DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
	:	**Board Docket No. 22-BD-080**
WILLIAM H. BRAMMER, JR., ESQUIRE,	:	**Disciplinary Docket No. 2022-D024**
	:	
Respondent	:	
	:	
A Member of the Bar of the District of Columbia Court of Appeals	:	
Bar Number: 478206	:	
Date of Admission: 07/08/2002	:	

PETITION FOR NEGOTIATED DISPOSITION

Pursuant to the District of Columbia Court of Appeals Rules Governing the Bar as prescribed by Rule X and Rule XI, § 12.1 (D.C. Bar R.) and Board Rule 17.3, Disciplinary Counsel and Respondent, William H. Brammer, Esquire, respectfully submit this petition for negotiated disposition in the above-captioned matter. Pursuant to D.C. Bar R. XI, §1(a), jurisdiction is found because Respondent is a member of the District of Columbia Bar.

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

Disciplinary Counsel received a complaint from two of Respondent's co-clients in an estate matter, alleging, among other things, that Respondent engaged in

neglect and was dishonest with them when communicating about their matter.

II. STIPULATION OF FACTS AND RULE VIOLATIONS

Disciplinary Counsel and Respondent stipulate to the following:

The Facts

1. Pursuant to D.C. Bar R. XI, §1(a), Disciplinary Counsel has jurisdiction to prosecute because Respondent is a member of the Bar of the District of Columbia Court of Appeals admitted on July 8, 2002, and assigned Bar number 478206.

2. On July 1, 2021, Patricia Easley Whearty and her brother Craig Easley retained Respondent to represent them in their efforts to obtain information about expenditures made by the trustee of their mother's trust. The trustee was their sister, who lived in Virginia with their mother. The siblings' parents had lived in Maryland before their father's death and certain assets remained in that state. The trustee had not responded to Ms. Whearty's and Mr. Easley's questions about how their mother's assets were being spent. They were concerned that the trustee was spending trust assets inappropriately while refusing to provide information about her expenditures.

3. Ms. Whearty and Mr. Easley first interviewed Respondent on or about June 8, 2021, by teleconference because of the pandemic. They have never met with him in person. Ms. Whearty and Mr. Easley informed Respondent that they sought an attorney who was familiar with the relevant law in both Maryland and Virginia.

They chose to retain Respondent after he led them to believe that his law firm had the requisite expertise to handle their matter, despite that the trust was formed in Maryland and the trustee and beneficiary lived in Virginia.

4. The initial telephone conference was followed by a Zoom call on June 17, 2021. Participants in this zoom teleconference were the complainant, her brother Craig Easley, Respondent, and the Maryland attorney.

5. Respondent did not adequately disclose that he was not licensed in either Virginia or Maryland in the parties' first telephone conference, or on the June 17, 2021 Zoom call. He explained that he would need to bring in a Maryland attorney but did not share that one of the reasons for this was that he was not licensed in Maryland or Virginia.

6. Respondent informed Ms. Whearty and Mr. Easley that he had a team that included a Maryland attorney. Though Respondent shared that the Maryland attorney worked for "Lincoln Park Associates," he failed to disclose that the attorney was not an associate, partner, or otherwise employed at his firm. Ms. Whearty and Mr. Easley believed that Respondent's team were members of Respondent's own law firm.

7. Respondent's law firm did not have a Maryland or Virginia attorney. Respondent was the only lawyer at his firm. He did not disclose these facts to Ms. Whearty and Mr. Easley.

8. Ms. Whearty and Mr. Easley would not have retained Respondent if they had known he was the firm's only attorney without a license in either relevant jurisdiction.

9. Around the time they initially met with Respondent, Ms. Whearty and Mr. Easley asked Respondent about projected fees to handle their matter. Respondent estimated that legal fees could range from $6000 to $30,000 or more for the representation, depending on whether the trustee would provide the information they sought without need of prolonged litigation.

10. Respondent agreed to bill Ms. Whearty and Mr. Easley hourly and agreed to alert them to replenish the retainer as fees were earned. He explained the concept of an evergreen deposit and agreed that they could replenish it in $3000 increments as the fees were earned.

11. Ms. Whearty and Mr. Easley paid Respondent $6000 to begin the representation.

12. On June 30, 2021, Mr. Easley signed Respondent's retainer agreement; Ms. Whearty signed it the next day. Respondent's retainer agreement identified the

Maryland attorney as local counsel but did not clearly state his billing rate, and did not set forth the division of responsibility or give any more details about the effect of the association of lawyers outside the firm on the fee to be charged.

13. At some point early in the representation, Respondent informed Ms. Whearty and Mr. Easley that the attorney with the Maryland license was going to travel out of the country for an extended period. He mentioned that another person would be brought in to perform some of the same duties the Maryland attorney would have performed if he had not been traveling. Respondent did not explain what these duties were or to what degree the new person would be involved.

14. Respondent contends that the duties he expected the new person to complete were proofreading, document compiling, and other basic paralegal functions. This was not explained to Ms. Whearty and Mr. Easley.

