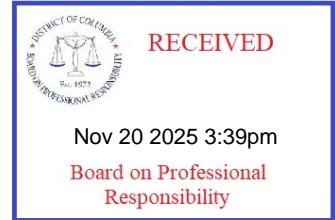


**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



In the Matter of :
:
Pauline M. Schwartz, :
:
Respondent :
:
A Member of the Bar of the District:
of Columbia Court of Appeals :
:
(Bar Registration No. 457853) :
:

SPECIFICATION OF CHARGES

The disciplinary proceeding instituted by this petition is based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar R. X and XI, § 2(b). 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:

1. Pauline Schwartz is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on March 9, 1998, and assigned Bar number 457853.

The facts giving rise to the charges of misconduct are as follows:

2. On February 25, 2019, Sarah Galeano Sanchez met with Ms. Schwartz for an immigration consultation. At the time, Ms. Sanchez had an F-1 Student visa but wanted to obtain work authorization and permanent resident status.

After the meeting, Ms. Schwartz sent an email outlining several options Ms. Sanchez might wish to pursue. Nicole Silver, Ms. Sanchez's prospective employer, was included in the consultation conversations.¹

3. Ms. Silver and Ms. Sanchez elected to go forward with the employer-sponsored green card and permanent residence option. In May 2019, Ms. Silver executed a retainer agreement with Ms. Schwartz that broke the representation down into three stages, each of which required a separate flat fee:

- a. Stage one required a flat fee of \$5,000 for the PERM case with the Department of Labor, which included the prerequisites for and the filing of the Form 9089 Application for Labor Certification.²
- b. Stage two required a flat fee of \$2,500 and included the preparation and filing of the Employer's Form I-140 Petition for Alien Worker (based upon the approved Form 9089 from stage one).
- c. Stage three required a flat fee of \$2,500 and included the preparation and filing of the Employee's Form I-485

4. On May 1, 2019, Ms. Silver paid Ms. Schwartz \$5,000 for stage one of

¹ Ms. Sanchez had previously worked for Ms. Silver as an au pair.

² A PERM case is a Permanent Labor Certification application, filed by an employer with the U.S. Department of Labor (DOL), to demonstrate that no qualified U.S. workers are available for a specific permanent position, a requirement before hiring a foreign worker for a green card. The process involves the DOL determining a prevailing wage, the employer conducting mandatory recruitment efforts to test the U.S. labor market, and the DOL certifying the application.

the representation.

5. Ms. Schwartz provided Ms. Silver and Ms. Sanchez with a document titled “Estimated Green Card Case Timeframe,” outlining her estimate of the time needed to complete the various stages of the representation.³ In that document, Ms. Schwartz estimated that she could complete stage one – which included the prerequisites for, and the filing of, the Form 9089 Application for Labor Certification – in approximately eight months.

6. Completing stage one of the representation involved three different steps. Ms. Schwartz was required to: 1) file the Form ETA-9141 Application for Prevailing Wage Determination with the U.S. Department of Labor; 2) after that was approved, advise and assist Ms. Silver with the advertising and recruitment requirements; and 3) after the recruitment process was complete, file the Form 9089 Application for Labor Certification with the DOL.

7. Ms. Schwartz told Ms. Silver and Ms. Sanchez she would file the prevailing wage form within ten days of the signing of the retainer agreement. She estimated, based on then-current processing times, that it would take 4-5 months for the DOL to approve the prevailing wage request.

8. Ms. Schwartz did not file the prevailing wage application within ten

³ Ms. Silver and Ms. Sanchez were both clients. As the employer, Ms. Silver was “the petitioner,” and as the prospective employee, Ms. Sanchez was “the beneficiary.”

days of the signing of the retainer agreement.

9. Four months later, when Ms. Sanchez emailed Ms. Schwartz to inquire about the status of her case, Ms. Schwartz still had not filed the prevailing wage application.

10. Two days after receiving Ms. Sanchez's email inquiry, Ms. Schwartz filed the prevailing wage application with the DOL. She then emailed Ms. Sanchez and told her that the case was pending with the DOL, that she expected a response within 2-3 months, and that "as soon as I get a response and completion of the prevailing wage request, I will notify you and Nicole."

11. Ms. Schwartz did not tell Ms. Sanchez that she had not filed the prevailing wage form in May 2019 as she had promised, nor did she explain that she had waited four months until September 13, 2019, to file it.

12. On January 16, 2020, the DOL issued a Prevailing Wage Determination (PWD), approving the prevailing wage. The PWD had an expiration date of June 30, 2020.

13. The next step in Stage One of the representation was to complete the pre-filing recruitment process.⁴ Ms. Schwartz was supposed to assist Ms. Silver with completing the recruitment process, which she had estimated at the outset of the representation would take 2-3 months.

⁴ See 20 CFR 656.17(e).

