DISTRICT OF COLUMBIA COURT OF APPEALS

BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
John P. Mahoney, Esquire,	:	**DDN 2021-D054; 2021-D059;[1] DDN 2021-D172; DDN 2022-D209; DDN 2023-D089**
Respondent	:	
A Member of the Bar of the District of Columbia Court of Appeals.	:	
Bar Number: 442839	:	
Date of Admission: 08/05/1994	:	

PETITION FOR NEGOTIATED DISCIPLINE

Pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondent John P. Mahoney, Esquire ("Respondent") respectfully submit this Petition for Negotiated Disposition in the above-captioned matter.

I. STATEMENT OF THE NATURE OF THE MATTER BROUGHT TO DISCIPLINARY COUNSEL'S ATTENTION

Disciplinary Counsel received bar complaints from six clients of Respondent's law firm, each alleging that Respondent or lawyers whom he

[1] The DDN of Count VI (DDN 2021-D059) was misidentified in the original Specification as DDN 2021-D054 (which is the DDN for Count III).

supervises failed to communicate, neglected their matters, and/or failed to protect the client's interest when terminating the representation. Disciplinary Counsel's investigation revealed that Respondent failed to timely respond to reasonable requests for information from five clients, or was aware that lawyers he supervised failed to respond to such requests and failed to take appropriate remedial action. Respondent also was aware that lawyers he supervised failed to keep three clients reasonably informed about the status of the matter, failed to explain matters to them to the extent reasonably necessary for them to make informed decisions, and failed to represent them zealously and diligently. Respondent failed to take appropriate remedial action. Moreover, with four clients, Respondent failed to take reasonable steps to protect the clients' interests when terminating the representation or failed to appropriately supervise the lawyers who worked at his firm when they terminated the firm's representation.

STIPULATION OF FACTS AND RULE VIOLATIONS

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on August 5, 1994, and assigned Bar Number 442839. Respondent is also admitted to practice in Maryland.

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

2. Since 2014, Respondent has been the founder and sole proprietor of the Law Firm of John P. Mahoney, Esq. (the "Firm"). The Firm represents federal employees in employment-related matters, including employment discrimination, whistleblower retaliation, and security clearances.

3. Starting in 2016, Respondent began hiring other lawyers to work at the Firm as non-equity partners and "of counsel" attorneys.

4. Respondent conducts almost all initial client consultations and countersigns almost all initial retainer agreements. After the initial consultation, if the client retains the Firm, Respondent usually assigns the matter to another lawyer at the Firm to carry out the representation.

5. In addition to generally supervising their work, Respondent discusses each case with the assigned attorney at least quarterly during a case review.

6. Respondent created the Firm's standard retainer agreements.

7. Respondent promulgates and enforces any formal or informal policies governing the conduct of the lawyers who work at the Firm.

8. Respondent directs the handling of all funds collected from or refunded to clients of the Firm.

COUNT I

Allen v. FBI

D. Dkt. No. 2023-D089

9. In April 2018, Respondent consulted with Kristen Allen about the employment discrimination complaint she had filed against her employer, the Federal Bureau of Investigation, which was pending before the Equal Employment Opportunity Commission in Washington, D.C.

10. On April 25, 2018, Ms. Allen signed the first of several limited scope retainer agreements for the Firm to represent her in the matter. Respondent countersigned the retainer. In the retainer agreement, Ms. Allen agreed to pay the Firm hourly attorney's fees that would initially be charged against an advance of unearned fees of $2,815. Ms. Allen also agreed to replenish the advance of unearned fees upon request as services were performed.

11. Respondent assigned partner Rachelle Young to work on Ms. Allen's case.

12. On October 7, 2019, the FBI filed a Motion for Summary Judgment. Ms. Young filed an Opposition on November 7, 2019.

13. Ms. Young provided Ms. Allen with a copy of the Opposition after it was filed. Ms. Allen had several comments and questions about the Opposition, including that Ms. Young failed to properly identify her supervisor (who was the alleged discriminating official). Ms. Young did not respond to Ms. Allen's comments or questions. Ms. Allen later complained to Respondent about this.

14. On February 11, 2020, the Administrative Judge issued an Order granting summary judgment to the FBI.

15. Ms. Young failed to inform Ms. Allen about her appellate rights. Ms. Allen erroneously believed that her appeal rights had terminated with the February 2020 Order. When Ms. Allen attempted to communicate with Ms. Young about the dismissal, Ms. Young did not respond.

16. On or about March 6, 2020, Ms. Allen received an electronic marketing message sent by a third party on behalf of the Firm. In response to the marketing email, Ms. Allen complained about the firm's representation, including the lack of communication and the dismissal of her case. Ms. Allen requested a partial refund of the attorney's fees she had paid. Ms. Allen's complaint was forwarded to Respondent on March 10, 2020.

