

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

In the Matter of

Paul T. Mensah, Esquire

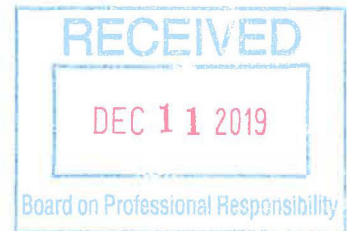
Respondent,

**A Member of the Bar of the
District of Columbia Court of Appeals.**

Bar Number: 480889

Date of Admission: February 8, 2003

**Board Docket No. 19-BD-049
Disciplinary Docket No. 2017-D286**



PETITION FOR NEGOTIATED DISPOSITION

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

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

The Office of Disciplinary Counsel received an overdraft notification from Bank of America regarding an overdraft of Respondent’s IOLTA. When asked to explain the overdraft, Respondent admitted that he lacked complete financial records as required by Rule 1.15(a) and hired a bookkeeper to create an accounting of his IOLTA for the relevant time period. After the bookkeeper had completed her accounting, Respondent

notified the Office of Disciplinary Counsel and acknowledged that client funds had been misappropriated in two matters (Autumn Kennedy and Compest Solutions) unrelated to the overdraft, which involved earned fees.

The Office of Disciplinary Counsel subpoenaed additional records from Bank of America and Respondent's client files, confirmed the misappropriations acknowledged by Respondent, and discovered a violation of Rule 1.5(e)'s prohibition of fee-splitting without the consent of the client.

II. STIPULATION OF FACTS AND RULE VIOLATIONS

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on February 8, 2003, and assigned Bar number 480889.

2. At all times listed herein, Respondent was sole signatory of a Bank of America IOLTA account titled "DC IOLTA Trust Accounts" (xxxx-xxxx-4908) and an operating account titled "Mensah Law Office PLLC" (xxxx-xxxx-4911).

COUNT I – AUTUMN KENNEDY

3. On September 29, 2016, Autumn Kennedy sustained injuries in an automobile accident with Charles Hill.

4. After the accident, John Stringfield, a lawyer and friend of Ms. Kennedy's, referred her to Respondent. Respondent agreed to pay Mr. Stringfield 40% of any fee collected in the matter in exchange for the referral.

5. On January 17, 2017, Ms. Kennedy hired Respondent to pursue a personal injury claim against Mr. Hill. The written retainer agreement provided that Respondent was entitled to 25% of any recovery and Ms. Kennedy was required to reimburse any expenses advanced by Respondent. Respondent did not inform Ms. Kennedy in writing

of his arrangement with Mr. Stringfield.

6. On May 9, 2017, Ms. Kennedy entered into a settlement of her claims against Mr. Hill for \$15,000.

7. On May 12, 2017, Respondent deposited the \$15,000 settlement check into his IOLTA account. After the deposit, the ending balance of the IOLTA account was \$15,030.29.

8. According to a disbursement sheet in Respondent's file, of the \$15,000, Respondent was entitled to \$3,863.59 in fees and expenses, Ms. Kennedy was entitled to \$6,904.02, and the remaining \$4,232.39 was to be paid to third parties.

9. On May 15, 2017, before depositing any additional funds into the account, Respondent withdrew \$3,860 from his IOLTA by two checks and a counter withdrawal. Of the remaining \$11,170.29 in the account, \$11,136.41 belonged to Ms. Kennedy or third parties who had an interest in the settlement funds.

10. On May 16, 2017, Respondent transferred \$520 of entrusted funds from his IOLTA account to his operating account. After the transfer, the ending balance of Respondent's IOLTA account was \$10,650.29. The day after the transfer, Respondent withdrew \$500 in cash from his operating account, leaving an operating account balance of \$26.89.

11. On May 19, 2017, Respondent paid \$1,500, or 40% of his \$3,750 fee, to Mr. Stringfield by check from his operating account. The check cleared on May 24, 2017.

12. Also on May 19, 2017, Respondent paid \$4,270.48 to Ms. Kennedy by check from his IOLTA account. The check cleared on May 24, 2017.

13. On May 31, 2017, Respondent paid \$735.93 to Anne Arundel Health Systems by check from his IOLTA account as payment of medical bills incurred by Ms. Kennedy. The check cleared on June 7, 2017.

