

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

In the Matter of	:	
	:	
MICHAEL G. HOEHN, ESQUIRE,	:	
	:	Disciplinary Docket No. 2017-D345
Respondent,	:	
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals.	:	
Bar Number: 478591	:	
Date of Admission: August 5, 2002	:	
	:	

SPECIFICATION OF CHARGES

The disciplinary proceedings instituted by this petition are 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. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on August 5, 2002, and assigned Bar number 478591.

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

2. Reverend Merrie Turner served as the President of the Presidential Inaugural Prayer Breakfast, Inc. (PIPB).

3. In September 2016, Rev. Turner entered into a contract with the Trump International Hotel to lease the Presidential Ballroom to hold the prayer breakfast on the morning of the Inauguration, January 20, 2017.

4. In late December 2016, Rev. Turner travelled to D.C. to finalize the arrangements for the prayer breakfast.

5. On December 28, 2016, the Trump Hotel delivered a letter to Rev. Turner saying that it was “enacting the force majeure clause” to cancel the contract. The hotel said it would refund Rev. Turner’s deposit and offered to assist her in finding an alternative venue for the prayer breakfast.

6. On December 31, 2016, Daniel Crandall, a lawyer from Roanoke, Virginia, who knew Rev. Turner and was also in Washington, D.C., wrote the manager of the Trump Hotel on behalf of Rev. Turner and the PIPB. Mr. Crandall argued that the force majeure clause was not “a legal reason” for cancelling the contract and said they hoped to resolve the issue “so that the event will be executed per contract.”

7. That day or the next, Rev. Turner and Mr. Crandall met with the manager of the Trump Hotel in the hotel lobby.

8. On January 7, 2017, the Trump Hotel’s manager advised Rev. Turner that the prayer breakfast could be held at the hotel. Rev. Turner and the hotel management then renegotiated some of the terms of the contract for use of the Presidential Ballroom.

Rev. Turner’s Retention of Respondent to Pursue Claims against the Presidential Inauguration Committee

9. In the interim, on January 2, 2017, Rev. Turner retained Respondent to pursue claims against the 58th Presidential Inauguration Committee (PIC) – the party they believed had caused the hotel to cancel its contract with Rev. Turner for the prayer breakfast.

10. Respondent gave Rev. Turner a form “Retainer Agreement” in which he described in handwriting the scope of his representation as “breach of contract, tortious interference” directly before the printed language “against any and all parties [Respondent] deems responsible for the

injury.” Respondent said he would charge a one-third contingency fee. Both Rev. Turner and Respondent signed the agreement.

11. On January 3, 2017, Respondent wrote Rick Gates, Chief Deputy Chairman for PIC. Respondent told Mr. Gates that he represented Rev. Turner in her claim against PIC which he claimed had engaged in tortious interference with her contract with the Trump Hotel.

12. At Respondent’s request, Rev. Turner gave Respondent a check on January 6, 2017 for \$3,000 to cover expenses in the anticipated litigation against PIC, which Respondent said would include hiring experts.

13. Respondent did not deposit the \$3,000 that Rev. Turner advanced to pay expenses in his trust account. Instead, on January 9, 2017, Respondent deposited the funds in his business or personal account at BB&T, account no. 9145.

14. When he made the deposit on January 9, 2017, Respondent had other funds in the 9145 account. Respondent used funds in the 9145 account to pay his gym membership and phone bills, among other expenses, and made cash withdrawals from the account.

15. By January 12, 2017, the balance in the 9145 account had fallen to \$2,540.86, and by March 13, 2017, the balance had fallen to \$392.93.

16. Rev. Turner never gave Respondent permission to use the \$3,000 for any purposes other than the expenses associated with the representation.

17. On January 9, 2017, Respondent filed a two-and-a-half-page complaint against PIC in the D.C. Superior Court. The complaint alleged that PIC had engaged in tortious interference with Rev. Turner’s contract with the Trump Hotel and sought \$1,000,000 in damages.

