

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

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In the Matter of	:	
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SAMUEL BAILEY JR., ESQUIRE	:	Disciplinary Docket No. 2015-D144
	:	
Respondent,	:	
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
Bar Number: 384974	:	
Date of Admission: December 18, 1984	:	
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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 Rule X of the District of Columbia Court of Appeals Rules Governing the Bar (D.C. Bar R.).

Jurisdiction

1. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, §1(a), jurisdiction exists because Respondent is a member of the District of Columbia Bar admitted to practice before the District of Columbia Court of Appeals on December 18, 1984, and assigned D.C. Bar number 384974.

The Federal Case

2. In or around September 2013, Allen Laster retained Respondent to represent him in an employment discrimination case before the United States District Court for the District of Columbia. Mr. Laster had filed suit against his local union, among other parties, in April 2013.

3. During a meeting early in the representation, Respondent and Clifford G. Stewart, Esquire, explained that Mr. Stewart was licensed to practice law only in New Jersey, but would nevertheless be the principal attorney handling the case. Both Respondent and co-counsel Stewart were present at that meeting, but Mr. Laster did not receive from either one a writing setting forth the scope of the representation or the basis or rate of the fee before Mr. Stewart began to work on his case. Respondent eventually provided Mr. Laster a representation agreement, although it is unclear when.

4. Mr. Stewart began work on Mr. Laster's case in early September 2013. At the time, the defendants had pending a June 2013 motion to dismiss or for a more definitive statement of the case. Mr. Laster had sought multiple extensions of time to file an opposition but had not filed a substantive motion, instead attempting to cure defendants' objections by filing an amended complaint, to which the defendants had filed a reply. The Court had not ruled in September when Mr. Laster hired Respondent and Mr. Stewart, but neither counsel addressed the pending pleadings before the District Court ruled in November 2013. Respondent waited more than eight months – until April 29, 2014 – to sponsor Mr. Stewart's *pro hac vice* admission to the District Court to represent Mr. Laster in the federal case. The court ultimately admitted Mr. Stewart on July 31, 2014.

5. In the meantime, on November 19, 2013, the District Court denied the defendants' motion to dismiss but set a deadline of December 16, 2013, for Mr. Laster to file a more definitive statement. On December 11, Respondent filed a motion to extend the time to file the statement and the District Court granted Respondent's motion, resetting the deadline to January 15, 2014. Respondent filed the Statement on January 15.

6. On March 14, 2014, Respondent filed a third amended complaint on Mr. Laster's behalf.

7. On March 27, 2014, one of the defendants in the federal case, Carpenters Local No. 491 Annuity Fund, filed a motion to dismiss. Respondent's opposition was due on April 14. Even though Respondent had named the annuity fund a defendant in the third amended complaint, he failed to file an opposition. The District Court eventually dismissed Mr. Laster's action against the Annuity Fund as conceded.

8. On July 14, 2014, the other defendants in the federal case, Labor Management Training Committee Local Union 491, and Mid-Atlantic Council of Carpenters ("LMTC *et al.*"), filed a motion to dismiss. Respondent's opposition was due on September 15.

9. On September 18, 2014, Respondent filed a response to LMTC *et al.*'s motion to dismiss (after the original deadline of September 15). The next day, he filed a "Notice to Supplement Exhibits." Respondent did not file a motion for leave to file out of time for either submission. He did not inform his client that he had missed the deadline.

10. At the District Court's invitation, LMTC *et al.* filed a joint motion for mediation on September 23, 2014, which was granted the same day. The District Court ultimately set a deadline for the parties to settle the federal case by February 9, 2015.

11. Sometime after the mediation session in 2014, Respondent and co-counsel Stewart advised their client to accept a settlement offer. Mr. Laster rejected it as too low.

12. In January 2015, Mr. Laster fired Respondent, memorializing his telephone conversation with Respondent by e-mail.

13. On February 2, 2015, Respondent filed a motion for him and co-counsel Stewart to withdraw as Mr. Laster's counsel. That day, Mr. Laster filed a *pro se* pleading alerting the court to his decision to change counsel and asking for time to retain successor counsel. The District Court granted both requests on February 5, granting Mr. Laster until February 25, 2015 to retain a new attorney.

14. During his representation of Mr. Laster from December 9, 2013 to February 2, 2015, Respondent, and co-counsel Stewart, filed with the District Court the following seven documents:

- A. Motion for Extension of Time, on December 11, 2013;
- B. A More Definitive Statement, on January 15, 2014;
- C. Memorandum in Opposition to Motion to Strike, on February 13, 2014;
- D. The Third Amended Complaint, on March 14, 2014;
- E. Motion for Leave to Appear *Pro Hac Vice*, on April 29, 2014;
- F. Motion for Extension of Time, on July 29, 2014; and
- G. Response to Motion to Dismiss, on September 18, 2014.