15. The new person Respondent identified was H. Franklin Green, whom Respondent knew or should have known was a convicted felon and former member of the D.C. Bar disbarred for financial misconduct.

16. Respondent explained to Ms. Whearty and Mr. Easley that Mr. Green possessed a Juris Doctor, but was not a practicing attorney. Respondent did not disclose Mr. Green's criminal and disciplinary history.

17. Ms. Whearty and Mr. Easley would not have retained Respondent or his firm if they had known about Mr. Green's criminal and disciplinary history.

18. As the representation progressed, Mr. Green, Respondent, the Maryland attorney, Ms. Whearty and Mr. Easley had teleconferences and exchanged e-mails.

19. On August 6, 2021, the Maryland attorney filed (a) a motion for preliminary injunction, and (b) a petition to account for trust assets, modify the trust, and replace the trustee on behalf of Ms. Whearty and Mr. Easley in the Circuit Court for Montgomery County, Maryland. The Maryland attorney, Respondent, and Mr. Green, worked together in preparing the pleadings and supporting affidavits. Respondent and the Maryland attorney both signed the substantive pleadings and the relevant documents to admit Respondent *pro hac vice* to the Maryland court.

20. Ms. Whearty and Mr. Easley were unclear about Mr. Green's role in their case and believed he was an attorney working in Respondent's law office. Respondent never explicitly told them that Mr. Green was not an attorney in his law firm. Ms. Whearty and Mr. Easley reasonably concluded that Mr. Green was an attorney.

21. Although Ms. Whearty and Mr. Easley had been prepared for the Maryland attorney to be less involved because of his foreign travel, the Maryland attorney stayed as involved in the representation as Respondent.

22. From the perspective of Ms. Whearty and Mr. Easley, Mr. Green's role in the representation was indistinguishable from that of the Maryland attorney and Respondent. Respondent concedes that he did not adequately explain to his clients Mr. Green's role in the representation.

23. About seven weeks after retaining Respondent, Ms. Whearty and Mr. Easley received their first invoice for legal services. It was for more than the initial estimate of $30,000. They were surprised by the amount. Despite Respondent's explanation of the evergreen deposit, they had expected to be charged in $3000 increments. Though he had provided some updates to Ms. Whearty and Mr. Easley about the work that was being performed, Respondent had never revised his initial estimate of the litigation cost. Respondent concedes that he had not provided billing updates or regular invoices because he had not had time to compile them. Respondent also concedes that though he explained the concept of an evergreen deposit, he failed to make sure that Ms. Whearty and Mr. Easley understood the difference between that and their billing schedule.

24. It was only after Ms. Whearty and Mr. Easley reviewed the invoice that they learned that the Maryland attorney was not part of Respondent's law firm. Respondent concedes that his designation of the Maryland attorney as "local

counsel" was not sufficient to inform Ms. Whearty and Mr. Easley of the salient facts.

25. Ms. Whearty and Mr. Easley disputed the amount of the legal fees stating they believed Respondent to be overcharging them. Ms. Whearty and Mr. Easley expressed their disappointment at the lack of communication and failure to advise them when the initial retainer was exhausted.

26. Ms. Whearty and Mr. Easley directed Respondent to cease further work except to move to dismiss the petition that had been filed.

27. The trustee filed a counter-motion and Ms. Whearty and Mr. Easley obtained successor counsel to respond.

28. Ms. Whearty and Mr. Easley discovered Mr. Green's criminal and disciplinary background after Ms. Whearty filed a disciplinary complaint.

29. Ms. Whearty and Mr. Easley ultimately paid Respondent $26,000 in fees.

30. At the onset of the representation, Respondent created a DropBox folder for Ms. Whearty and Mr. Easley to use to view all of the documents in the case. Respondent uploaded all of the pleadings to this folder, including the August 6, 2021 Motion for Special Admission for Respondent to practice in Maryland.

Although this document was available to Ms. Whearty and Mr. Easley, Respondent concedes that he never made any efforts to confirm that they had actually read it.

The Rule Violations

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

A. Rule 1.4(a), because Respondent failed to keep his clients apprised of the status of the matter, specifically around fees;

B. Rule 1.4(b), because Respondent failed to explain the matter to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation;

C. Rule 1.5(e), because Respondent worked with an attorney who was not in the same firm without advising his clients in writing of the contemplated division of responsibility and of the effect of the association of lawyers outside the firm on the fee to be charged, obtaining his clients' informed consent, and ensuring that the total fee was reasonable; and,

D. Rule 8.4(c), because Respondent engaged in reckless conduct rising to dishonesty by misleading his clients to believe that more than one attorney worked for his law firm, that his firm had expertise in representing

clients seeking the relief they sought and so could handle their matter efficiently, and that Mr. Green was an attorney who worked for his firm.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II other than those set forth above, or any sanction other than that set forth below.