17. On March 11, 2020, Respondent asked Ms. Young about Ms. Allen's complaints. Ms. Young did not respond to him, nor did she respond to the client. Respondent did not respond to the client directly; nor did he take reasonable steps to ensure that Ms. Young responded.

18. On March 19, 2020, the Department of Justice issued a Final Agency Decision. Ms. Young assumed Ms. Allen had received a copy of the FAD from the agency, but Ms. Allen did not receive it nor did Ms. Young or anyone else from the Firm mail her a copy.

19. The FAD adopted the reasoning of the EEOC Administrative Judge and dismissed Ms. Allen's case. The FAD gave Ms. Allen 30 days to appeal the decision to the EEOC. Neither Ms. Young nor anyone else at the Firm informed Ms. Allen of her appellate rights until April 16, 2020--a few days before the deadline for appeal.

20. Ms. Allen did not appeal the FAD.

21. Based on his quarterly reviews of matters assigned to Ms. Young, Respondent knew or should have known that Ms. Young had failed to close Ms. Allen's case and make the case file available to Ms. Allen.

22. In September 2020, Respondent's non-lawyer employee contacted Ms. Allen to close her file. Ms. Allen asked whether Respondent had been told about her complaints about Ms. Young's representation, including her lack of diligence and communication. Ms. Allen again requested a partial refund of the attorney's fees she had paid. The employee told Ms. Allen that the Respondent would be informed of her concerns.

23. The employee informed Respondent of Ms. Allen's complaint and refund request. On October 3, 2020, Respondent told Ms. Young to respond to Ms. Allen's concerns and send him a copy of the response.

24. Ms. Young never responded to the client. Respondent did not respond to the client directly; nor did he take reasonable steps to ensure that Ms. Young responded.

25. On October 15, 2020, Respondent refunded Ms. Allen $20.72 in unearned advance attorney's fees.

26. Respondent violated the following District of Columbia Rules of Professional Conduct:

A. Rule 5.1(b), in that he failed to take reasonable steps to ensure that Ms. Young complied with her duties of communication and diligence, and her obligations to protect Ms. Allen's interest when the Firm's representation ended;

B. Rule 5.1(c)(2), in that he supervised Ms. Young and knew or should have known of her misconduct, but failed to mitigate it or take remedial action; and

C. Rule 1.4(a), in that he failed to comply with Ms. Allen's reasonable requests for information.

COUNT II

Zadran Whistleblower Complaint

D. Dkt. No. 2022-D209

27. In August 2018, Respondent consulted with Said Zadran about representing him in a whistleblower matter against his employer, a government contractor.

28. On August 6, 2018, Mr. Zadran entered into a retainer agreement with the Firm to negotiate a resolution of his whistleblower complaint. Respondent countersigned the retainer agreement. Mr. Zadran agreed to pay the Firm hourly attorney's fees that would initially be charged against an advance of unearned fees of $2,865. Mr. Zadran also agreed to replenish the advance of unearned fees upon request as services were performed.

29. Respondent assigned Ms. Young to represent Mr. Zadran.

30. Ms. Young took over two and a half years to complete a draft demand letter to submit to Mr. Zadran's employer – which Respondent knew or should have known based on his quarterly review of Ms. Young's representation of Firm clients.

31. During the representation, Ms. Young failed to communicate with Mr. Zadran about his case, including:

A. Failing to respond to numerous requests for updates; and

B. Failing to inform Mr. Zadran for almost one year about his employer's response to his demand letter.

32. Mr. Zadran often copied Respondent on his inquiries to Ms. Young. Respondent failed to ensure that Ms. Young responded to Mr. Zadran and did not respond to Mr. Zadran himself.

33. In April 2022, Ms. Young discussed with Mr. Zadran issues raised by his employer's response to the demand letter and explained to Mr. Zadran numerous reasons why the Firm believed his case should not be pursued and would not assist him in filing a complaint.

34. Mr. Zadran did not understand that the Firm was no longer going to represent him, and he continued to send Ms. Young emails asking for updates, often cc'ing Respondent.

35. Respondent did not take adequate steps to ensure that Ms. Young responded to the requests for updates or explained that they had withdrawn from the representation, and he did not directly respond to Mr. Zadran's inquiries himself.

36. Respondent did not return Mr. Zadran's unearned advance fees of $2,865 until December 2022, after Mr. Zadran filed a bar complaint.

37. Respondent violated the following District of Columbia Rules of Professional Conduct:

A. Rule 5.1(b), in that he failed to take reasonable steps to ensure that Ms. Young complied with her duties of communication and diligence;

B. Rule 5.1(c)(2), in that he supervised Ms. Young and knew or should have known of her misconduct, but failed to mitigate it or take remedial action; and

C. Rule 1.16(d), in that he failed to take timely steps to ensure that Mr. Zadran received a prompt refund of unused advance fees.

