

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



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**In the Matter of** :  
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**Melanie M. Mfume, Esquire** : **Disciplinary Docket No. 2019-D101**  
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 **Respondent,** :  
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 **A Member of the Bar of the District** :  
 **of Columbia Court of Appeals** :  
 **Bar Number: 986367** :  
 **Date of Admission: February 9, 2009** :  
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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 D.C. Bar R. X and XI, § 2(b).

1. 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, having been admitted on February 9, 2009, and assigned Bar number 986367. Respondent has also been licensed to practice law in Maryland since December 12, 2007.

2. At all relevant times, Respondent’s misconduct, as set forth below, had its predominant effect in Maryland.

3. At all relevant times, Renee Berry was the owner of a condominium unit in Gaithersburg, Maryland.

4. Ms. Berry owed monthly assessments to her condominium association, “Potomac Oaks Condominium” (also known as the Council of Unit Owners of Diamond Farms Condominium). Potomac Oaks alleged that Ms. Berry had accrued a debt dating back to 2008.

5. The debt was the subject of a 2010 civil action filed by Potomac Oaks against Ms. Berry in the District Court of Maryland for Montgomery County, *Council of Unit Owners of Diamond Farms v. Renee Berry*, Case Number 0601-0030270-2010 (“The 2010 Case”).

6. The 2010 Case was settled three times based on payment plans Potomac Oaks entered with Ms. Berry, but it was reactivated whenever Ms. Berry defaulted on those payments. The 2010 Case was first settled on May 4, 2011, via a Settlement Agreement. It was settled again on October 10, 2013, via an Amendment to Settlement Agreement. It was settled once again on September 10, 2015, via a Second Amendment to Settlement Agreement.”

7. On January 30, 2017, Ms. Berry emailed Respondent and stated that she “need[ed] to dispute condo fees.” Ms. Berry attached to her email a copy of the 2013 and 2015 agreements. Both agreements featured the caption of the 2010 Case.

8. The Second Amendment to Settlement Agreement provided that the entire balance of Ms. Berry's debt was due in full by September 30, 2017 (also known as the "balloon payment" date). In the event of a default on any of the payments, Potomac Oaks was entitled to request that judgment be entered for the unpaid balance.

9. Respondent agreed to represent Ms. Berry and arranged for a phone call. After their call, Ms. Berry emailed Respondent more information, including a letter and ledger from Potomac Oaks' attorney, Phillip Ochs, detailing the alleged amount owed.

10. On February 8, 2017, Ms. Berry emailed Respondent and asked whether she was still going to take her case. Ms. Berry believed Potomac Oaks would file a lien, and she stated that she wanted to file something in court first.

11. On February 8, 2017, Respondent replied to Ms. Berry and stated that she would charge a "flat fee of \$1500." She also stated: "It is not clear at this time if litigation will be required but if so it will be included in that fee."

12. On or about February 16, 2017, Ms. Berry paid Respondent the \$1,500 flat fee.

13. On March 2, 2017, Ms. Berry emailed Respondent. According to Ms. Berry, she owed Potomac Oaks approximately \$8,000.

14. On March 8, 2017, Respondent sent Mr. Ochs an email with a subject line referencing the 2010 Case. She stated that she was retained by Ms. Berry “to assist her in resolving this situation.”

15. On March 16, 2017, Mr. Ochs replied, attached a draft “Exhibit List” (captioned under the 2010 Case), and provided all three settlement agreements. Mr. Ochs stated that he was “preparing an exhibit list... in the event [they had] a hearing on the balance due[,]” but he had not declared a default yet and he “hoped to work out a new agreement with Ms. Berry.” Mr. Ochs explained that under their agreements, “if there is a breach, [he could] go back to court under the current case and not have to file separate lawsuits.”

16. Between March 21 and March 30, 2017, Respondent and Mr. Ochs exchanged emails. Mr. Ochs advised that Ms. Berry was not current on her payments. He stated that unless they could work out a new payment plan, he would have to “file a request to enter judgment [in] the pending case or file a new case.”