IV. AGREED UPON SANCTION AND RELEVANT PRECEDENT

The agreed-upon sanction in a negotiated discipline case must be (a) justified; and (b) not unduly lenient, taking into consideration the record as a whole, including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel's evidence, any circumstances in aggravation and mitigation (including Respondent's cooperation with Disciplinary Counsel and acceptance of responsibility), and relevant precedent. Board Rule 17.5; *see* D.C. Bar R. XI, § 12.1(b)(1)(iv). A justified sanction does not have to comply with the the comparability standard set forth in D.C. Bar R. XI, §9(h). Board Rule 17.5(a)(iii).

Agreed-Upon Sanction

Disciplinary Counsel and Respondent agree that: (a) 30 days after the Court issues its Order (or on a date otherwise specified by the Court), and (b) ending one year from the date that Respondent is reinstated, the sanction to be imposed is:

1. a 90-day suspension, all but 30 days stayed;

2. one year's unsupervised probation on the condition that Respondent 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 licensed to practice during the probationary period;

3. that Respondent will notify Disciplinary Counsel promptly of any disciplinary complaint filed against him and its disposition;

4. that Respondent will consult with the D.C. Bar's Practice Management Advisory Service to conduct a review of Respondent's prior discipline, and his law practice to avoid continuing to make the same ethics breaches, with particular emphasis on clear and effective communication;

5. that Respondent waives confidentiality regarding the PMAS consultation process and will provide proof within 10 days of its completion;

6. that within 30 days of the Court's order suspending Respondent, he will notify Disciplinary Counsel in writing of all jurisdictions in which he is or has been

licensed to practice, and all tribunals before which he has appeared as legal counsel; and,

7. Respondent's probation begins on the day he completes his suspension.

Relevant Precedent

Respondent's Misconduct Was Reckless, Rising to Dishonesty

Disciplinary Counsel and Respondent agree that Respondent's reckless communication with his clients about his employees, billing practices, and anticipated fees was dishonest. "Dishonesty" includes not only fraudulent, deceitful or misrepresentative conduct, but also "conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness." *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990); *In re Samad,* 51 A.3d 486, 496 (D.C. 2012). The District of Columbia Court of Appeals has made clear for decades this point: "Honesty is basic to the practice of the law." *In re Baber*, 106 A.3d 1072, 1077 (D.C. 2015) (citation omitted); *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987). "Clients must be able to rely unquestioningly on the truthfulness of their counsel." *In re Outlaw*, 917 A.2d 684, 688 (D.C. 2007), citing *In re Reback [and Parsons]*, 513 A.2d 226, 231 (D.C. 1986) (*en banc*).

Nor is an intent to deceive a requirement to violate Rule 8.4(c) (or its predecessor). *See e.g., In re McBride*, 642 A.2d at 1270, 1273 (D.C. 1994) (lawyer

engaged in dishonesty notwithstanding that actions were not motivated by personal gain, but "misguided" effort to help friend); *In re Schneider*, 553 A.2d 206, 211 (D.C. 1989) (Court rejected argument that "intent to deceive" was required for dishonesty; Court assumed lawyer's motivation was "simply to utilize 'short-cut' method to obtain reimbursement" to which he thought he was entitled, but lawyer committed acts of deception by altering receipts); *Reback [and Parsons]*, 513 A.2d at 228, 231-32 (lawyers were dishonest for filing accurate second complaint without client's knowledge and after forging then notarizing her signature to replace earlier one dismissed due to neglect, trying to restore client to prior case posture but for their negligence).

30 Days' Served Suspension Falls Within the Broad Range of Sanctions for Respondent's Dishonesty and Other Violations

The parties also agree that a 30-day suspension falls within the broad range of sanction under the Court's jurisprudence for his violation of Rules 8.4(c) (dishonesty), 1.4(a) and (b) (failures to communicate with clients), and 1.5(e) (failure to comply with required writing setting forth fee-splitting and division of labor with counsel from another law firm). The range of sanctions for dishonesty combined with other ethics violations is from a non-suspensory sanction to disbarment. *See In re Gregory W. Gardner, Esquire*, Disciplinary Docket No. 2017-

D102 (Oct. 24, 2018) (informal admonition for violating promise to communicate with both co-counsel and the client)[1]; *In re Cleaver-Bascombe*, 986 A.2d 1191 (D.C. 2010) (disbarment for submitting false Criminal Justice Act vouchers violating Rules 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), 1.5(a) (unreasonable fee), 3.3(a)(1) (false statement of material fact to tribunal), and 8.4(d) (engaging in conduct seriously interfering with administration of justice) – all aggravated by attorney's perjury during disciplinary hearing).