COUNT III

Saceda v. USDA

D. Dkt. No. 2021-D054

38. In November 2018, Respondent consulted with Joneta Saceda about representing her in an informal Equal Employment Opportunity complaint that she filed with her employer, the United States Department of Agriculture.

39. On November 8, 2018, Ms. Saceda entered into the first of several limited scope retainer agreements with the Firm to represent her in the matter. Respondent countersigned the retainer agreement. Ms. Saceda agreed to pay the Firm hourly attorney's fees that would initially be charged against an advance of unearned fees of $2,860. Ms. Saceda also agreed to replenish the advance of unearned fees upon request as services were performed.

40. Respondent originally assigned "of counsel" attorney Lynn Mahoney to represent Ms. Saceda. Later, after the Firm filed a formal EEO complaint on Ms. Saceda's behalf, and a second informal EEO complaint in a separate matter,

Respondent reassigned partner Letha Miller[2] to represent Ms. Saceda. Ms. Miller continued to represent Ms. Saceda after Ms. Saceda chose to proceed with her first EEO complaint before an Administrative Judge at the EEOC in Washington, D.C.

41. Paragraph 11 of the retainer agreements that Ms. Saceda signed provided:

> Unless other arrangements are made, after such time as any Fee advance is absorbed by services rendered costs incurred on your behalf by the Firm, the Client agrees to timely replenish the Fee Advance as requested by the Law Firm. **CLIENT ACKNOWLEDGES THAT THE LAW FIRM, IN ITS SOLE DISCRETION, MAY REFUSE TO PERFORM SERVICES IF THE CLIENT DOES NOT HAVE SUFFICIENT FUNDS ON ACCOUNT TO PAY FOR SUCH SERVICES.**

(Emphasis in original.)

42. On February 2, 2021, the agency noticed Ms. Saceda's deposition for February 12, 2021. Ms. Miller did not tell Ms. Saceda until February 10, 2021, that unless she paid the Firm an additional $3,851, the Firm would not appear and defend her at the deposition. Ms. Miller's demand for additional fees was pursuant to the policies and procedures that Respondent had implemented and set forth in his Firm's fee agreements.

43. Because Ms. Saceda could not pay the fees demanded by February 12, 2021, Ms. Miller did not represent her at the deposition.

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[2] Ms. Miller is admitted elsewhere and is not admitted to practice in the District of Columbia.

44. On February 19, 2021, Ms. Saceda sent Ms. Miller an email firing the Firm and copying Respondent. Ms. Saceda demanded a refund of any unused advance fees still in her account.

45. That same day, Ms. Miller emailed Ms. Saceda that she would withdraw from both cases; she also copied Respondent. In the email, Ms. Miller did not address the refund, provide Ms. Saceda her case files, or advise her of upcoming deadlines in the case. Respondent took no steps to protect Ms. Saceda's rights when his Firm withdrew as her counsel.

46. Ms. Miller withdrew from both of Ms. Saceda's cases on February 19, 2021. She did not ask for a stay of the proceedings to give Ms. Saceda time to seek new counsel. Respondent did not have a policy or practice of requiring attorneys working for the Firm, when they filed to withdraw, to ask the EEOC judges for additional time for clients to find new counsel. Indeed, the Respondent's policy and practice was that the Firm not seek such an enlargement of time.

47. On February 22, 2021, Ms. Saceda asked Ms. Miller for her case files.

48. On February 23, 2021, Ms. Miller asked Respondent and Ms. Mahoney whether she should charge Ms. Saceda for reviewing and providing her with an electronic copy of her files. She stated that if she should charge Ms. Saceda, then the Firm should delay providing her with a refund. Respondent replied that she should charge Ms. Saceda, citing paragraph 14 of his standard Firm retainer which

provides, "If the Law Firm is discharged, it shall have the right to make a copy of the file and charge Client its customary copying costs. The Law Firm shall have a reasonable amount of time to allow for the copying of the entire file . . ."

49. Ms. Saceda asked for her files several more times, and Ms. Miller finally provided her with the files on February 25, 2021.

50. On February 27, 2021, Ms. Saceda asked Ms. Miller about the upcoming deadlines. Ms. Miller provided the deadlines on March 1, 2021. The deadlines included a March 8, 2021, deadline for the filing of dispositive motions and a March 23, 2021, deadline for oppositions thereto.

51. Ms. Saceda asked Ms. Miller for a refund several times. The Firm sent Ms. Saceda her monthly invoice on March 3, 2021. Respondent refunded Ms. Saceda $726.96 in unearned fees on March 4, 2021.

52. Respondent violated the following District of Columbia Rules of Professional Conduct:

A. Rule 5.1(b), in that he failed to take reasonable steps to ensure that Ms. Miller protected Ms. Saceda's interest when terminating the Firm's representation; and

B. Rule 5.1(c)(2), in that he supervised Ms. Miller and knew or should have known of her misconduct but failed to mitigate it or take remedial action.

