed his ways. I believe that, based on the facts of the case, the charges made and accepted by Respondent, Respondent's character, and matters raised in the Dissent Confidential Appendix that warrant further inquiry, the proposed sanction is unduly lenient. Instead, Respondent should serve a longer period of suspension and should not be readmitted until he can demonstrate that he has both the character and competence to practice in accordance with the Rules. *See Mance*, Board Docket Nos. 22-BD 039 & 11-ND-006, HC Rpt. at 22 ("A fitness requirement is appropriate in this case because Respondent's history of similar misconduct, the number of matters involved, and the length of time over which the misconduct occurred raise questions about Respondent's competence to practice law.").

For the foregoing reasons, I respectfully dissent.

Adam Kaufman, Public Member