14. Also on May 31, 2017, Respondent paid \$30.00 to Community Radiology Associates, Inc. by check from his IOLTA account as payment of medical bills incurred by Ms. Kennedy. The check cleared on June 9, 2017.

15. After these transactions, Respondent should have maintained \$6,100 in trust for Ms. Kennedy and third parties.

16. On June 16, 2017, Respondent's operating account had an ending negative balance of \$-125.22. On June 19, 2017, Respondent transferred \$2,620 of entrusted funds from his IOLTA account to his operating account, leaving an IOLTA balance of \$2,707.84.

17. On June 27, 2017, Respondent deposited into his IOLTA account a check for \$435.93 he received from Anne Arundel Health System as a reimbursement for overpayment from the May 31, 2017 disbursement.

18. After the reimbursement, Respondent should have maintained \$6,535.93 in trust for Ms. Kennedy and third parties who had an interest in the settlement funds.

19. On July 5, 2017, the ending balance of Respondent's IOLTA account was \$58.77 and the ending balance of Respondent's operating account was \$131.54.

20. On October 12, 2017, Respondent paid Ms. Kennedy \$2,633.54 by check from his operating account. The check cleared on October 19, 2017.

21. On November 7, 2017, Respondent paid Physiotherapy Corporation \$2,408.00 by debit card from his operating account as payment of medical bills incurred

by Ms. Kennedy.

22. On October 30, 2017, Respondent paid Ms. Kennedy \$435.93 by check from his operating account. At the same time, Respondent provided Ms. Kennedy with a disbursement sheet reflecting how the settlement proceeds had been disbursed. The check cleared on November 15, 2017.

23. On November 1, 2017, Respondent paid Blue Cross Blue Shield \$963.46 by check from his operating account as reimbursement of medical expenses paid on Ms. Kennedy's behalf. The check cleared on November 13, 2017.

24. At some point in 2017, Respondent paid \$95.00 to Bowie Internal Medicine as payment of medical bills incurred by Ms. Kennedy.

25. Ultimately, Respondent appropriately disbursed all of the Kennedy settlement funds to Ms. Kennedy, third parties, and himself.

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

- a. Rule 1.5(e) in that Respondent divided his fee with Mr. Stringfield, a lawyer who was not in his law firm, without advising Ms. Kennedy, in writing, of Mr. Stringfield's identity, the contemplated division responsibility, or the effect of the association with Mr. Stringfield on the fee to be charged;
- b. Rule 1.15(a) in that Respondent engaged in reckless misappropriation of entrusted funds.

COUNT II – COMPEST SOLUTIONS

27. On May 17, 2017, Compest Solutions, Inc. hired Respondent to collect a

debt from Tequarian Corp. for breach of contract. The written retainer agreement provided that Respondent was entitled to 35% of any recovery in the event litigation was necessary.

28. On July 6, 2017, Respondent filed a complaint in District of Columbia Superior Court on behalf of Compest against Tequarian for breach of contract.

29. On August 10, 2017, the parties filed a Stipulation of Settlement, settling the case for \$15,200, to be paid in three installments.

30. By September 29, 2017, Tequarian had paid all \$15,200 in settlement funds to Respondent's IOLTA account, of which Respondent had disbursed \$6,565 to Compest. On that day, the ending balance of Respondent's IOLTA account was \$5,723.71, of which Compest was entitled to \$3,315.

31. On October 3, 2017, Respondent transferred \$3,200 of entrusted funds from his IOLTA account to his operating account, leaving an ending balance of \$123.71 in the IOLTA account. The ending balance of Respondent's operating account that day was \$2,466.94.

32. On October 11, 2017, the ending balance of Respondent's operating account was \$1,501.88.

33. On October 17, 2017, after depositing other funds into his operating account, Respondent wired \$3,315 from his operating account to Compest.

34. Ultimately, Compest received all of the settlement funds to which it was entitled.

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

- a. Rule 1.15(a) in that Respondent engaged in reckless misappropriation of entrusted funds.

COUNT III – ACCOUNT RECORDS

36. On October 15, 2018, Disciplinary Counsel issued a subpoena to Respondent for financial and accounting records related to his IOLTA account for the period of July 6, 2016 to October 15, 2018, including a check register or journal for the account, subsidiary client ledgers for each client, and records showing the reconciliation of the account with Respondent's records.