17. On April 11, 2017, Mr. Ochs wrote to Ms. Berry and Respondent, notifying Ms. Berry that she was in default of the settlement agreements. In the letter, he advised that if she failed to pay the balance owed, he reserved the right to re-open the 2010 Case and request judgment for the entire balance. That day, Respondent emailed Mr. Ochs and asked for his best settlement offer.

18. On April 14, 2017, after speaking with Mr. Ochs by phone, Respondent emailed him to state that her client could pay \$700 per month to Potomac Oaks. She asked if the September 30, 2017, balloon payment date could be extended. Mr. Ochs replied that he would prepare an agreement the next week.

19. On April 24, 2017, having found Ms. Berry in default of the settlement agreements, Potomac Oaks filed an action in the District Court for Montgomery County, Maryland. *Council of Unit Owners of Diamond Farms v. Renee Berry*, Case No. 0601-0007177-2017 (hereinafter “The 2017 Case”). Potomac Oaks sued for assessments Ms. Berry accrued through April 1, 2017. At the time, the 2010 case remained inactive.

20. On April 28, 2017, Mr. Ochs emailed Respondent, advised her of the filing of the 2017 Case, and provided a draft settlement agreement captioned under the 2017 Case. Mr. Ochs separately emailed Respondent a copy of the Complaint and Writ of Summons for the 2017 Case.

21. Also, that day, Mr. Ochs emailed Respondent a draft Notice of Dismissal captioned under the 2017 Case. The dismissal was unsigned and had not been filed, as no settlement had been reached with Ms. Berry.

22. Ms. Berry was never personally served in the 2017 Case.

23. Nevertheless, on April 29, 2017, Ms. Berry emailed Respondent,

informed her that she learned Potomac Oaks had “filed for judgment,” and asked whether she had gotten a notice from the court.

24. On May 1, 2017, Respondent replied to Ms. Berry and stated that Mr. Ochs said he was “working on the agreement.” However, Respondent stated that she would “check the docket” and tell her whether there was any activity.

25. Respondent did not forward Ms. Berry a copy of the complaint and summons that Mr. Ochs emailed her days earlier.

26. Instead, Respondent sent Ms. Berry a copy of Mr. Ochs’s proposed dismissal. She told Ms. Berry, incorrectly, that Mr. Ochs had filed it. Ms. Berry thanked Respondent, saying that she had been worried.

27. On May 1, 2017, Respondent replied to Mr. Ochs, thanking him for his email containing the dismissal. The next day, Mr. Ochs replied that he would “fill in the blanks” and email it to her. On May 3, 2017, Mr. Ochs forwarded the “filled-[in]” settlement agreement captioned under the 2017 Case.

28. Respondent did not write to Mr. Ochs until May 23, 2017. She stated that she would “finalize this by the end of the week.” Respondent did not write to Mr. Ochs again until June 19, 2017.

29. Respondent did not forward the draft settlement agreement to Ms. Berry until June 19, 2017.

30. On June 21, 2017, Respondent emailed Mr. Ochs and provided him a copy of the settlement agreement with proposed changes. The next day, Mr. Ochs responded, agreeing to the changes.

31. On June 28, 2017, Mr. Ochs provided Respondent a copy of the settlement agreement with Respondent's modifications. Potomac Oaks agreed to reduce its legal fees if Ms. Berry entered into the agreement and made all payments by October 2019.

32. The next day, Respondent forwarded the agreement to Ms. Berry.

33. On July 7, 2017, Ms. Berry emailed Respondent and informed her that she could not afford the amounts provided in the settlement agreement.

34. On July 11, 2017, Ms. Berry emailed Respondent and asked if they could get an independent accounting of her debt. Ms. Berry stated that she could not understand why her debt had grown so much.