The Sanction Is Justified

A 30-day suspension for Respondent's dishonesty, failure to communicate, and other violations is justified. First, no set of facts will be identical from case to case, but there are examples of attorneys who have violated Rules somewhat comparable to those of Respondent. *See e.g., In re Avery,* 189 A.3d 715 (D.C. 2018) (Court imposed 60-day suspension with 30 days stayed for neglecting client, making misleading statements to Disciplinary Counsel, and giving "not credible" and "false testimony" at hearing); *In re Bailey*, 283 A. 3d 1199, 1209 (D.C. 2022) (Court imposed one year's suspension for dishonestly charging client unreasonable fee

1 Included at the labeled appendix.

(Rules 8.4(c) and 1.5(a)), failing to communicate with client (Rules 1.4(a) and 1.4(b)), failing to provide client a writing about fee-splitting and division of responsibilities with counsel at another law firm (Rule 1.5(e)), and seriously interfering with the administration of justice (Rule 8.4(d)), in the context of much more extensive disciplinary history than Respondent's that included nine-month suspension for, *inter alia*, misappropriation, in addition to two informal admonitions).[2]

Second, Respondent previously benefited from a petition for negotiated disposition but failed to complete his probation before the instant case was docketed. *In re Brammer*, 243 A.3d 863 (D.C. 2021).

Finally, Respondent recognizes the pattern of his misconduct and is prepared to learn effective strategies to avoid repeating it. He takes responsibility for failing to disclose to his clients important information about his law firm, its employees, and his billing practices, agreeing that he should have been more forthcoming. Given the broad range of sanctions, a 30-day suspension falls within the range of sanctions

2 The additional context in *Bailey* can be found in abbreviated fashion in the Board's Report and Recommendation, 18-BD-054 (BPR July 9, 2021) at 34 (discussing attorney's prior discipline).

for dishonest conduct. The sanction is justified considering relevant precedent and the record as a whole.

A. Evidence in Aggravation to Be Considered

Aggravating factors are that Respondent's misconduct includes dishonesty, and he has a significant disciplinary history (a negotiated stayed 30-day suspension with probation for incompetence, neglect, and failure to communicate, and a prior informal admonition for incompetence and failure to communicate). The Court's order approving the earlier petition for negotiated discipline, the petition for negotiated disposition, and the informal admonition are attached at the labeled appendices. Further, Respondent failed to complete his probation during his prior (fully) stayed suspension before the disciplinary complaint giving rise to these charges was filed.

B. Evidence in Mitigation to Be Considered

In mitigation, Respondent has taken responsibility for his misconduct, in that he acknowledges that he violated the Rules as set forth above, has cooperated fully with Disciplinary Counsel's investigation, agrees that a served suspension is appropriate given his failure to complete probation in his prior negotiated disposition, and seeks to learn strategies to avoid further ethics breaches.

***

Respondent is aware that he will be required to notify clients of his suspension under D.C. Bar R. XI, § 14, and Board Rule 9.9.

V. RESPONDENT'S DECLARATION

Accompanying this Petition in further support of this Petition for Negotiated Disposition, is Respondent's declaration pursuant to D.C. Bar R. Xl, § 12.1(b)(2).

William H. Brammer, Jr., Esquire
Respondent

s/Hamilton P. Fox, III
Hamilton P. Fox, III
Disciplinary Counsel

s/ McGavock D. Reed, Jr
McGavock D. Reed, Jr., Esquire
Respondent's Counsel

s/Traci M. Tait
Traci M. Tait
Assistant Disciplinary Counsel

APPENDIX

OFFICE OF DISCIPLINARY COUNSEL

October 24, 2018

BY FIRST CLASS AND CERTIFIED MAIL NO. 9414-7266-9904-2129-1986-56

Gregory Gardner, Esquire
c/o Kenneth McPherson, Esquire
6801 Kenilworth Avenue, #202
Berkshire Building
Riverdale, Maryland 20737

In re Gregory W. Gardner, Esquire
(D.C. Bar No. 499514)
Disciplinary Docket No. 2017-D102

Dear Mr. Gardner:

This office has completed its investigation of you in the above-referenced matter. We find that your conduct reflected a disregard of certain ethical standards under the District of Columbia Rules of Professional Conduct (the Rules). We are, therefore, issuing you this Informal Admonition pursuant to D.C. Bar R. XI, §§ 3, 6, and 8.

We opened an investigation based upon Mr. Bruce Anton's representation that he permitted you to assist him and his co-counsel draft a habeas petition in Texas for a death row inmate on one condition. The condition was that you include both of them in any communications that you had with the client. You acknowledged this condition, agreed to it, and told the client of this condition. However, you very quickly breached this condition by emailing and talking to the client without the knowledge or participation of your co-counsels. They sponsored your *pro hac vice* admission in Texas believing that you would honor your agreement.

You assisted both co-counsel with the habeas petition and particularly focused on one issue concerning hypnosis. After the habeas petition was filed, the court ordered a stay of execution and the case was remanded for further proceedings. Soon after remand, you contacted Mr. Anton and advised him that the client wished to have Mr. Anton withdraw from the case. You further stated that the client wrote a letter requesting Mr. Anton's withdrawal. You stated that this letter was written "without [your] input or direction." This was not an accurate statement; you had counseled the client about his letter requesting the withdrawal.