18. The D.C. Superior Court records reflect that the filing fee for the complaint was \$120.

19. On January 17, 2017, Respondent sent another letter to PIC, this one addressed to Thomas Barrack, the Chair of PIC. Respondent said he had filed a complaint against PIC in the D.C. Superior Court, but had not yet effected service in the hope they could reach “a reasonable solution without resort to litigation.”

20. Respondent did not arrange for PIC to be served until February 24, 2017. In the interim, Respondent entered into another fee agreement with Rev. Turner relating to the prayer breakfast.

The Filming Rights and PIPB’s Payment of \$2,000 in Advance Fees to Respondent

21. In January 2017, Rev. Turner had discussed with Respondent securing the right to obtain and use videos of the prayer breakfast. Respondent agreed to assist her, but did not provide her a fee agreement until January 21, 2017.

22. Shortly before the prayer breakfast, Rev. Turner sent Respondent a proposed contract to be signed by the people filming the event. Respondent said he would make copies of it and indicated he would obtain the needed signatures. Respondent did not provide the contract to anyone filming the prayer breakfast on January 20, 2017.

23. On January 21, 2017, Respondent gave Rev. Turner a fee agreement for the film rights matter. Respondent described the scope of his legal services to PIPB as “filming contracts – negotiation” and said he would charge \$150/hour. The fee agreement required Rev. Turner to pay Respondent a retainer of \$2,000. According to his fee agreement, Respondent would “deposit such funds into the retainer account to maintain the account balance, or pay for any expense in advance, as the attorney may request.” Respondent did not explain in his agreement or to Rev. Turner what a “retainer account” was, but Rev. Turner understood that Respondent would hold the \$2,000 she paid him in trust until the funds had been earned.

24. Rev. Turner gave Respondent two checks totaling \$2,000 for the film rights matter – a \$500 check dated January 25, 2017, and \$1,500 check dated February 7, 2017.

25. Respondent negotiated both checks, but did not deposit the funds in his IOLTA or trust account. Instead, Respondent deposited both checks in his business or personal account at BB&T, the 9145 account. Respondent deposited the \$500 check on January 27, 2017, and the \$1,500 check on February 7, 2017.

26. When he made the deposits on January 27 and February 7, 2017, Respondent had other funds in the 9145 account. Respondent used funds in the 9145 account to pay his personal expenses and made cash withdrawals from the account.

27. By March 13, 2017, the balance in the 9145 account was \$392.23. Thus, by March 13, 2017, Respondent had taken not only the \$2,000 advanced for the film rights matter, but the \$3,000 advanced for expenses in the PIC litigation.

28. Sometime after January 21, 2017, Respondent prepared a one-page contract to send to people who had filmed part or all of the prayer breakfast. No one signed the contract Respondent prepared.

29. Only one person, Rosalinda Rivera a member of the PIPB staff, signed an agreement for the filming, but she signed the agreement that Rev. Turner had prepared. Most of Ms. Rivera's video, however, was unusable.

30. Respondent did not send Rev. Turner any invoices reflecting what time he spent relating to the film rights and the services he performed.

31. After the litigation against PIC concluded in September 2017, Rev. Turner asked for an accounting and a refund of the \$2,000 that she had advanced for the film right matter. Respondent never provided her an accounting, although he said he would. Respondent also did

not refund any of the \$2,000.

32. Respondent never told Rev. Turner that he had taken the \$2,000 for himself shortly after receiving the payments. Rev. Turner never authorized Respondent to take the funds.

The Settlement in the PIC Litigation

33. On August 23, 2017, Respondent met with PIC's counsel to discuss discovery. At the conclusion of the meeting PIC's counsel asked Respondent what Rev. Turner would accept to settle the case. After communicating with Rev. Turner, Respondent told PIC's counsel that she would settle for \$80,000.

34. On or about August 25, 2017, PIC offered \$30,000 to settle the case. Respondent told Rev. Turner about the \$30,000 offer on August 27, 2017 and encouraged her to counter for \$40,000.

35. The following day, August 28, 2017, Respondent told counsel for PIC that Rev. Turner would settle for \$40,000, and PIC agreed to the amount.