35. Respondent did not ask for an independent accounting or otherwise address Ms. Berry's challenges to the amount demanded.

36. After July 12, 2017, Respondent had no further communications with Ms. Berry about her case until November 11, 2017.

37. Ms. Berry and Potomac Oaks were unable negotiate a payment plan.

38. Even though Ms. Berry was aware that she had until September 30, 2017, to pay the balloon payment, Respondent failed to adequately explain to her the matter of the balloon payment and the potential consequences of not coming to an agreement with Potomac Oaks.

39. Respondent also did not tell Ms. Berry that Mr. Ochs had not dismissed the 2017 Case.

40. On October 5, 2017, the court issued a Notice of Summons Renewal in the 2017 Case at the request of Potomac Oaks and scheduled a trial for January 17, 2018.

41. On October 5, 2017, Mr. Ochs wrote to Ms. Berry and Respondent on behalf of Potomac Oaks. The letter's subject line featured the 2010 Case number. Mr. Ochs stated that Ms. Berry failed to bring her account current by the balloon payment date of September 30, 2017. He was therefore providing her a ten-day written notice of the default. Mr. Ochs advised that he would seek to collect the entire balance due as of September 30, 2017, plus interest, totaling \$18,756.61. Potomac Oaks demanded payment by October 18, 2017.

42. Ms. Berry did not pay the entire balance due to Potomac Oaks.

43. On November 7, 2017, Potomac Oaks revived the 2010 Case by filing an "Amended Complaint."



44. On November 9, 2017, the court reactivated the 2010 Case and scheduled a trial date. On November 15, the court rescheduled the trial to January 10, 2018.

45. On November 11, 2017, Ms. Berry emailed Respondent and stated that she had received two letters directly from Mr. Ochs. Respondent did not respond.

46. On November 19, 2017, Ms. Berry emailed Respondent. She asked, “Why is Potomac Oaks suing me for over \$16,000?”

47. The next day, Respondent replied that she would follow up that week.

48. Respondent failed to follow up or communicate with Ms. Berry about the matters she raised in her emails.

49. Respondent failed to check the status of the 2010 Case or 2017 Case or otherwise take any action following their November 19 and 20 emails.

50. On January 4, 2018, Ms. Berry emailed Respondent and stated that she “misplaced the new court date.” She asked when she should appear in court.

51. That day, Respondent replied that she would “check the docket.” Respondent added that they needed to schedule a call for next week so that she could “get up to speed.” Shortly thereafter, Respondent emailed Ms. Berry and informed her of a trial date of January 17, 2018, in the District Court for Montgomery County, Maryland.

52. The January 17, 2018, trial date Respondent provided to Ms. Berry related only to the 2017 Case.

53. Respondent failed to check the status of the 2010 Case and did not advise Ms. Berry of the January 10 trial date or otherwise take any action in the 2010 Case following Ms. Berry's January 4 email.

54. Respondent never entered her appearance in either the 2010 Case or the 2017 Case and did not prepare Ms. Berry for her impending court dates.

55. Respondent did not otherwise advise Ms. Berry that she would not be handling the matters.

56. On January 10, 2018, the court heard the 2010 Case. Mr. Ochs appeared on behalf of Potomac Oaks. Neither Respondent nor Ms. Berry appeared.

57. That day, the court entered a judgment against Ms. Berry and in favor of Potomac Oaks. The Court awarded \$10,795.09, plus pre-judgment interest, costs, and attorney's fees.

58. On January 13, 2018, Ms. Berry emailed Respondent twice, each with the subject "Potomac Oaks Condominium v. Renee Berry." Ms. Berry provided an "outline of the fees paid" and contested the debt. Respondent failed to respond.

59. On January 16, 2018, Ms. Berry emailed Respondent again and stated: "According to these documents, the case was Wednesday, Jan. 10th." Ms. Berry

attached the two scheduling notices issued by the court in the 2010 Case (November 9 and November 15, 2017). Ms. Berry also attached a copy of the judgment, which provided that Ms. Berry had until February 9, 2018, to file a motion to vacate the judgment.