The documents Respondent filed sometimes had obvious typographical errors and at least one misnamed his client.

15. Mr. Laster retained successor counsel who, within six months, settled the federal case for more than \$190,000 – several times higher than the best offer Respondent or co-counsel Stewart had obtained.

The OHR Cases

16. Before he retained Respondent, Mr. Laster had filed a claim with the District of Columbia Office of Human Rights, alleging that his union had impermissibly discriminated against him. At some point, Mr. Laster filed a second claim. In or around March 2014, after Respondent had been retained, he agreed to file a request for reconsideration on Mr. Laster's behalf in one of the cases.

17. Respondent and co-counsel Stewart failed to provide Mr. Laster an agreement setting forth the basis or rate of the additional representation. Nor was the original representation agreement for the federal case modified in writing to incorporate the new matter.

18. On April 1, 2014, Respondent transmitted the reconsideration request to the OHR by electronic mail.

19. On July 3, 2014, Respondent e-mailed OHR about the status of his client's case. OHR's general counsel's office replied the same day, informing Respondent that the agency was reviewing his reconsideration request. Respondent never followed up.

20. After Mr. Laster terminated Respondent's services, he attempted to find out the status of his OHR claim. On March 17, 2015, OHR's general counsel's office wrote Mr. Laster that the OHR did not have a record of his request for reconsideration.

21. It appears that the OHR cases were not resolved before Mr. Laster signed a global release settling with the opposing parties in 2016, through successor counsel.

The Professional Relationship and Post-Termination Interactions

22. During the professional relationship between Respondent and his client, Mr. Laster paid \$1000 each month for much of the representation but received no bills reflecting the work

purportedly performed or receipts for payment. The first invoice Mr. Laster received was among the file documents he got when Respondent turned over his file upon termination.

23. During the representation, Mr. Laster wanted to know the status of his matter. However, Respondent was often unresponsive. When he did respond, Respondent almost always referred Mr. Laster to co-counsel Stewart, claiming that Mr. Stewart knew the details of his case, not Respondent. Respondent failed to notify his client of developments in the case.

24. After Mr. Laster terminated the representation, Respondent e-mailed Mr. Laster on February 23, 2015, to arrange to turn over the client file. He also placed a lien on any recovery Mr. Laster might obtain.

25. Respondent did not return several documents to Mr. Laster that should have been in the file including, *inter alia*, e-mail correspondence, filings, and receipts for payments Mr. Laster had made.

26. Among the documents included in his file, Mr. Laster found a copy of the representation agreement. It bore only Respondent's signature, which was consistent with Mr. Laster's recollection that he had never signed it. Respondent had never discussed its provisions with Mr. Laster and he (Mr. Laster) did not understand many of its terms and conditions upon reading it in his file.

27. Respondent also included with Mr. Laster's file an invoice dated February 23, 2015. Respondent charged a total \$85,270 for the federal and OHR cases. Respondent credited Mr. Laster's payments throughout the representation in the amount of \$12,300. Respondent claimed Mr. Laster still owed \$72,970 for services rendered.

28. Mr. Laster disputed Respondent's invoice with the District of Columbia Attorney/Client Arbitration Board and sought \$13,500 in relief. Respondent counter-claimed that Mr. Laster owed him \$72,000.

29. On January 13, 2016, ACAB concluded that Respondent was due not \$72,000 but \$16,500.

The Representation Agreement and Mr. Laster's Payments

30. The only representation agreement Mr. Laster ever received was signed only by Respondent. The agreement was unclear, with a number of unexplained provisions. For example:

A. ¶ "A)": Respondent promised to develop a plan for relief that included "all equitable relief offered under the United States Constitution and the New Jersey Law Against Discrimination i.e. back pay, reemployment, prospective employer contacts, and all legal relief like compensatory and/or punitive damages," even though Mr. Laster's employment was in D.C. and he had filed his case the District of Columbia.

B. ¶ "A.": Respondent stated that "Client agrees to pay Counsel costs and expenses set forth below to prosecute this matter. These costs are only partial payment of the expense of prosecution. Counsel will pay all other costs above and beyond Clients [*sic*] contribution (listed below) required to successfully prosecute this matter." The agreement set forth no costs that Mr. Laster was not responsible for and stated elsewhere that the client was responsible for all costs.

