

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



In the Matter of	:	
	:	
	:	
Cheryl Moat Taylor, Esquire	:	Disciplinary Docket No. 2017-D303
Respondent	:	Disciplinary Docket No. 2017-D304
	:	
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
Bar Number: 448435	:	
Date of Admission: November 3, 1995	:	

AMENDED PETITION FOR NEGOTIATED DISPOSITION

Pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondent Cheryl Moat Taylor, 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

In the first matter, Disciplinary Counsel received a complaint from Teresa Lewis, whom Respondent had represented before the Equal Employment Opportunity Commission. Ms. Lewis alleged that Respondent had abruptly stopped

representing her, failed to provide her file upon request, and sent her an exorbitant bill failing to provide monthly invoices.

In the second matter, Disciplinary Counsel received a complaint from Mark Oliver, whom Respondent also represented before the Equal Employment Opportunity Commission. Mr. Oliver alleged that Respondent had abruptly stopped representing him and failed to provide his file upon request.

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 November 3, 1995, and assigned Bar number 448435.

COUNT I (2017-D303)

2. In 2015, Teresa Lewis filed a complaint with the Equal Employment Opportunity Commission for discrimination against her employer, the Department of Health and Human Services.

3. On February 8, 2016, Ms. Lewis hired Respondent to represent her in the EEOC proceedings. In a written retainer agreement, they agreed that Respondent would be paid at an hourly rate of \$150 and receive 25% of any award received by Ms. Lewis. The agreement provided that Respondent would provide biweekly invoices by email and that client funds would be held in a trust account until earned.

Ms. Lewis paid Respondent, in cash, a \$200 consultation fee and a \$2000 initial retainer and agreed to pay an additional \$1000 a month.

4. Contrary to the retainer agreement, Respondent did not place the \$2,000 retainer into a trust account. Disciplinary Counsel cannot prove that Respondent misappropriated or commingled the funds the initial \$2,000 in fees advanced by the client and the remaining payments were for services already provided.

5. From February 2016 to August 2017, Respondent represented Ms. Lewis before the EEOC. The services provided by Respondent included filing a second EEOC complaint for retaliation, conducting discovery and depositions, and successfully opposing a motion for summary judgment.

6. During that period, Ms. Lewis paid Respondent an additional \$23,000 for earned fees. Although the retainer agreement called for biweekly invoices, Respondent sent only two invoices during this period, on March 1, 2016 and May 1, 2016.

7. In July 2017, Respondent began to experience medical issues.

8. On August 26, 2017, Respondent called Ms. Lewis. They had previously discussed filing a Prohibited Personnel Practices complaint with the Office of Special Counsel. Respondent told Ms. Lewis that she should not file the complaint because it would endanger her life and that of her daughter. Ms. Lewis

was scared and confused by Respondent's comments and asked to meet in person.

9. Respondent did not return Ms. Lewis's phone call for a week and a half. On September 7, 2017, Ms. Lewis was able to speak to Respondent on the phone. Respondent told Ms. Lewis that something did not feel right about the representation, that people were lying to her, and that she needed to start eliminating people "4, 3, 2, 1". Respondent told Ms. Lewis that she would finish the first EEOC complaint but could no longer represent her on the second EEOC complaint or file the Prohibited Personnel Practices action with the Office of Special Counsel. Ms. Lewis asked to meet with Respondent, but Respondent refused. Ms. Lewis asked Respondent to send her documents related to her second EEOC complaint. Respondent did not do so.

10. On September 12, 2017, Respondent emailed Ms. Lewis an invoice for \$217,000, based on an hourly rate of \$400. In response, Ms. Lewis told Respondent that the invoice did not reflect the funds that she had already paid. Respondent sent an updated invoice that included \$23,000 in payments but still showed \$217,000 as the total amount due.

11. On October 1, 2017, Ms. Lewis sent Respondent a letter formally terminating the representation and requesting all of her files to be sent by certified mail.

12. Respondent never provided Ms. Lewis with her files.
13. On October 6, 2017, Respondent filed a complaint with the Office of Disciplinary Counsel.
14. On November 7, 2017, Respondent went to Ms. Lewis's house and demanded \$30,000 in legal fees. On November 17, 2017, Respondent again went to Ms. Lewis's house and demanded money.
15. On December 31, 2017, Respondent was hospitalized for five days due to her medical issues.
16. On April 16, 2018, Respondent submitted a response to Ms. Lewis's complaint to Disciplinary Counsel. Respondent acknowledged that she had applied the wrong hourly rate in her invoice and agreed not to pursue any additional fees from Ms. Lewis. She also acknowledged that she did not provide Respondent with her files or notify the EEOC that she was withdrawing from her case.
17. In response to a subpoena from Disciplinary Counsel, Respondent was unable to produce financial records related to her treatment of the advanced fees paid by Ms. Lewis.
18. On November 1, 2018, Ms. Lewis, represented by successor counsel, settled her two EEOC complaints against HHS, receiving a lump sum payment and attorney's fees to cover the money she had previously paid to Respondent and

successor counsel.

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

- a. Rule 1.4(a) in that Respondent failed to keep Ms. Lewis reasonably informed about the status of a matter by providing regular invoices;
- b. Rule 1.5(a) in that Respondent charged an unreasonable fee;
- c. Rule 1.15(a) in that Respondent failed to keep and preserve complete records of trust funds for a period of five years after termination of a representation;
- d. Rule 1.15(a), (b), and (e) in that Respondent failed to treat advanced fees as client property by keeping them in a trust account;
- e. Rule 1.16(a)(2) in that Respondent failed to withdraw from a representation when the lawyer's mental condition materially impaired her ability to represent Ms. Lewis; and
- f. Rule 1.16(d) in that, in connection with the termination of a representation, Respondent failed to surrender papers to which Ms. Lewis was entitled.