60. That same day, Ms. Berry emailed Respondent again and asked her to write a motion to vacate the judgment on her behalf.

61. Respondent failed to respond to either of Ms. Berry's January 16 emails.

62. On January 22, 2018, Ms. Berry emailed Respondent twice and asked for her assistance. Ms. Berry stated that she would like to respond to the default judgment prior to the February 9 deadline. Respondent failed to respond.

63. Respondent failed to take any action in either the 2010 or 2017 Case.

64. On January 31, 2018, having received no response or action on the part of Respondent, Ms. Berry filed a *pro se* Notice of Intention to defend in the 2017 Case.

65. On February 8, 2018, Ms. Berry emailed Respondent again. Ms. Berry asked whether she submitted a motion to vacate on her behalf. Ms. Berry attached a motion she had drafted and asked Respondent to prepare the motion.

66. On February 9, 2018 at 7:19 a.m., Respondent replied to Ms. Berry.

She stated: “I have been in court so not yet. Will draft and file today. And you retained me to keep you out of court which didn’t happen.”

67. Later that day, Respondent emailed Ms. Berry and began demanding information. Ms. Berry responded and provided Respondent information. She asked Respondent to join the 2010 and 2017 Cases.

68. Respondent failed to file a Motion to Vacate as she assured Ms. Berry she would.

69. Between February 9 and February 16, 2018, Ms. Berry and Respondent exchanged emails in which Respondent challenged Ms. Berry’s claims against Potomac Oaks.

70. On February 11, 2018, Ms. Berry emailed Respondent and stated that if Respondent was not going to represent her, then she should provide a refund of her fees.

71. On February 12, 2018, Respondent wrote to Ms. Berry and stated: “you paid for my time which you have more than spent. I do not owe you a refund of any fees paid.”

72. Contrary to Respondent’s earlier statements, Respondent falsely stated to Ms. Berry that she did not retain Respondent to represent her in court.

73. Potomac Oaks sought and obtained a lien against Ms. Berry’s property

in the 2010 Case. The court issued a notice on February 15, 2018.

74. Ms. Berry filed a motion to vacate in the 2010 Case, but did so *pro se*. The court denied the motion on February 27, 2018.

75. Potomac Oaks filed a motion to dismiss the 2017 case, and the court dismissed it on March 5, 2018.

76. In the 2010 Case, which Potomac Oaks did not dismiss, Potomac Oaks later sought a writ of garnishment on Ms. Berry's property and on Ms. Berry's rental income.

### **DISCIPLINARY INVESTIGATIONS**

77. On January 2, 2019, Ms. Berry filed a complaint against Respondent with the Attorney Grievance Commission of Maryland.

78. The Maryland Office of Bar Counsel forwarded a copy of the complaint to Respondent on January 10, 2019. Maryland Bar Counsel asked Respondent to provide a written response to the complaint.

79. On February 5, 2019, Respondent wrote to Maryland Bar Counsel. The response contained a 13-page timeline of communications with Ms. Berry and Mr. Ochs from April 26, 2016, through February 16, 2018.

80. Following Respondent's chronology of her February 8 through August 10, 2017 correspondence with Ms. Berry and Mr. Ochs, Respondent falsely stated

in her response to Maryland Bar Counsel that she had “no further communications” with Mr. Ochs.

81. Respondent also falsely stated to Maryland Bar Counsel that during the 2017 settlement discussions, Attorney Ochs filed the 2017 Case without her knowledge.

82. In her response, Respondent falsely stated that she had “provided a complete history for all text and email conversations that [she] had with Ms. Berry.” But, Respondent had omitted (a) her April 28 and 29, 2017 emails with Mr. Ochs and Ms. Berry regarding the filing and “dismissal” of the 2017 Case, (b) her November 19-20, 2017 email exchange with Ms. Berry about why Potomac Oaks had sued her; and (c) the January 4, 2018 emails exchanged with Ms. Berry in which Ms. Berry said she “misplaced the new court date” and asked when she should appear in court.