COUNT IV

Jedlowski v. Army

D. Dkt. No. 2023-D089

53. In January 2019, Respondent consulted with Joseph Jedlowski about representing him in a formal EEO complaint he filed with his employer, the United States Army.

54. On January 29, 2019, the Firm entered into a limited scope retainer agreement with Mr. Jedlowski and agreed to represent him on certain aspects of his employment discrimination and retaliation claims. Respondent countersigned the retainer agreement. Mr. Jedlowski agreed to pay the Firm hourly attorney's fees that would initially be charged against an advance of unearned fees of $2,860. Mr. Jedlowski also agreed to replenish the advance of unearned fees upon request as services were performed.

55. Respondent assigned Ms. Young to work on Mr. Jedlowski's case.

56. By early December 2019, Mr. Jedlowski's case was pending before an Administrative Judge at the EEOC in Baltimore, Maryland. At Mr. Jedlowski's request and due to health issues, he was experiencing, Ms. Young asked the Administrative Judge to stay the proceedings and refer the matter to a different judge for settlement negotiations.

57. Mr. Jedlowski's wife, Maria, was involved in the representation because of his on-going health issues.

58. On or about June 15, 2020, the parties reached a settlement agreement in principle. On June 22, 2020, the Army provided Ms. Young with the first draft of the settlement agreement, which she forwarded to Mr. Jedlowski and his wife. Ms. Young was supposed to send comments back to the Army on the draft.

59. Despite repeated requests for updates from Mr. Jedlowski and his wife from June to late July 2020, Ms. Young failed to keep them reasonably informed about the status of the settlement agreement.

60. Mr. Jedlowski contacted Respondent on July 6, 2020, and informed him that Ms. Young was not communicating with him about the case. Respondent instructed Ms. Young to contact Mr. Jedlowski. Ms. Young failed to do so. Respondent did not respond to the client directly; nor did he take reasonable steps to ensure that Ms. Young responded.

61. On July 21, 2020, Mr. Jedlowski contacted the Firm through an on-line chat function on the Firm's website. In the chat, he stated that he had been trying to get information from Ms. Young about the status of his case and had spoken to Respondent three weeks earlier, all to no avail.

62. Mr. Jedlowski's comments in the on-line chat were sent to Respondent, and Respondent again instructed Ms. Young to contact Mr. Jedlowski.

63. On July 23, 2020, after receiving a status update request from the Army's lawyer, Ms. Young provided comments on the draft agreement. She did so without obtaining the concurrence of or input from the Jedlowskis. Ms. Young then sent the Jedlowskis a copy of her comments. When Ms. Jedlowski asked Ms. Young for clarification, Ms. Young did not respond.

64. Within a week, the Army accepted Ms. Young's changes and she indicated that she would obtain Mr. Jedlowski's signature on the agreement. From late July to early September 2020, despite the Jedlowskis repeated calls and emails, Ms. Young did not communicate with the Jedlowskis about the settlement agreement.

65. In August 2020, Mr. Jedlowski called the Firm and again spoke with Respondent. Mr. Jedlowski told Respondent that he had not heard from Ms. Young. Respondent informed Mr. Jedlowski that he needed to pay off a balance due on his account (less than $50) and stated that he would ask Ms. Young to contact Mr. Jedlowski. Ms. Young did not contact the Jedlowskis. Respondent did not take reasonable steps to ensure that she did, and Respondent did not communicate with the Jedlowskis.

66. On September 9, 2020, the settlement judge commented on the delay and asked Ms. Young to provide an update on the settlement.

67. On September 16, 2020, Ms. Young finally provided Mr. Jedlowski and his wife with the final draft of the settlement agreement. When Mr. Jedlowski raised some concerns about the draft agreement, Ms. Young did not reply.

68. Between September until the end of December 2020, the Jedlowskis continued to ask Ms. Young for updates, but Ms. Young did not communicate with them about the status of the settlement.

69. On January 20, 2021, the presiding Administrative Judge lifted the stay and asked the parties to brief her on the status of the settlement. Ms. Young then began communicating with Mr. Jedlowski again about the draft settlement agreement on that same date.

70. On or about April 6, 2021, the parties signed the settlement agreement.

71. Respondent violated the following District of Columbia and/or Maryland Rules of Professional Conduct:

A. D.C. Rule 5.1(b) and Maryland Rule 19-305.1(b), in that he failed to take reasonable steps to ensure that Ms. Young complied with her duties of communication and diligence;

B. D.C. Rule 5.1(c)(2) and Maryland Rule 19-305.1(c)(2), in that he supervised Ms. Young and knew or should have known of her misconduct, but failed to mitigate it or take remedial action; and

C. D.C. Rule 1.4(a) and Maryland Rule 19-301.4(a)(3), in that he failed to comply with Mr. Jedlowski's reasonable requests for information.