You state that you did not honor your agreement not to communicate with the client unless co-counsel were a part of the communication because you believed that the client wished to communicate with you confidentially. If that were true, you should have informed the client that you could not have such communications in view of your prior commitment to co-counsel or you had the option of informing co-counsel of the client's wishes. You took neither of these options but allowed co-counsel to believe that you were honoring the commitment you had made. This conduct violated Rule 8.4(c).

Your denial that you had any input into the client's termination letter is incorrect and inaccurate and violates Rule 8.4(c).

In deciding to issue this letter of Informal Admonition rather than institute formal disciplinary charges against you, we have taken into consideration that you took this matter seriously, cooperated with our investigation, and have accepted responsibility for your misconduct, including by accepting this Informal Admonition. You also have no disciplinary history.

This letter constitutes an Informal Admonition for your violation of the Rules, pursuant to D.C. Bar R. XI, §§ 3, 6, and 8 and is public when issued. Please refer to the Attachment to this letter of Informal Admonition for a statement of its effect and your right to have it vacated and have a formal hearing before a Hearing Committee.

If you would like to have a formal hearing, you must submit a written request for a hearing within 14 days of the date of this letter to the Office of Disciplinary Counsel, with a copy to the Board on Professional Responsibility, unless Disciplinary Counsel grants an extension of time. If you request a hearing, this Informal Admonition will be vacated, and Disciplinary Counsel will institute formal charges pursuant to D.C. Bar R. XI, § 8 (b). The case will then be assigned to a Hearing Committee and a hearing will be scheduled by the Executive Attorney for the Board on Professional Responsibility pursuant to D.C. Bar R. XI, § 8 (c). Such a hearing could result in a recommendation to dismiss the charges against you or a recommendation for a finding of culpability, in which case the sanction recommended by the Hearing Committee is not limited to an Informal Admonition.

Sincerely,

Hamilton P. Fox, III
Disciplinary Counsel

Encl.: Attachment to Letter of Informal Admonition

cc: Bruce Anton, Esquire

HPF:EAH:eaf

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
	:	
WILLIAM H. BRAMMER, JR., ESQUIRE,	:	**Bar Docket Nos. 2012-D174**
	:	
Respondent	:	
	:	
Member of the Bar of the District of Columbia Court of Appeals	:	
Bar Number: 478206	:	
Date of Admission: July 8, 2002	:	
	:	

PETITION FOR NEGOTIATED DISCIPLINE

Disciplinary Counsel and William H. Brammer, Jr., Esquire, ("Respondent"), represented by Daniel Schumack, Esquire, agree to enter into a negotiated discipline pursuant to D.C. Bar Rule XI, § 12.1 and Board Rule 17.3. Respondent is the subject of the above-referenced investigation by Disciplinary Counsel pursuant to D.C. Bar Rule XI §§ 6(a)(2), 8(a) and Board Rule 2.1. The parties agree that a 30-day suspension, stayed upon the successful completion of probation and restitution to his client in the amount of $5,000, is the appropriate discipline for his misconduct.

Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals, having been admitted on July 8, 2002 and assigned Bar number 478206.

I. STATEMENT OF THE NATURE OF THE MATTERS

This matter was docketed for investigation upon Disciplinary Counsel's receipt and review of an ethical complaint filed by Respondent's former client, Neema Mgana, reporting that Respondent had neglected her case.

II. STIPULATION OF FACTS AND CHARGES

1. Respondent was retained by Ms. Neema Mgana on February 15, 2005 to represent her in pursuit of remedies for the breach of a professional services contract by her employer. Respondent agreed to represent the client on an hourly basis of $200 per hour. The initial retainer payment was $5,000, which the client paid in two installments.

2. Respondent conducted legal research regarding Ms. Mgana's claim and developed a litigation strategy. Respondent also contacted the putative defendant for purposes of attempting to negotiate settlement, but settlement overtures were rebuffed.

3. In or about June 2006, Respondent's wife accepted a position in California. Shortly thereafter, Respondent moved to California with his wife.

4. Respondent did not regularly communicate with Ms. Mgana during the representation, due to his relocation to California and a disability (as described in more detail below).

5. In March 2007 and again in August 2007, Respondent suggested to Ms. Mgana that she retain additional counsel to assist him with her claim. Ms. Mgana declined to do so because of the expense.

6. In August and September 2007, Ms. Mgana sent electronic correspondence to Respondent asking for an update on the status of her claim. Respondent did not respond to the correspondence, nor did he communicate with his client thereafter.

7. In his responses to the bar complaint, Respondent stated his belief and recollection that he returned to Ms. Mgana her file via the U.S. Postal Service in or about September 2007. He conceded that he has no USPS receipts and does not recall whether he used

Certified Mail. He further reported having found no copies of any Mgana related materials from 2006 or 2007 by which to challenge Ms. Mgana's report of events. Respondent further recalled that there were legal problems with Ms. Mgana's claims, which were not discussed at the time of engagement that seriously impacted the merits of her claim (such as visa eligibility for the job she sought and a prior settlement with the putative defendant).