14. Ms. Schwartz did not immediately tell Ms. Silver and Ms. Sanchez about the PWD when it was issued. Over the next two months, she took no steps to advance the case.

15. On March 5, 2020, Ms. Silver emailed Ms. Schwartz requesting an update on the status of the case. The next day, Ms. Schwartz replied to the email stating “Good news! I checked with DOL and they finally issued the prevailing wage, so we can move ahead with the next step of the case, which is the advertising of the nanny position.” Ms. Schwartz did not explain that the PWD had been issued in January 2020, nor did she provide a copy of it to Ms. Silver.

16. On June 5, 2020, five months after the PWD was issued, Ms. Schwartz paid for a Classified Ad in the Washington Post that would run from June 7, 2020, through June 14, 2020.

17. The final step of Stage One required Ms. Schwartz to file the Form 9089 Application for Labor Certification. The labor certification application must be filed before the PWD expires, but at least 30 days after the last ad was run.

18. Ms. Schwartz never filed the application for labor certification.

19. The PWD expired on June 30, 2020. Ms. Schwartz did not tell Ms. Sanchez and Ms. Silver that the PWD had expired, nor did she explain how it affected the pursuit of her clients’ objectives.

20. Six months later, when Ms. Sanchez’s F-1 Student status was set to

expire, Ms. Schwartz convinced Ms. Sanchez to proceed with an application to change status from F1 Student to B2 Tourist. At this time, Ms. Sanchez still believed that her labor certification process was pending.

21. On December 30, 2020, Ms. Schwartz filed an I-539 Application to Extend/Change Nonimmigrant Status on Ms. Sanchez's behalf, seeking to convert her status from F1 Student to B2 Tourist effective December 30, 2020, through June 30, 2021.

22. In April 2021, Ms. Schwartz responded to an inquiry from Ms. Sanchez and falsely told her that "we are working on the Department of Labor step in the case now." Nothing was pending before the Department of Labor at that time.

23. By the end of June 2021, the first I-539 remained pending. On June 30, 2021, Ms. Schwartz filed a second I-539 Application. This application sought to extend the B2 Tourist status for another six months from June 30, 2021, through December 31, 2021. The second application was based on the assumption that the first I-539 would be granted.

24. In late 2021, Ms. Sanchez and Ms. Silver were still under the impression that the Form 9089 had been filed, and the case was pending before the Department of Labor.

25. On October 14, 2021, Ms. Sanchez emailed Ms. Schwartz asking for the date her case was sent to the DOL and the case number. Ms. Schwartz did not

provide the requested information.

26. In November 2021, Ms. Sanchez discovered that the DOL was processing applications with a priority date of June 2021. Ms. Sanchez asked Ms. Schwartz why her labor certification application had not yet been decided, since it had supposedly been filed long before June 2021. She repeatedly asked Ms. Schwartz what her priority date was for the Form 9089.

27. Ms. Schwartz refused to give a straight answer. On November 23, 2021, Ms. Schwartz emailed Ms. Sanchez and referred her to Rosemary Pichardo - her “legal assistant who is an expert on the Department of Labor cases” – for the answers to her questions. Ms. Sanchez had never heard of or spoken with Ms. Pichardo before this communication. Ms. Sanchez never received the information she was asking for from either Ms. Schwartz or Ms. Pichardo.

28. On December 29, 2021, Ms. Schwartz submitted a third I-539 Application to Extend/Change Nonimmigrant Status. This application sought to extend the B2 Tourist status for another six months from December 31, 2021, through June 30, 2022. This third application was based on the assumption that the first and second applications would be granted.

29. In early 2022, Ms. Schwartz stopped communicating entirely with Ms. Sanchez and Ms. Silver. Ms. Schwartz effectively terminated the representation by abandoning her clients.

30. Even though she had not completed the stage one milestone she set out in her retainer agreement, Ms. Schwartz did not return any portion of the \$5,000 advance fee to her clients.

31. On March 11, 2022, Ms. Sanchez filed a complaint with the Office of Disciplinary Counsel.

32. On May 5, 2022, Disciplinary Counsel sent an inquiry to Ms. Schwartz requesting a response to the complaint and including a subpoena for her office file relating to the Sanchez matter.

33. On June 10, 2022, Ms. Schwartz submitted a response to the complaint and the subpoena. The response did not include financial records demonstrating her handling of the fees in the Sanchez matter.

34. After submitting the response, Ms. Schwartz failed to respond to any of Disciplinary Counsel's follow-up inquiries.

35. Ms. Schwartz never provided financial records as required by the May 5, 2022 subpoena, and thus has not shown that she kept in trust the unearned fees in the Sanchez matter.