COUNT V

Holloway v. DOL

D. Dkt. No. 2021-D172

72. In March 2020, Respondent consulted with Tenisha Campbell Holloway about representing her in an employment discrimination case against her employer, the Department of Labor, which was pending before the EEOC in Washington, D.C. The case was awaiting assignment to an Administrative Judge and the issuance of a Case Management Order that would establish litigation deadlines.

73. On April 7, 2020, the Firm entered into a limited scope retainer agreement with Ms. Holloway and agreed to represent her on certain aspects of her case. Respondent countersigned the retainer agreement. Pursuant to the agreement, Ms. Holloway agreed to pay the Firm hourly attorney's fees that would initially be charged against an advance of unearned fees of $2,975. Ms. Holloway also agreed to replenish the advance of unearned fees upon request as services were performed.

74. Respondent assigned Ms. Miller to work on Ms. Holloway's case.

75. Ms. Holloway informed Respondent and Ms. Miller from the beginning that she wanted to settle her discrimination claims.

76. After being rescheduled, the Initial Status Conference took place on June 21, 2021. The parties filed a Joint Settlement Statement on June 29, 2021, asking the Administrative Judge to stay the deadlines in the case and refer the matter to mediation.

77. Ms. Holloway told Ms. Miller in or around April 2021 that, going forward, she would have to get a loan from her government retirement fund to pay for the representation.

78. On June 28, 2021, Ms. Miller asked Ms. Holloway to supplement her account by paying $2,760 in advance unearned attorney's fees for future legal services. That same day, Ms. Holloway asked Ms. Miller to contact her to discuss "serious billing concerns." Ms. Miller asked Ms. Holloway by email to let her know which invoice entries were the cause of concern.

79. Because Ms. Miller did not call her, Ms. Holloway called the Firm and left a voicemail message for Respondent saying that she wanted to talk about billing concerns.

80. Respondent did not return Ms. Holloway's call. Instead, on June 29, 2021, he told Ms. Miller to call her back.

81. Later that day, Ms. Miller sent Ms. Holloway an email stating that Respondent had informed her about Ms. Holloway's voicemail message and asking Ms. Holloway for a list of her concerns. Because no one would respond to her request to talk by phone, Ms. Holloway sent Ms. Miller a list of her concerns and cc'd Respondent.

82. On June 30, 2021, the Administrative Judge set the litigation deadlines in the case and indicated that he would schedule the case for mediation.

83. From June 30, 2021, to early July 2021, Ms. Holloway and Ms. Miller exchanged several emails about billing and their attorney-client relationship, copying Respondent on most of them. In one of the earlier exchanges, Ms. Holloway stated, "I will deposit the money requested." She added, "Going forward, I would like to have a list of itemized work that is expected prior to your request for funds." Ms. Holloway copied Respondent on the email.

84. Ms. Miller refused to provide an itemized list of future services despite Ms. Holloway explaining that she needed the list going forward because she had to fund the litigation through loans. She demanded that Ms. Holloway supplement her account by July 8, 2021. Ms. Holloway asked for more time.

85. While these email exchanges were taking place, Ms. Holloway tried to call Ms. Miller and Respondent several times. She left voicemail messages for

Respondent asking if he could assign another attorney to work on her case, but neither Ms. Miller nor Respondent called her back.

86. Ms. Miller wrote Ms. Holloway an email on July 14, 2021, copyiing Respondent. She reiterated that she would not provide Ms. Holloway with a list of future anticipated work, said that she had already responded to the issues Ms. Holloway raised, noted that Ms. Holloway had not paid the requested advance of unearned fees, and said that she would be withdrawing from the representation that day. She asked Ms. Holloway to let her know if she wanted her case file delivered by Dropbox. Ms. Miller did not address deadlines in the case or the return of any unused advance fees.

87. Ms. Miller filed her notice of withdrawal that day. In the notice, pursuant to Respondent's policies and procedures, she did not ask the court to extend scheduling of the mediation so that Ms. Holloway could find new counsel.

88. On July 28, 2021, the Administrative Judge scheduled the mediation to take place on August 17, 2021.

89. On August 4, 2021, the Firm sent Ms. Holloway her monthly invoice reflecting that there was $51.10 in advance unearned fees left in her account. On August 9, 2021, Ms. Holloway sent an email to the Firm's billing department, copying Respondent, asking for a refund. No one responded to her request.

90. Ms. Holloway was unable to find another lawyer to represent her. She tried to postpone the settlement conference, but on August 10, 2021, the Administrative Judge denied her request.

91. At the August 17, 2021, settlement conference, Ms. Holloway proceeded *pro se.* Although Ms. Miller had demanded $95,090 plus attorney's fees, Ms. Holloway ended up settling her case for $12,500 including attorney's fees.