8. Respondent did not file an action on behalf of his client before the statute of limitations on her claim expired.

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

a. Rule 1.1(a), in that Respondent did not provide competent representation to his client;

b. Rule 1.3(c), in that Respondent did not act with reasonable promptness in representing his client;

c. Rule 1.4(a), in that Respondent did not keep his client reasonably informed about the status of a matter; and

III. MITIGATION

10. Respondent has cooperated with Disciplinary Counsel's investigation of this matter and has accepted responsibility for his misconduct.

11. Respondent's misconduct did not involve dishonesty.

12. Respondent's misconduct in this matter dates to events that began in 2005. Ms. Mgana reported this matter to Disciplinary Counsel in 2012.

13. In or about October 2006, Respondent relocated his residence to the State of

California, and unsuccessfully attempted to find successor counsel for his client's case.

14. During the time that Respondent was living in California, he was experiencing troubles in his marriage which culminated in a divorce from his wife in 2011.

15. Also, during the time relevant to his representation of Ms. Mgana, Respondent was suffering from alcohol addiction. (The agreed sanction in this matter is not materially impacted by the principles set forth in *In re Kersey*, 520 A. 2d 321 (D.C. 1987) because the sanction agreed here would be within the range of proper sanctions even if there were no *Kersey* issues. There is, therefore, no need for the disciplinary system to determine whether Respondent could meet his burden of proof on *Kersey* in a contested case.)

16. The combination of his personal issues and his relocation to California, contributed significantly to Respondent's mishandling of Ms. Mgana's case.

17. In June 2011, Respondent voluntarily sought and received assistance for his alcohol addration from the District of Columbia Bar's Lawyer's Assistance Program ("LAP").

18. Respondent has successfully remained sober since his involvement with LAP.

19. Disciplinary Counsel is not aware that Respondent has engaged in any other misconduct since the filing of Ms. Mgana's ethical complaint in 2012.

20. Respondent has agreed to make restitution in the amount of $5,000 to Ms. Mgana, within one year of the approval of this petition by the Court.

IV. AGGRAVATION

Respondent was informally admonished on May 10, 2011 in the matter styled *Brammer/ Saucedo*, Bar Docket No. 2010-D338, for a violation of Rules 1.1(a) and (b) and 1.4(b).

V. AGREED UPON SANCTION

The parties agree that the appropriate sanction in this matter is a 30-day suspension, stayed upon the successful completion of a period of probation, during which Respondent will not engage in any ethical misconduct. The sanction for violating Rules of Professional Conduct involving competency, diligence, and communications ranges from informal admonition up to and including a suspension from the practice of law. See *In re Fay,* 111 A. 2d 1025 (D.C. 2015) (informal admonition for violating Rule 1.1(b), 1.3(a) and (c), 1.4(a) and (b) and 1.5(b); *In re Chapman,* 962 A.2d 922 (D.C. 2008) (public censure for neglect of a client); *In re Douglass*, 745 A. 2d 307 (D.C. 200) (public censure for violating Rules 1.2(a) and (b), 1.3(a) and (c); serious misconduct mitigated by death of lawyer's mother and his son, as well as his son's serious medical problems, all in the year before his misconduct); *In re Francis,* 137 A 2d 187 (D.C. 2016) (30-day suspension for neglect and other violations, stayed on condition of completion of probation). More severe sanctions are imposed where the attorney's neglect is accompanied with violations involving dishonesty, fraud, misrepresentation or deceit. See *In re Outlaw,* 917 A. 2d at 689 (60-day suspension); *In re Schoeneman*, 891 A 2d 279 (D.C. 2006) (four-month suspension for neglect of three matters, failure to communicate, dishonesty and serious interference with the administration of justice), *In re Chisholm,* 679 A. 2d 495 (D.C. 1996) (six-month suspension for extensive neglect, deceit and significant prejudice to the client).

Respondent's earlier discipline was an informal admonition issued in 2011, for violating Rules 1.1(a) and (b) and Rule 1.4(b) for failing to provide competent representation in an immigration matter. Given Respondent's prior receipt of an informal admonition, the parties agree that he is not eligible for an informal admonition in this matter.

However, given that the misconduct in the prior informal admonition case as well as the misconduct on this docket occurred more than ten years ago, the sanction herein need not be severe. *See In re Parsons*, BDNo. 72-91, Brd. Rpt. dated Feb. 1, 1996, aff'd 678 A. 2d 1022 (D.C. 1998). Additionally, Respondent's misconduct described in the prior informal admonition took place before he became a client of the D.C. Bar's LAP. Nonetheless, a stayed suspension, coupled with the successful completion of probation is the appropriate sanction. *In re Francis, supra.* The terms of Respondent's probation are that he not engage in any ethical misconduct for a period of one year from the date that the court approves this petition for negotiated discipline and that he make full restitution, during that year.

VI. RELEVANT PRECEDENT

1. Rule 1.1(a) provides:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Comment [5] to Rule 1.1 explains that a competent representation:

> Includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

In *In re Evans,* 902 A.2d 56 (D.C. 2006) (per curium), the Court adopted the report and recommendation of the Board regarding proof of violation of Rule 1.1(a).