C. ¶ "B.": Respondent stated that "[t]his Representation Agreement is a partial contingent fee contract."

D. ¶ "C.": Respondent stated that:

Client agrees to compensate Counsel in the following manner; [*sic*]

– Pay cost [*sic*] for prosecuting the Charge of Discrimination of Thirty Thousand (\$30,000.00) Dollars. Client and Counsel will agree to a payment plan that is set forth below.

– These payments are for costs and expenses anticipated for prosecuting the claims set forth above. Client agrees to pay One Thousand

Hundred (\$1000.00) [sic] per month beginning on December 1, 2013. Client agrees to pay One Thousand Hundred (\$1000.00) [sic] Dollars per month due on the fifteenth day of the month for _____ months until the aforesaid agreed upon cost for prosecuting the charge is satisfied. Such satisfaction amount shall include cost for a jury trial if applicable. The last payment will be due on _____. Payments more than ten (10) days late or past the first of each month will automatically incur a twenty five (15%) [sic] late fee or one hundred and twenty five (\$125.00) dollars unless prior arrangements for payment is [sic] made by Client.

– If this matter results in a jury trial there will be additional costs beyond the initial Thirty thousand (\$30,000.00) dollars in costs initially set forth above. Jury trial cost [sic] will not exceed Twenty thousand [sic] (\$20,000.00)[.] Jury trial costs, if any, will be set forth in an addendum to this agreement.

E. ¶ “D.”: Respondent stated that “Counsel will be entitled to payment of 40% percentage of Clients [sic] recovery after deduction of costs.”

Many of the words in the representation agreement were nonsensical or inconsistent, or failed to provide guidance as to what Respondent meant, including the difference between costs and fees, and how Respondent’s fee was in any way contingent. (The representation agreement is attached to the Specification of Charges.)

31. The representation agreement set forth three different hourly rates without clearly setting forth when each applied.

32. The representation agreement provided that, if Mr. Laster discharged Respondent without “just cause,” Respondent could enforce a lien for services at \$500 per hour for services performed. Respondent never discussed what he meant by “just cause,” or explained that his client had the right to discharge him for any reason at all.

33. Although the representation agreement informed Mr. Laster that Respondent would associate with co-counsel Stewart, it did not advise Mr. Laster of the contemplated division of

responsibility or say that Respondent and co-counsel assumed joint responsibility for the representation.

34. The representation agreement stated: "If associated counsel is retained[,] no additional costs will be required of Client." Yet, Respondent and co-counsel Stewart each billed Mr. Laster independently for some of the same work. The only "discounts" Respondent purported to give Mr. Laster were for meetings attended by Mr. Laster and both attorneys; co-counsel Stewart provided no such discounts.

35. Respondent credited Mr. Laster with payments of \$12,300 over the course of the representation. Despite Mr. Laster's repeated requests during the representation for receipts as proof of payment, Respondent failed to provide them. Respondent only gave proof of Mr. Laster's payments after he was fired when he drafted a single bill purporting to reflect the hours he and co-counsel Stewart had worked on Mr. Laster's case and acknowledging his client's payments.

36. Respondent's invoice purported to cover "Invoice period 01-03-2013 – 23-02-2015" (March 1, 2013 through February 23, 2015), even though Respondent's first time entry is for "03-10-2013" (October 3, 2013), and co-counsel Stewart's first entry is for "9/9/13."

Disciplinary Counsel's Investigation

37. In May 2015, Mr. Laster filed a disciplinary complaint against Respondent.

38. On October 2, 2015, the Disciplinary Counsel subpoenaed Respondent's client files and all documents relating to Mr. Laster, including, among other things, time records and other financial documents from the case so that the office could substantiate Respondent's claims regarding the amount of work done for the bill he had presented to his client. Other than the final

invoice, the documents Respondent produced did not include time records or any way to verify what was billed.

39. On October 12, 2017, in an effort to conclude the investigation, Disciplinary Counsel wrote Respondent asking him to explain certain aspects of the representation – including his billing practices and professional relationship with Mr. Stewart. Disciplinary Counsel asked Respondent to identify among the records he had previously produced, documentary support for, among other things, the hours Respondent and co-counsel Stewart had billed, as Disciplinary Counsel had been unable to locate them. Despite a promise through counsel to respond, Respondent has failed to do so.

40. In response to Disciplinary Counsel's inquiries and subpoenas, Respondent has produced no contemporaneous time records documenting the hours he and co-counsel claimed to have worked.