92. On August 19, 2021, Ms. Holloway again requested a refund from the Firm, copying Respondent on her email.

93. Respondent refunded Ms. Holloway $51.10 on August 26, 2021.

94. Respondent violated the following District of Columbia Rules of Professional Conduct:

A. Rule 5.1(b), in that he failed to take reasonable steps to ensure that Ms. Miller protected Ms. Holloway's interest when terminating the Firm's relationship with her;

B. Rule 5.1(c)(2), in that he supervised Ms. Miller and knew or should have known of her failure to protect Ms. Holloway's interest when terminating the Firm's relationship with her, failure to communicate, but failed to mitigate Ms. Miller's misconduct or take remedial action;

C. Rule 1.4(a), in that he failed to reply to Ms. Holloway's reasonable requests for information; and

D. Rule 1.16(d), in that he failed to take timely steps to protect Ms. Holloway's interests when his Firm withdrew, including advising her of deadlines and giving her time to retain new counsel.

COUNT VI

Tranumn v. DOT

D. Dkt. No. 2021-D059[3]

95. In November 2020, Respondent consulted with Anthony Tranumn about an employment discrimination case he had filed against the Department of Transportation. After the agency investigated the matter, Mr. Tranumn elected to proceed before an Administrative Judge at the EEOC in New York.

96. On November 12, 2020, the Firm entered into the first of two limited scope retainer agreements with Mr. Tranumn and agreed to represent him in certain aspects of his case. Respondent countersigned the retainer agreement. Pursuant to the agreement, Mr. Tranumn agreed to pay the Firm hourly attorney's fees that would initially be charged against an advance of unearned fees of $3,105. Mr. Tranumn

[3] The DDN was misidentified on the original Specification of Charges as DDN 2021-D054.

also agreed to replenish the advance of unearned fees upon request as services were performed.

97. Respondent assigned Ms. Miller to work on Mr. Tranumn's case.

98. Ms. Miller continued to represent Mr. Tranumn through written discovery in the case, including on a motion to compel that Mr. Tranumn wanted to file against the agency.

99. On February 10, 2021, while the discovery dispute was still pending, the agency filed a Motion for Summary Judgment.

100. On February 12, 2021, the Administrative Judge ruled that Mr. Tranumn could not file the motion to compel.

101. On February 16, 2021, Ms. Miller asked Mr. Tranumn to advance $2,710 in unearned fees to pay for the next steps in the litigation.

102. On that same day, without informing Ms. Miller, Mr. Tranumn contacted the supervisory Administrative Judge to express his dismay and confusion at the presiding judge's ruling. Mr. Tranumn left Ms. Miller a voicemail message about the call after the fact.

103. The same day, the presiding Administrative Judge ordered the parties to appear at a status conference on February 18, 2021, to discuss Mr. Tranumn's concerns about the fairness of the proceedings.

104. When Ms. Miller discussed Mr. Tranumn's call to the supervisory Administrative Judge with Respondent on February 16, 2021, Respondent instructed her to contact the D.C. Ethics Hotline to find out if the call would constitute a lack of client cooperation that would justify ending the attorney-client relationship.

105. On February 17, 2021, Ms. Miller reported back to Respondent about her call to the ethics hotline. She stated that she was advised that Mr. Tranumn's call likely would not be a basis under Rule 1.16 to terminate the relationship, but that the relationship could be terminated for failing to pay for legal services if the lack of payment was a hardship for the attorney. Ms. Miller reported that she told the ethics hotline advisor that Mr. Tranumn was "pretty far in the red."

106. However, Mr. Tranumn owed the Firm only $271.35 in fees.

107. From February 17, 2021 until the early hours of February 18, 2021, Ms. Miller and Mr. Tranumn exchanged several emails about billing, a pre- conference call, and the representation, copying Respondent on many of them. Ms. Miller asked Mr. Tranumn to pay $271.35 to bring his account current and pay

an additional $1,626 in unearned fees for her to participate in the status conference with the presiding Administrative Judge scheduled for February 18th.

108. Mr. Tranumn asked to speak to Ms. Miller and Respondent about the case before the status conference. Ms. Miller said that neither she nor Respondent would talk to Mr. Tranumn about substantive matters until he supplemented his account, but that they were not available for a call before the status conference in any event.

109. Mr. Tranumn continued to express that he wanted to talk before the status conference and indicated that he would seek redress elsewhere if Ms. Miller and Respondent were unwilling to talk to him about his concerns.

110. Three hours before the status conference, Ms. Miller emailed Mr. Tranumn giving him twenty minutes to supplement his account and to withdraw any concerns he had about the representation and his statement about seeking redress elsewhere. She stated that, if Mr. Tranumn would not change his mind about the issues in her email by 9:00 a.m., she would withdraw her appearance. Ms. Miller cc'd Respondent on the email.