> To prove a violation, Bar Counsel must not only show that the attorney failed to apply his or her skill and knowledge, but that this failure

constituted a serious deficiency in the representation.

Id. at 69 (citations omitted).

To prove a "serious deficiency", Disciplinary Counsel must show that the attorney's incompetence. . . could have prejudiced the client. *In re Yelverton*, 105 A.3d 413, 422 (D.C. 2014). In this matter, the client was deprived of the opportunity to pursue her claim.

2. Rule 1.3(c) provides:

"A lawyer shall act with reasonable promptness in representing a client".

> Comment [1] to the rule provides pertinently that "[t] his duty requires the lawyer to pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and to take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor".

3. Rule 1.4 provides:

> (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Respondent's failure to consistently communicate with his client throughout the representation and his specific failure to respond to his clients' August and September 2007 requests for an update of the status of her case evinces Respondent's violation of Rule 1.4. Respondent's failure to file suit or formally terminate the representation prior to September 2007 evinces a violation of Rule 1.3(c).

IX. PROMISES

Respondent acknowledges that Disciplinary Counsel has made no promises or inducements other than what is contained in this petition for negotiated discipline.

WHEREFORE, the Office of Disciplinary Counsel and Respondent requests that the Executive Attorney assign a Hearing Committee to review the petition for negotiated disposition pursuant to D.C. Bar Rule XI, § 12.1(c).

Dated:

Hamilton P. Fox, III
Disciplinary Counsel

William H. Brammer, Jr., Esquire
Respondent

H. Clay Smith, III
Assistant Disciplinary Counsel

Daniel Schumack, Esquire
Counsel for Respondent

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 20-BG-552

IN RE WILLIAM H. BRAMMER, JR., RESPONDENT.

A Member of the Bar of the District of Columbia Court of Appeals
(Bar Registration No. 478206)

On Report and Recommendation of the Board on Professional Responsibility Ad Hoc Hearing Committee Approving Petition for Negotiated Discipline
(DDN 174-12)

(Decided: January 7, 2021)

Before MCLEESE and DEAHL, *Associate Judges*, and STEADMAN, *Senior Judge*.

PER CURIAM: This decision is non-precedential. Please refer to D.C. Bar R. XI, § 12.1(d) regarding the appropriate citation of this opinion.

In this disciplinary matter, the Ad Hoc Hearing Committee (the Committee) recommends approval of a petition for negotiated attorney discipline. *See* D.C. Bar R. XI, § 12.1(c). The petition is based on Respondent's voluntary acknowledgment that Respondent failed to provide his client competent representation.

Respondent acknowledged that he failed to (1) provide competent representation of his client, (2) act with reasonable promptness, and (3) keep his client reasonably informed about the status of the matter. As a result, Respondent violated D.C. Rules of Professional Conduct 1.1(a), 1.3(c), and 1.4(a). The proposed discipline is a thirty-day suspension, stayed upon the successful completion of a one-year period of probation during which Respondent will not engage in any ethical misconduct, and conditioned upon Respondent making restitution in the amount of $5,000 to his former client within one year of the approval of his petition for negotiated discipline.

Having reviewed the Committee's recommendation in accordance with our procedures in uncontested disciplinary cases, *see* D.C. Bar R. XI, § 12.1(d), we agree this case is appropriate for negotiated discipline and the proposed disposition is not unduly lenient or inconsistent with dispositions imposed for comparable professional misconduct. Accordingly, it is

ORDERED that Respondent William H. Brammer, Jr. is hereby suspended from the practice of law in the District of Columbia for thirty days, stayed in lieu of a one-year period of probation during which time Respondent will not engage in any ethical misconduct and shall pay restitution in the amount of $5,000 to his former client.

So ordered.

OFFICE OF BAR COUNSEL

May 13, 2011

Certified Article Number
7160 3901 9849 0761 3833
SENDERS RECORD

BY FIRST-CLASS AND CERTIFIED MAIL NO. 7160 3901 9849 0761 3833

William H. Brammer Jr., Esquire
107 7th Street, S.E.
Washington, D.C. 20003

Re: *William H. Brammer, Jr., Esquire*
(D.C. Bar Registration No. 478206)
Bar Docket No. 2010-D338

Dear Mr. Brammer:

This office has completed its investigation of the above-referenced matter. We find that your conduct reflected a disregard of certain ethical standards under the District of Columbia Rules of Professional Conduct (the Rules). We are, therefore, issuing you this Informal Admonition pursuant to Rule XI, Sections 3, 6, and 8 of the District of Columbia Court of Appeals' Rules Governing the Bar (D.C. Bar R.).