36. When Respondent told Rev. Turner that PIC had accepted the offer to settle for \$40,000, she told him that she had not agreed to this amount but had only agreed to consider it. Rev. Turner reiterated to Respondent her dissatisfaction with the settlement amount, including in emails to him on August 29, 30 and 31, 2017.

37. Respondent told Rev. Turner that he was her agent, that PIC and its lawyers had accepted the offer he made on her behalf, and that PIC would sue her to enforce the settlement.

38. Rev. Turner eventually agreed to the settlement and on September 8, 2017, she signed the Settlement and General Release Agreement that PIC's counsel had prepared.

39. Respondent told Rev. Turner that he would consider reducing his fee as an inducement to her accepting the settlement, but no agreement was reached between them before

she signed the Settlement and General Release Agreement.

40. On September 12, 2017, a representative of PIC signed the settlement agreement and on September 20, 2017, counsel for PIC and Respondent filed a stipulation of dismissal with the court. On September 26, 2017, the court issued an order dismissing the case based on the parties' settlement.

Respondent's Receipt of the Settlement Funds and the Initial Unauthorized Payment to Himself

41. On September 14, 2017, PIC transferred \$40,000 to Respondent's attorney trust account at BB&T, account no. 8176. Prior to the wire transfer the trust account had a balance of \$59.99.

42. On September 16, 2017, Respondent wrote himself a check for \$10,000, which cleared the trust account on September 18, 2017, reducing the balance to \$30,059.99.

43. Respondent did not tell Rev. Turner he had paid himself \$10,000 from the settlement funds and he did not have her authority to take the funds.

44. Rev. Turner continued to express dissatisfaction with the settlement, which was one-half the amount she wanted. She told Respondent that she would agree to pay him only \$7,000 as his fee. On September 22, 2017, Respondent wrote Rev. Turner saying that he would not accept \$7,000, and that he was owed not only one-third of the \$40,000 settlement but one-third of the profits from the prayer breakfast. According to Respondent's calculations, his fee was \$47,631 – more than \$7,000 over the settlement amount. Respondent told Rev. Turner that he would give her \$10,000 from the settlement funds to resolve their dispute.

45. Rev. Turner disputed Respondent's entitlement to one-third of the \$40,000. She also disputed his entitlement to any of the revenue from the prayer breakfast and, according to her calculations, it had not made a profit. Rev. Turner did not know that Respondent already had taken

\$10,000 from the settlement funds, and Respondent did not disclose this fact to her.

46. Respondent told Rev. Turner that he was leaving for a vacation on September 26, 2017, and unable to communicate with her during the approximately six weeks he was out of the country.

47. Prior to leaving on September 26, 2017, Respondent did not provide Rev. Turner a disbursement statement reflecting his receipt of the \$40,000 settlement or what he had done with the funds. Respondent never provided her a disbursement statement any time after September 26, 2017.

48. Respondent also never accounted for the \$3,000 he had received at the beginning of the representation, even after Rev. Turner asked Respondent for a refund. Respondent's only statement to Rev. Turner about the \$3,000 was in his September 22, 2017 letter in which he said that he still had more than \$1,000 left, but would keep the funds as part of his fee.

49. In fact, Respondent had taken the entire \$3,000 that Rev. Turner had advanced for expenses within two months of receiving the funds, although he spent most of the funds on business or personal expenses having nothing to do with the litigation against PIC.

The Continuing Dispute About Respondent's Fee and Respondent's Additional Unauthorized Payments to Himself

50. On November 15 and 16, 2017, shortly after Respondent returned from his vacation, Rev. Turner emailed Respondent reiterating that she had agreed to settle her claims against PIC for \$80,000. She also disputed his claim that the prayer breakfast had made a profit - she said that the "overall cost of the event supersedes that revenue income" and further said that his retainer agreement "clearly outlines the stated percentage of 33.3% of the proceeds paid by PIC only." She then reminded Respondent that he had agreed to accept a lesser percentage of 25%, that his legal fee should be \$10,000, and asked him to send her a check for \$30,000 payable

to the Presidential Inaugural Prayer Breakfast.