111. In her email, Ms. Miller did not offer to provide Mr. Tranumn with his case file, advise him of upcoming deadlines in the case, or offer to seek an enlargement to allow Mr. Tranumn time to find other representation.

112. While these emails were being exchanged, Mr. Tranumn left several voicemail messages for Respondent asking if someone else could be assigned to his case. Respondent did not reply to Mr. Tranumn's messages.

113. Respondent knew or should have known that Ms. Miller withdrew her appearance at 9:22 a.m. Pursuant to Respondent's policies and procedures, Ms. Miller did not ask for an extension of time for Mr. Tranumn to be able to find representation.

114. Mr. Tranumn attended the scheduled hearing at 11:30 a.m. that morning *pro se*.

115. Ultimately, Mr. Tranumn could not find other representation, and had to respond to the agency's pending summary judgment motion on his own.

116. The Administrative Judge entered summary judgment for the agency.

117. Ms. Miller and Respondent never provided Mr. Tranumn with his case file. Nor did they provide him with a list of deadlines in the case.

118. Respondent violated the following District of Columbia and New York Rules of Professional Conduct:

A. D.C. Rule 5.1(b), and New York Rules 5.1(b)(1) and (2), in that he failed to take reasonable steps to ensure that his Firm protected Mr. Tranumn's interest when Ms. Miller terminated the Firm's representation of Mr. Tranumn;

B. D.C. Rule 5.1(c)(2) and New York Rule 5.1(d)(2)(i) and (ii), in that he supervised Ms. Miller and knew or should have known of her misconduct, but failed to mitigate it or take remedial action;

C. Rule 1.4(a), in that he failed to reply to Mr. Tranumn's reasonable requests for information; and

D. Rule 1.16(d), in that, when his Firm withdrew, Respondent failed to take timely steps to the extent reasonably practicable to protect his client's interests, including by giving reasonable notice to the client, allowing time for the employment of other counsel, and surrendering papers and property to which the client was entitled.

II. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

In connection with this Petition for Negotiated Disposition, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section I, *supra*, other than those set forth above, or any sanction other than that set forth below.

III. AGREED UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed in this matter is a 60-day suspension, with 30 days stayed in favor of a one-year period of probation with conditions. The period of suspension shall begin 30 days after the Court enters its final order imposing the sanction. The one-year probationary period shall begin immediately after the period of suspension ends. The Court's order should include a condition that, if probation is revoked, Respondent will be required to serve the remaining 30 days of his suspension.

Respondent and Disciplinary Counsel also have agreed to the following conditions of this negotiated disposition:

(a) Respondent must take the Basic Training and Beyond two-day course offered by the District of Columbia Bar and must take an additional three hours of pre-approved continuing legal education that are related to attorney ethics. Respondent must certify and provide documentary proof that he has met these requirements to the Office of Disciplinary Counsel within six months of the date of the Court's final order;

(b) During the period of probation, Respondent shall not be the subject of a disciplinary complaint that results in a finding that he violated the disciplinary rules of any jurisdiction in which he is admitted or licensed to practice;

(c) Respondent must meet with Dan Mills, Esquire, the Manager of the Practice Management Advisory Service of the District of Columbia Bar (or his

successor or designee) in person or virtually within 30 days of the date of the Court's final order. At that time, Respondent must execute a waiver allowing PMAS to communicate directly with the Office of Disciplinary Counsel regarding his compliance. When Respondent meets with PMAS virtually or in person, he will make any and all records relating to his firm and law practice available for review. Respondent shall ask PMAS to conduct a full assessment of Respondent's business structure and his practice, including but not limited to all law firm processes and procedures, financial records, client files, engagement letters, supervision and training of staff, and responsiveness to clients. Respondent shall adopt all recommendations and implement them in the law firm and his general practice of law.

Thirty days after the entry of the Court's final order, Respondent shall begin his 30-day suspension. His one-year probation shall begin immediately after his suspension ends. During his probation, Respondent shall consult regularly with PMAS on the schedule it establishes. Respondent must be in full compliance with PMAS's requirements for a period of twelve consecutive months, and it is Respondent's sole responsibility to demonstrate compliance. Respondent must sign an acknowledgement under penalty of perjury affirming that he is in compliance with PMAS's requirements and file the signed acknowledgement with the Office of

Disciplinary Counsel. This must be accomplished no later than seven business days after the end of Respondent's period of probation; and

(d) Respondent's Rule 14(g) notification to all existing firm clients about his suspension shall also include notice that, after his 30-day suspension, he will be on probation for one year.

If Disciplinary Counsel has probable cause to believe that Respondent has violated the terms of his probation, Disciplinary Counsel may seek to revoke Respondent's probation pursuant to D.C. Bar R. XI, § 3 and Board Rule 18.3, and request that Respondent be required to serve the remaining 30 days of suspension.