We docketed this matter for investigation based on a disciplinary complaint filed by "RS."[1] We find as follows: In December 2009, you were retained by RS and her husband, "HS," to obtain permanent resident status for HS, who is a citizen of Peru. RS, proceeding *pro se*, had filed an I-130 family-based visa petition, which had been approved on March 5, 2008. RS and HS had begun the process of obtaining HS a visa through the U.S. Consulate in Lima. You advised RS and HS that HS could obtain permanent resident status by filing an application for adjustment of status (I-485). This would avoid HS having to return to Peru. You agreed to file an I-485 on behalf of HS; RS and HS paid you $1200 in legal fees and $1010 in United States Citizenship and Immigration Service ("USCIS") fees.

The I-485 that you prepared for HS indicated that he had last entered the United States at Piedras Negras, Mexico, and that he had not been inspected by a

[1] Except as noted, this letter discusses only those aspects of RS's complaint and of your response that are relevant to the Rule violations found herein.

U.S. Immigration Officer. These facts, which were correct, were provided to you by RS and HS in their response to the "Permanent Residency Questionnaire" that you provided them with on December 23. You filed the I-485 on January 14, 2010. You did not, however, include a copy of HS's birth certificate, his medical examination report, and an affidavit of support, all of which are required elements of an application to adjust status, as the instructions to Form I-485 clearly state. *See* Instructions for I-485 at 3-5. At no time did you seek to supplement HS's application with these materials.

On January 28, 2010, USCIS issued a four-page Request for Initial Evidence, asking for HS's birth certificate, his medical examination report, and the affidavit of support. The Request for Initial Evidence also requested evidence of HS's lawful admission to the United States, or his eligibility for an exemption pursuant to Section 245(i) of the Immigration and Nationality Act. You did not respond to this request,[2] and, on May 25, 2010, USCIS wrote to you informing you that HS's I-485 had been denied. You informed RS and HS of this decision on June 16, 2010. USCIS initiated removal proceedings against HS on August 25, 2010 based on his presence in the United States without having been admitted or paroled after inspection by an Immigration Officer.

HS was plainly not eligible to adjust status, and your advice to the contrary was deeply flawed. The instructions to Form I-485 clearly state "you are not eligible for adjustment of status if . . . [y]ou were not admitted or paroled following inspection by an immigration officer . . ." I-485 Instructions at 2. HS also is plainly not eligible for exemption from this restriction pursuant to section 245(i), which requires that he have been the beneficiary of a visa petition or application for labor certification filed on or before April 30, 2001. Moreover, by pursuing adjustment of status for HS, it appears that you drew attention to his undocumented status, and prompted USCIS to initiate removal proceedings against him.

Based on these facts, we find that you violated: (i) Rules 1.1(a) and (b) which require that "[a] lawyer shall provide competent representation to a client" and "[a] lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters"; and (ii) Rule 1.4 (b) which requires that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

In deciding to issue this letter of Informal Admonition rather than institute formal disciplinary charges against you, we have taken into consideration that you took this matter seriously, that you cooperated with our investigation, that you have no prior discipline, and that you have accepted responsibility for your misconduct including by accepting this Informal Admonition. In

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[2] We acknowledge that you contend that you never received the Request for Initial Evidence; we make no findings on this matter. Your failure to respond to the RFE is not, therefore, part of the factual basis for this Informal Admonition.

addition, (i) you have agreed to refund $2210 to RS and HS and (ii) you have agreed to attend six hours of immigration continuing legal education provided by the D.C. Bar within three months of the date of this letter, unless Bar Counsel grants an extension of this deadline for good cause shown. Each of these continuing legal education classes must be pre-approved by Bar Counsel. You also have agreed to forward proof of such attendance to Bar Counsel within four months of the date of this letter, unless Bar Counsel grants an extension of this deadline for good cause shown. Our decision to issue this Informal Admonition is based upon your promise to fulfill these conditions. In the event that you do not fulfill these obligations, this Informal Admonition will be null and void, and formal disciplinary charges may be filed against you.

This letter constitutes an Informal Admonition for your violation of Rules 1.1(a) and (b), and 1.4 (b), pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8 and is public when issued. Please refer to the attachment to this letter of Informal Admonition for a statement of its effect and your right to have it vacated and have a formal hearing before a Hearing Committee.

If you would like to have a formal hearing, you must submit a written request for a hearing within 14 days of the date of this letter to the Office of Bar Counsel, with a copy to the Board on Professional Responsibility, unless Bar Counsel grants an extension of time. If a hearing is requested, this Informal Admonition will be vacated, and Bar Counsel will institute formal charges pursuant to D.C. Bar R. XI, § 8 (b). The case will then be assigned to a Hearing Committee and a hearing will be scheduled by the Executive Attorney for the Board on Professional Responsibility pursuant to D.C. Bar R. XI, § 8 (c). Such a hearing could result in a recommendation to dismiss the charges against you or a recommendation for a finding of culpability, in which case the sanction recommended by the Hearing Committee is not limited to an Informal Admonition.

Sincerely,

Wallace E. Shipp, Jr.
Bar Counsel

Enclosure: Attachment to Letter of Informal Admonition

cc: R.S. (w/o enclosure)

WES:MHP:itm:jnb