COUNT II (2017-D304)

20. On May 4, 2017, Mark Oliver hired Respondent to represent him in a

case against the United States Department of the Interior before the EEOC.

21. On September 6, 2017, Respondent informed Mr. Oliver that she was no longer able to represent him. Respondent offered to continue to represent him for 60 days so as to not prejudice his case before the EEOC, but the next day, Mr. Oliver informed her that he was terminating the attorney-client relationship immediately and requested that she mail him his client file. Respondent agreed to do so.

22. Respondent never provided Mr. Oliver with his file.

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

- a. Rule 1.16(d) in that, in connection with the termination of a representation, Respondent failed to surrender papers to which Mr. Oliver was entitled.

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 90-day suspension with reinstatement conditioned upon proof of fitness, with all 90 days stayed in favor of a two-year period of probation. The Court's order should include a condition that if probation is revoked, Respondent will be required to serve the 90-day suspension with reinstatement conditioned upon proof of fitness. During the two-year probation, Respondent shall (1) not engage in any misconduct in this or any other jurisdiction; (2) engage with the D.C. Bar Lawyer Assistance Program for monitoring and treatment related to her medical issues; and (3) within 90 days attend the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond courses and the Ethics and Trust Accounts CLE.

If Disciplinary Counsel has probable cause to believe that Respondent has violated the terms of her probation, Disciplinary Counsel may seek to revoke Respondent's probation pursuant to D.C. Bar R. XI, § 3 and Board Rule 18.3, and request that Respondent be required to serve the 90-day suspension with reinstatement conditioned upon proof of fitness previously stayed herein.

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

Relevant Precedent

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

The typical sanction for failure to communicate is an informal admonition. *See, e.g., In re Rivera*, Bar Docket No. 234-01 (October 3, 2001) (informal admonition); *In re Steinberg*, Bar Docket No. 203-98 (March 26, 2001) (informal admonition); *In re Bryant*, Bar Docket No. 2013-D241 (January 3, 2014) (informal admonition).

The typical sanction for improper withdrawal is an informal admonition. *See, e.g., In re Champan*, Bar Docket No. 006-02 (Aug. 8, 2002) (informal admonition); *In re Davis-Smith*, Bar Docket No. 383-01 (Aug. 15, 2003) (informal admonition); *In re Shea*, Bar Docket No. 325-01 (June 21, 2002) (informal admonition); *In re Lahongrais*, Bar Docket No. 2016-D030 (June 30, 2016) (informal admonition).

Without dishonesty or misappropriation, the typical sanction for an unreasonable fee ranges from an informal admonition to a public censure. *See, e.g.,*

In re Theodore-Lewis, Disciplinary Docket No. 2016-D032 (Oct. 17, 2016) (informal admonition); *In re Schlemmer*, Disciplinary Docket No. 2017-D143 (Oct. 6, 2017) (informal admonition); *In re Baird*, Bar Docket No. 571-02 (BPR, Nov. 10, 2004) (informal admonition); *In re Shaw*, 775 A.2d 1123, 1124 (D.C. 2001) (public censure).

Without misappropriation, the sanction for failure to treat advance fees as client property and deposit them into a trust account and failure to maintain complete financial records ranges from an informal admonition to a short suspension with a fitness requirement. *See, e.g., In re Brazil*, Bar Docket No. 2013-D123 (July 1, 2014) (informal admonition); *In re Reed*, Bar Docket No. 2004-D022 (Dec. 18, 2008) (informal admonition); *In re Canty*, Bar Docket No. 310-02 (BPR, Dec. 31, 2003) (board reprimand); *In re McDaniel*, Board Docket No. 17-BD-076 (BPR, April 5, 2018); *In re Mott*, 886 A.2d 535 (D.C. 2005) (public censure); *In re Graham*, 795 A.2d 51 (D.C. 2002) (public censure); *In re Clower*, 831 A.2d 1030 (D.C. 2003) (public censure); *In re Salgado*, 207 A.3d 168 (D.C. 2019) (30-day suspension with fitness).

Mitigating Factors

Mitigating circumstances include that Respondent: 1) acknowledges her misconduct; 2) has cooperated with Disciplinary Counsel; 3) has expressed remorse;

and 4) was experiencing severe medical issues at the time of the misconduct.

Aggravating Factors

The only aggravating factor is that Respondent has a disciplinary history, having previously been informally admonished in 2002 for failing to provide a written fee agreement, failing to represent a client zealously and diligently, and failing to withdraw after being discharged.

Justification of Recommended Sanction

A 90-day suspension with reinstatement conditioned upon proof of fitness, fully stayed in favor of two-years' probation is justified because Respondent has acknowledged her misconduct, cooperated with Disciplinary Counsel and expressed remorse. Respondent was also experiencing medical issues that contributed to some of the misconduct. She is currently undergoing treatment for those medical issues and, under the terms of the probation, she will be required to engage with the D.C. Bar's Lawyer Assistance Program to ensure that she remains in treatment.

Respondent has also agreed to attend the D.C. Bar Practice Management Advisory Service's Basic Training and Beyond course and Ethics and Trust Accounts CLE. These courses will address Respondent's treatment of trust funds and her obligation to maintain complete financial records.

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

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

V. RESPONDENT'S AFFIDAVIT

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

CONCLUSION

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

Dated:

4/7/2020

w/permission HRD



Hamilton P. Fox, III
Disciplinary Counsel



Cheryl Moat Taylor, Esquire
Respondent



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