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

Relevant Precedent

Under Board Rule 17.5(a)(iii), the agreed-upon sanction in a negotiated discipline case must be "justified, and not unduly lenient, taking into consideration the record as a whole." A justified sanction "does not have to comply with the sanction appropriate under the comparability standard set forth in D.C. Bar Rule XI, § 9(h)." Bd. R. 17.5(a)(iii). Moreover, to the extent that Respondent has violated the Maryland or New York Rules of Professional Conduct, District of Columbia law determines the appropriate sanction. *In re Tun*, 286 A.3d 538, 543 (D.C. 2022)

(Although "we are evaluating misconduct under the rules of another jurisdiction, we make sanctions determinations pursuant to District of Columbia law.").

The Court of Appeals has noted, "Generally, absent aggravating factors, a first instance of neglect of a single client matter warrants a reprimand or public censure. . . . But in cases where there are aggravating factors or the respondent has a prior disciplinary history, a 30-day suspension has severally been imposed." *In re Chapman*, 962 A.2d 922, 925 (D.C. 2009). The Court has further stated, "We have imposed greater punishment in neglect cases where there were significant aggravating factors—such as deliberate dishonesty, a pattern of neglect, or an extensive disciplinary history." *Id. Also see, e.g., In re Fay*, 111 A.3d 1025 (D.C. 2015) (Court ordered informal admonition of lawyer who served as local counsel in personal injury case but failed to serve complaint and case was dismissed); *In re Speights*, 173 A.3d 96 (D.C. 2017) (extensive neglect in single case over six-year period and incompetence caused dismissal of case; also respondent had history of discipline and testified falsely at disciplinary hearing; Court imposed 90-day suspension with 60 days stayed and one-year probation with conditions); *In re Ukwu*, 926 A.2d 1106 (D.C. 2007) (Court imposed two-year suspension with fitness, and restitution on lawyer who engaged in pervasive pattern of neglect of five immigration clients, made misrepresentations to tribunal, and engaged in conduct

that seriously interfered in the administration of justice, including failing to appear at agency interviews and at least one hearing).

Here, based on the aggravating and mitigating circumstances described below, a suspension of 60 days with 30 days stayed in favor of one year probation with conditions is appropriate. *See, e.g., In re Hargrove*, 155 A.3d 375 (D.C. 2017) (Court imposed 60-day suspension on lawyer who served for 13 years as court-appointed representative but failed to record and collect judgments for the estate, failed to have property transferred to estate to allow for sale, failed to repay estate as ordered by the court, and refused to give estate file to successor counsel); *In re Thai*, 987 A.2d 428 (D.C. 2009) (Court imposed 60-day suspension with 30 days stayed in lieu of one-year probation with conditions upon lawyer whose neglect in immigration case contributed to entry of order of deportation against client and who failed to promptly provide case file to successor counsel).

Mitigating Factors

Mitigating circumstances include that Respondent: 1) has expressed remorse; 2) has cooperated with Disciplinary Counsel during the investigation of this matter; 3) has partially reimbursed Kristen Allen $16,707.30 of the attorney's fees she paid for the representation; 4) has instituted certain changes at the Firm including, but not limited to, offering additional virtual administrative assistance to the attorneys who work for him, instituting new policies to protect the interests of clients when

terminating the representation including asking the tribunal for a 30-day enlargement to permit the client to find new counsel, advising the client in writing of upcoming deadlines, promptly providing client files, and refunding unused advance fees within three days or as soon as possible; as well as adopting new policies about client communication, including giving clients copies of pleadings prior to their filing, promptly providing clients with copies of pleadings filed and explaining their legal import, giving the client as much advance notice as possible about the amount of money that the firm requires to be paid as advance unearned fees before work will be performed, responding to client communications within 24-48 hours, and proper calendaring; and 5) has engaged in or is currently engaging in bar-related and public activities including serving as co-chair of the Labor & Employment Law Section of the D.C. Bar, helping to found a charity that provides employment-related legal services to low income workers in the D.C. metro area, and serving on a council that works to protect voting rights.

Aggravating Factors

In aggravation, Respondent violated several rules of professional conduct in six client matters as set forth above.

Also, Disciplinary Counsel informally admonished Respondent in 2016 for disclosing client confidences after the client criticized him online and, in a subsequent post where he claimed that Disciplinary Counsel had "cleared" him of

certain charges, omitting material information about the rule violation that Disciplinary Counsel told him it found had occurred.

The parties agree they are not aware of any additional aggravating factors outside of the conduct as described in this petition.

Given these mitigating and aggravating factors, the parties submit that the agreed-upon sanction is appropriate.

IV. RESPONDENT'S AFFIDAVIT

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

CONCLUSION

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

Dated: October 16 2023

Hamilton P. Fox, III
Disciplinary Counsel

Jerri Dunston
Assistant Disciplinary Counsel

John P. Mahoney
Respondent

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