37. On November 15, 2018, Respondent admitted that he did not maintain the records called for in the subpoena.

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

- a. Rule 1.15(a) in that Respondent failed to maintain complete records of entrusted account funds.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

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

IV. AGREED UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed in this matter is a three-year suspension, with a requirement to prove fitness as a condition of reinstatement.

Absent extraordinary circumstances, the typical sanction for reckless misappropriation is disbarment. *In re Addams*, 579 A.2d 190 (D.C. 1990). Under Board Rule 17.5(a)(iii), however, the agreed-upon sanction in a negotiated disposition need not strictly adhere to dispositions for comparable conduct, as is called for in contested hearings by D.C. Bar Rule XI, § 9(h). Instead, a negotiated sanction must be “justified, and not unduly lenient, taking into consideration the record as a whole, including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel’s evidence, any circumstances in aggravation and mitigation (including respondent’s cooperation with Disciplinary Counsel and acceptance of responsibility), and relevant precedent.” In this case, a three-year suspension with a fitness requirement is justified and not unduly lenient.

Mitigating Circumstances

In *Addams*, the Court cautioned that “as a matter of course, the mitigating factors of the usual sort will suffice to overcome the presumption of disbarment only if they are especially strong and, where there are aggravating factors, they substantially outweigh any aggravating factors as well.” 579 A.2d at 191 (citing *In re Reback*, 513 A.2d 226, 233 (D.C.1986)). The Court has identified “[m]itigating factors of the usual sort” to include: “(1) an admission of wrongdoing, (2) full cooperation with the disciplinary authorities, (3) prompt return of the disputed funds, and, most importantly, (4) an unblemished record of professional conduct.” *In re Edwards*, 990 A.2d 501, 527 (D.C. 2010), *as amended* (Mar. 18, 2010) (citing *In re Pierson*, 690 A.2d 941, 950 (D.C.1997)).

Each of these mitigating factors is present in this case. Respondent cooperated with Disciplinary Counsel, including hiring a bookkeeper at his own expense to provide an accounting of his IOLTA. Upon discovering the misappropriations, he acknowledged his misconduct, brought them to Disciplinary Counsel's attention, and deposited personal funds into his IOLTA account to return the misappropriated funds. Respondent also notes that he was working as a contract attorney for the past 6 years while maintaining a part time law practice, frequently working late nights on weekdays and weekends to support his family. He takes complete responsibility for lack of judgement in trying to maintain his own bookkeeping, under his circumstances, and further expresses his total remorse for his actions. In both matters charged in this case, the clients and third parties ultimately received all of the settlement funds to which they were entitled. Respondent does not have prior discipline and there are no additional aggravating factors.

These mitigating circumstances would be unlikely to overcome the presumption of disbarment in a contested matter. *See In re Bach*, 966 A.2d 350, 366 (D.C. 2009) (listing cases where mitigating factors of the usual sort were insufficient to overcome presumption of disbarment). Nonetheless, they should be given significant weight in a negotiated disposition where the sanction need not align with comparable cases under Board Rule 17.5(a)(iii).

Other Considerations

A three-year suspension with fitness is also justified and not unduly lenient because it provides the parties a certain outcome without the need for a prolonged and expensive adjudicative process. Disciplinary Counsel and Respondent acknowledge that a contested hearing could result in anything from a six-month suspension, if the

misappropriations were found to be negligent, to disbarment. Both parties are willing to forego the possibility of a more favorable outcome in order to expedite resolution of the matter. In contested matters, it is not unusual for the Court to issue its final order in a disciplinary matter more than five years after the filing of charges. By proceeding with a negotiated disposition, the parties can expect Respondent's suspension to go into effect within a year, without committing resources to the hearing and multiple levels of review. The imposition of a fitness requirement ensures that Respondent will not be in the position of handling entrusted funds until he has demonstrated by clear and convincing evidence that he has reformed his practices and earned the trust of the disciplinary system.

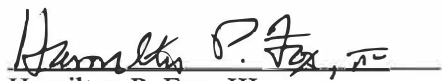
RESPONDENT'S AFFIDAVIT

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


CONCLUSION

Wherefore, Respondent and Disciplinary Counsel request that the Executive Attorney assign a Hearing Committee to review the petition for negotiated discipline pursuant to D.C. Bar R. XI § 12.1(c).

Dated:


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Disciplinary Counsel


Paul T. Mensah
Respondent


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