Respondent's Violation of the Rules

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

A. Rules 1.1(a) and (b), in that Respondent (a) failed to provide competent representation to his client because Respondent failed to represent his client's interests using the required legal knowledge, skill, thoroughness and preparation reasonably necessary or the representation; and (b) failed to serve his client with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters;

B. Rule 1.4(a), in that Respondent failed to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information;

C. Rule 1.4(b), in that Respondent failed to explain the matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation;


D. Rule 1.5(a), in that Respondent's fees were unreasonable;

E. Rule 1.5(e), in that the division of a fee between Respondent and co-counsel Stewart, who were not in the same firm, was made while the client was not advised, in writing, of the contemplated division of responsibility or of the effect of the association of lawyers outside the firm on the fee to be charged;

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

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

Respectfully submitted,



Hamilton P. Fox, III
Disciplinary Counsel


Traci M. Tait
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, Traci M. Tait, Assistant Disciplinary Counsel, for the District of Columbia, do affirm
that I verily believe the facts stated in the petition to be true.



Traci M. Tait
Assistant Disciplinary Counsel

NOTARY PUBLIC

District of Columbia: S.S.

Subscribed and affirmed before me in the District of Columbia, on May 10, 2018.



Signature

Notary Public, Washington, D.C.
My Commission Expires: 01-31-2020



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SAMUEL BAILEY & ASSOCIATES

1776 I Street, NW
Ninth Floor
Washington, DC 20006
Tel. 202-359-8535

December 9, 2013

REPRESENTATION AGREEMENT

Samuel Bailey, Jr. Esquire, herein after, Counsel agrees to represent Alan Laster hereinafter Client, on the following allegations against Local Union 491, Mid Atlantic Regional Council of Carpenters and the Labor Management Training Committee Defendant, for labor law violations employment discrimination based on race and disability. Client alleges that the Local Union and Labor Management Training Committee failed to provide Client with a reasonable accommodation, denied him equal access to work and retaliated against him in violation of the Americans With Disabilities Act (ADA).

The above allegations will be brought under the Americans With Disabilities Act, Title VII of the 1963 Civil Rights Act and the National Labor Relations Act.

COUNSEL WILL PROVIDE THE FOLLOWING SERVICES:

- A) Prosecuting the complaint alleging employment discrimination before the United States District Court for the District of Columbia:
- Compiling and marshalling all evidence supportive of Client's allegations
 - Represent Client in all mediation, conciliation or settlement negotiations with the United States District Court for the District of Columbia;
 - Conduct all activities necessary to prosecute Clients claims including, disclosures, discovery; i.e., drafting interrogatories, requests for production of documents, admission of facts, depositions, answering interrogatory all motions, witness preparation, preparation and response to all dispositive motions, i.e., summary judgment motions
 - Developing a plan for relief with Client which includes all equitable relief offered under the

United States Constitution and the New Jersey Law Against Discrimination i.e. back pay, re-employment, prospective employer contacts, and all legal relief like compensatory and/or punitive damages; and,

- Keeping Client informed about all activities engaged in regarding this matter.

A. Client agrees to pay Counsel costs and expenses set forth below to prosecute this matter. These costs are only partial payment of the expense of prosecution. Counsel will pay all other costs above and beyond Clients contribution (listed below) required to successfully prosecute this matter.

B. This Representation Agreement is a partial contingent fee contract.

C. Client agrees to compensate Counsel in the following manner;

- Pay cost for prosecuting the Charge of Discrimination of Thirty Thousand (\$30,000.00) Dollars. Client and Counsel will agree to a payment plan that is set forth below.
- These payments are for costs and expenses anticipated for prosecuting the claims set forth above. Client agrees to pay One Thousand Hundred (\$1000.00) per month beginning on December 1, 2013. Client agrees to pay One Thousand Hundred (\$1000.00) Dollars per month due on the fifteenth day of the month for _____ months until the aforesaid agreed upon cost for prosecuting the charge is satisfied. Such satisfaction amount shall include cost for a jury trial if applicable. The last payment will be due on _____. Payments more than ten (10) days late or past the first of each month will automatically incur a twenty five (15%) late fee or one hundred and twenty five (\$125.00) dollars unless prior arrangements for payment is made by Client.
- The above costs and expenses are not hourly fees but are a reflection of fees in that they

represent Counsel's discounted hourly rate of \$400.00 per hour. Counsel will keep an itemized time sheet of tasks accomplished in this matter for which fees will be based when applicable.