83. On February 11, 2019, Respondent forwarded Ms. Berry’s Maryland complaint to the Office of Disciplinary Counsel. On June 12, 2019, Disciplinary Counsel issued a subpoena to Respondent for the client file of Ms. Berry.

84. On July 8, 2019, Respondent provided a copy of Ms. Berry’s client file.

85. However, in her production of responsive documents, Respondent omitted documents, including: (a) the November 2017 emails in which Ms. Berry

asked Respondent why Potomac Oaks was suing her and in which Respondent replied that she would respond the next week; and (b) the January 4, 2018 emails in which Ms. Berry stated that she “misplaced the new court date” and asked when she should appear in court, and in which Respondent replied with a court date.

86. In her October 7, 2019 letter to Disciplinary Counsel, Respondent falsely stated that there was “no communication with Ms. Berry... between November 12, 2017 and January 12, 2018.”

87. Respondent’s conduct violated the following Maryland Attorneys’ Rules of Professional Conduct:

a. Md. Rule 19-301.1, in that Respondent failed to provide competent representation to Ms. Berry.

b. Md. Rule 19-301.2(a), in that Respondent failed to abide by Ms. Berry’s decisions concerning the objectives of the representation.

c. Md. Rule 19-301.3, in that Respondent failed to act with reasonable diligence and promptness in her representation of Ms. Berry.

d. Md. Rule 19-301.4(a), in that Respondent failed to keep Ms. Berry reasonably informed about the status of her matters, failed to promptly comply with reasonable requests for information, and failed to timely consult with Ms. Berry about any relevant limitations on her conduct

when Respondent believed Ms. Berry expected assistance Respondent did not believe she could provide under the Maryland Rules.

e. Md. Rule 19-301.4(b), in that Respondent failed to timely explain Ms. Berry's matter and her ability to represent Ms. Berry to the extent reasonably necessary to permit Ms. Berry to make informed decisions regarding the representation.

f. Md. Rule 19-301.16(d) in that Respondent, upon termination of the representation, failed to take steps to the extent reasonably practicable to protect Ms. Berry's interests.

g. Md. Rule 19-308.1(a), in that Respondent knowingly made false statements of material fact to Maryland Bar Counsel.

h. Md. Rule 19-308.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation to Ms. Berry and during Maryland Bar Counsel's investigation.

i. Md. Rule 19-308.4(d), in that Respondent engaged in conduct that was prejudicial to the administration of justice in her representation of Ms. Berry and during Maryland Bar Counsel's investigation.

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



a. Rule 8.1(a), in that Respondent knowingly made a false statement of fact to Disciplinary Counsel during its investigation.

b. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation during Disciplinary Counsel's investigation.

c. Rule 8.4(d), in that Respondent engaged in conduct that was prejudicial to the administration of justice during Disciplinary Counsel's investigation.

Respectfully submitted,

*Hamilton P. Fox, III*

Hamilton P. Fox, III  
Disciplinary Counsel



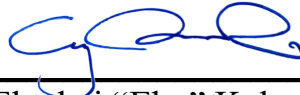
Ebtchaj "Eby" Kalantar  
Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL  
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(202) 638-1501

**VERIFICATION**

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

Subscribed and affirmed in the District of Columbia this 28<sup>th</sup> day of September, 2022.



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Ebtehaj “Eby” Kalantar  
Assistant Disciplinary Counsel

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



**In the Matter of** :  
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**Melanie M. Mfume, Esquire** : **Disciplinary Docket No. 2019-D101**  
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**Respondent,** :  
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**A Member of the Bar of the District** :  
**of Columbia Court of Appeals** :  
**Bar Number: 986367** :  
**Date of Admission: February 9, 2009** :  
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**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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