51. Respondent responded to Rev. Turner on November 17, 2017. He said that based on his calculations of the gross income and expenses, he believed the prayer breakfast made a profit and he was entitled to a third of it, as well as a third of the \$40,000 settlement, for a total fee of \$47,631. Respondent offered to pay Rev. Turner \$10,000 of the \$40,000, and keep \$30,000 as his fee. Respondent did not disclose that he already had paid himself \$10,000.

52. On November 19, 2017, Rev. Turner emailed Respondent asking Respondent if he had followed up with counsel for PIC about the settlement as she said he had promised to do before leaving the country. Rev. Turner also requested "a status report on the film rights agreement which was entered by [Respondent] and [her]." She went on to state: "It seems you forgot your commitment along the way. You have been holding \$1,500 which by now I would say is due to be returned."

53. On November 20, 2017, Rev. Turner emailed Respondent offering to pay Respondent one-third of the \$40,000, or \$13,230, but said if he did not accept her offer by November 22, 2017, and she had to mediate against him, the fee would be based on the 21% contingency fee he had offered during the settlement negotiations.

54. On November 21, 2017, Respondent emailed Rev. Turner stating he was withdrawing his offer to reduce his fee and demanding \$47,631. Respondent also said he was going to take one-third of the \$40,000 from his trust account. Respondent did not disclose he already had paid himself \$10,000. Respondent said he would mediate the fee dispute with Rev. Turner if she agreed to pay half of the cost of mediation.

55. On November 21, 2017, Rev. Turner sent Respondent an email saying she had retained an attorney in Leesburg, Virginia to represent her in mediating their fee dispute.

56. On November 22, 2017, Respondent wrote himself a check drawn on his trust account for \$3,333.33 (no. 547), which he negotiated that day. By the end of the day on November 22, 2017, the balance in Respondent's trust account was \$26,726.66.

57. Respondent did not seek or have Rev. Turner's consent to take the additional funds from the settlement funds.

58. Rev. Turner had not agreed that Respondent could take one-third of the settlement funds or \$13,333.33, and she did not authorize him to do so. She had only offered him one-third of the \$40,000 if he distributed the balance of \$26,666.67 to her or the PIPB.

59. Respondent did not disburse any funds from the settlement to Rev. Turner or PIPB.

60. In late November 2017, Rev. Turner filed a complaint against Respondent with Disciplinary Counsel. Among other things, Rev. Turner complained that Respondent had not disbursed any funds from the settlement to her or PIPB and that she disputed his one-third contingency fee particularly since he had settled the case for \$40,000 – one-half the amount she said she authorized.

61. In December 2017, Rev. Turner asked Respondent to return the \$2,000 that she had paid him to negotiate filming rights. Respondent did not respond to her request, provide an accounting of his time, or refund any of the \$2,000.

62. On January 2, 2018, Disciplinary Counsel sent Respondent a letter enclosing Rev. Turner's complaint asking him to respond. Respondent submitted a response on January 24, 2018.

63. In January 2018, Rev. Turner again requested Respondent to provide an itemized statement of the work he had done and asked for copies of the client files. Respondent did not provide any accounting, failed to turn over the files, and did not respond to Rev. Turner's request.

64. In February 2018, Rev. Turner filed an application for fee arbitration with the D.C.

Bar's Attorney-Client Arbitration Board (ACAB). The ACAB proceeding is still pending.

65. Knowing that Rev. Turner disputed his entitlement to the \$13,333.33 that he already had paid himself (although he still had not disclosed the payments to Rev. Turner), Respondent took additional funds from the \$40,000 settlement after Rev. Turner had filed a complaint and an ACAB claim against him.

66. The additional payments that Respondent made to himself from the trust account included:

- a. \$15,000 by check (no. 548) on March 29, 2018; and
- b. \$10,000 by check (no. 549) on May 3, 2018.