- Client will pay the costs of all deposition transcripts. A separate addendum to this agreement will be completed for the payment of deposition transcript costs prior to the commencement of depositions. Deposition transcript costs include transcripts for Client's testimony and that of any witnesses deposed by Client or Defendant District of Columbia.
- Client will also pay the costs for all expert witnesses including expert witness reports and including physicians or physician costs for diagnosis and medical expert reports (if any experts are retained) An addendum to this agreement will be executed to cover expert costs.
- If this matter results in a jury trial there will be additional costs beyond the initial Thirty thousand (\$30,000.00) dollars in costs initially set forth above. Jury trial cost will not exceed Twenty thousand (\$20,000.00) Jury trial costs, if any, will be set forth in an addendum to this agreement.

D. Counsel will be entitled to payment of 40% percentage of Clients recovery after deduction of costs.

E. The Client understands that Counsel does not specialize in tax law and will not provide advice and/or counsel on matters relating to any tax implications arising out of the pursuit of this matter. The Client agrees to consult his accountant and/or tax lawyer on such issues and/or to authorize Counsel to consult with such individual on his behalf. All fees and costs attributed to such consultation by Counsel shall be billable under a separate agreement between Counsel and the Client.

CLIENT AGREES TO THE FOLLOWING CONDITIONS:

- F. Client has received and read this Agreement before execution.
- G. Client has discussed this Agreement with Counsel.
- H. Counsel agrees to represent Client with competence and diligence.
- I. Client acknowledges that entering this Agreement does not guarantee any particular outcome or result.
- J. Counsel agrees not to settle or resolve this matter without Client's consent.
- K. Client acknowledges that if he discharges Counsel for any reason other than just cause, Counsel shall have a lien for services in an amount equal to the greater of: (1) the above agreed percentage or gross recovery or \$500.00 per hour for services performed to date of discharge; (2) Counsel may withdraw from representing Client at any time after giving reasonable notice or if Client fails to cooperate with Counsel in handling this matter.
- L. Client will cooperate by promptly returning any and all of Counsel's telephone calls or other efforts to contact Client, by mail, email, facsimile, text or any other mode of communication. Client will timely appear at all meetings called by Counsel or court appearances or court related appearances in this matter. If Client is unable to appear at a meeting previously agreed to by Client, Client will contact Counsel as soon as possible prior to the meeting or appearance to let him know that he cannot appear. Client will promptly provide Counsel will all documents or other information requested by Counsel. If Client intends to travel outside the jurisdiction of Washington, D.C. where this action will be prosecuted, Client will notify Counsel in advance of his intent to travel. Failure to fulfill the

requirements of this provision may lead to withdrawal from representation by Counsel.

- M. Client acknowledges that Counsel may associate other counsel at his discretion. If associated counsel is retained no additional costs will be required of Client. If client is 'prevailing plaintiff' in this action associate counsel will share in Counsel's recovery and not in Clients share of any recovery without Client's express written agreement. Counsel intends to associate Clifford G. Stewart, Esq. in this matter. As Mr. Stewart is not a member of the District of Columbia bar, Counsel will file a motion pro hac vice on behalf of Mr. Stewart for temporary admission in the D.C. bar.
- N. Counsel's current non-discounted hourly rate for representation of this type is \$450.00 per hour.
- O. The Client understands that in the event of a recovery of a monetary award or money damages that the Client will be responsible for all taxes, state, local and federal, which may include taxes on both her recovery and fees recovered by Counsel. The Client further understands that such taxes may potentially be substantial and significantly reduce the ultimate value of his recovery.
- P. All communications between Client and Counsel are private, confidential and privileged. Communications of confidential information shared between Client and Counsel, if shared with third parties, may constitute a breach of the attorney/client privilege and shall be considered a basis for Counsel terminating this representation agreement or withdrawing from representation. Third parties are not to be permitted access to attorney/client conversations or information without prior approval of Counsel.

The Client and Counsel executed this Agreement on December 9, 2013.

By: _____
SIGNATURE

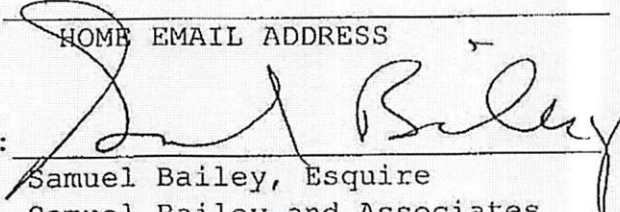
PRINTED NAME

STREET ADDRESS

CITY, STATE, ZIP CODE

HOME TELEPHONE NUMBER

HOME EMAIL ADDRESS

By: 
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