36. Ms. Schwartz's conduct violated the following Rules of the District of Columbia Rules of Professional Conduct:

- a. Rule 1.1(b), in that Ms. Schwartz failed to serve her clients with skill and care commensurate with that generally afforded to clients by other

lawyers in similar matters;

- b. Rule 1.3(a), in that Ms. Schwartz failed to represent her clients zealously and diligently within the bounds of the law;
- c. Rule 1.3(c), in that Ms. Schwartz failed to act with reasonable promptness in representing her clients,
- d. Rule 1.4(a), in that Ms. Schwartz failed to keep her clients reasonably informed about the status of their matter and promptly comply with reasonable requests for information;
- e. Rule 1.4(b), in that Ms. Schwartz failed to explain a matter to the extent reasonably necessary to permit the clients to make informed decisions regarding the representation;
- f. Rules 1.15(a) and (e), in that Ms. Schwartz recklessly or intentionally misappropriated client funds;
- g. Rule 1.16(d), in that when the representation ended, Ms. Schwartz failed to turn over the client file and failed to refund an advance payment of fee or expense that had not been earned or incurred;
- h. Rule 8.1(b), in that Ms. Schwartz knowingly failed to respond reasonably to a lawful demand for information from a disciplinary authority;
- i. Rule 8.4(b), in that Ms. Schwartz committed theft in violation of D.C.

Code §22-3211, a criminal act that reflected adversely on her honesty, trustworthiness, or fitness as a lawyer in other respects;

- j. Rule 8.4(c), in that Ms. Schwartz engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- k. Rule 8.4(d), in that Ms. Schwartz engaged in conduct that seriously interfered with the administration of justice.

Respectfully submitted,

/s/
Hamilton P. Fox, III
Disciplinary Counsel

/s/
Jelani C. Lowery
Assistant Disciplinary Counsel

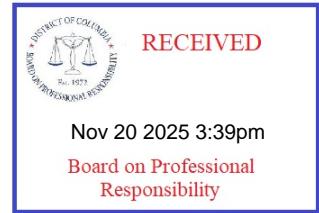
OFFICE OF DISCIPLINARY COUNSEL
515 Fifth Street, N.W.
Building A, Room 117
Washington, D.C. 20001
(202) 638-1501

VERIFICATION

I do affirm that I verily believe the facts stated in the Specification of Charges to be true.

/s/
Jelani Lowery
Assistant Disciplinary Counsel

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



In the Matter of :
PAULINE M. SCHWARTZ, ESQUIRE, : **Disciplinary Docket No. 2022-D091**
Respondent, :
:

PETITION INSTITUTING FORMAL DISCIPLINARY PROCEEDINGS

A. This Petition (including the attached Specification of Charges which is made part of this Petition) notifies Respondent that disciplinary proceedings are hereby instituted pursuant to Rule XI, § 8(c), of the District of Columbia Court of Appeals' Rules Governing the Bar (D.C. Bar R.).

B. Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals on the date stated in the caption of the Specification of Charges.

C. A lawyer member of a Hearing Committee assigned by the Board on Professional Responsibility (Board) pursuant to D.C. Bar R. XI, § 4(e)(5), has approved the institution of these disciplinary proceedings.

D. **Procedures**

(1) **Referral to Hearing Committee** – When the Board receives the Petition Instituting Formal Disciplinary Proceedings, the Board shall refer it to a Hearing Committee.

(2) **Filing Answer** – Respondent must respond to the Specification of Charges by filing an answer with the Board and by serving a copy on the Office of Disciplinary Counsel within 20 days of the date of service of this Petition, unless the time is extended by the Chair of the Hearing Committee. Permission to file an answer after the 20-day period may be granted by the Chair of the Hearing Committee if the failure to file an answer was attributable to mistake, inadvertence, surprise, or excusable neglect. If a limiting date occurs on a Saturday, Sunday, or official holiday in the District of Columbia, the time for submission will be extended to the next business day. Any motion to extend the time to file an answer, and/or any other motion filed with the Board or Hearing Committee Chair, must be served on the Office of Disciplinary Counsel at the address shown on the last page of this petition.

(3) **Content of Answer** – The answer may be a denial, a statement in exculpation, or a statement in mitigation of the alleged misconduct. Any charges not answered by Respondent may be deemed established as provided in Board Rule 7.7.

(4) **Mitigation** – Respondent has the right to present evidence in mitigation to the Hearing Committee regardless of whether the substantive allegations of the Specification of Charges are admitted or denied.

(5) **Process** – Respondent is entitled to fifteen days' notice of the time and place of hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

E. In addition to the procedures contained in D.C. Bar R. XI, the Board has promulgated Board Rules relating to procedures and the admission of evidence which are applicable to these procedures. A copy of these rules is being provided to Respondent with a copy of this Petition.

WHEREFORE, the Office of Disciplinary Counsel requests that the Board consider whether the conduct of Respondent violated the District of Columbia Rules of Professional Conduct, and, if so, that it impose/recommend appropriate discipline.

/s/ Hamilton P. Fox, III

Hamilton P. Fox, III
Disciplinary Counsel

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