67. Respondent did not tell Rev. Turner he was paying himself the additional amounts, and he did not have permission to do so.

68. Altogether, Respondent took \$38,333.33 of the \$40,000 for his fees – or approximately 96% of the settlement amount.

69. After May 3, 2018, the balance in Respondent's attorney trust account was \$1,726.66.

Respondent's Failure to Keep and Maintain Records and Provide Accountings

70. Disciplinary Counsel sent Respondent a subpoena for the client file and his financial records reflecting his handling of the funds he received from or on behalf of Ms. Turner, including the \$40,000 settlement.

71. Respondent produced most of the client file, but did not produce all the emails he exchanged with Rev. Turner, even after being requested to do so.

72. The only financial records that Respondent produced were copies of the monthly bank statements for his attorney trust account and subsequently monthly bank statements for his

business or personal account (but only after Disciplinary Counsel had subpoenaed them from his bank).

73. Respondent did not maintain or produce ledgers reflecting his receipt and handling of funds, including the \$40,000 settlement he received.

74. Respondent also did not produce any records reflecting his receipt and handling of the \$5,000 that Ms. Turner paid him at the beginning of the representation – \$3,000 for expenses in the litigation against PIC, and \$2,000 for fees for the film rights matter.

75. Respondent did not provide Rev. Turner or produce to Disciplinary Counsel a disbursement statement.

76. Respondent also failed to account to Rev. Turner despite her repeated requests for accountings and refunds.

77. Rev. Turner subsequently learned from Disciplinary Counsel (not Respondent), that Respondent had taken \$38,333.33 of the \$40,000 settlement funds.

78. In response to further requests for documents and information about the payments he received, Respondent produced in February 2019, a document purporting to reflect the time he spent on the film rights matter. Respondent had never produced or referred to the document previously, despite the fact that Disciplinary Counsel had subpoenaed his client files and asked for his records concerning the \$5,000 in expenses and fees advanced by his client. Respondent created the document after the fact to provide to Disciplinary Counsel but did not disclose that it was other than a contemporaneous record.

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

a. Rules 1.4(b) and/or 1.5(b), in that Respondent failed to explain to his client his

intention to charge her additional fees including those based on the receipts of PIPB, he did not explain to his client the basis on which he was entitled to fees in addition to the contingency fee he charged for litigating against PIC, and he did not tell his client the total fee he intended to charge during the settlement negotiations with PIC;

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

c. Rule 1.5(c), in that upon the conclusion of a contingent fee matter, Respondent failed to provide a written statement stating the outcome of the matter and the remittance to the client and the method of its determination;

d. Rule 1.15(a), in that Respondent failed to keep and preserve complete records of entrusted funds;

e. Rule 1.15(a) and/or (e), in that Respondent failed to safekeep and hold advances of unearned fees and unincurred expenses that were in his possession in connection with a representation separate from his own funds, but instead deposited the \$5,000 he was advanced in his business or personal account and then took all the funds, thereby engaging in commingling and intentional or reckless misappropriation of client funds;

f. Rule 1.15(a) and/or (d), in that Respondent failed to hold the \$40,000 settlement funds that his client claimed and/or disputed in trust until their dispute was resolved, but instead took almost all the \$40,000 for himself, thereby engaging in intentional misappropriation;

g. Rule 1.15(c), in that Respondent failed to promptly render a full accounting of the funds he received;

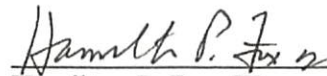
h. Rule 1.16(d), in that in connection with the termination of the representation, Respondent failed to take timely steps to the extent reasonably practicable to surrender papers and

property to which the client was entitled and to refund advance payments of fees and expenses that were not earned or incurred;

i. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, deceit and misrepresentation; and

j. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice.

Respectfully submitted,



Hamilton P. Fox, III
Disciplinary Counsel



Julia Porter
Deputy 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.



Julia L. Porter
Deputy Disciplinary Counsel

Re-subscribed and re-affirmed before me in the District of Columbia this 11th day of March
2019.

My Commission Expires:



Notary Public