

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

In the Matter of

CLAUDIA BOTTY, ESQUIRE

Respondent,

**A Member of the Bar of the
District of Columbia Court of Appeals**

Bar Number: 459210

Date of Admission: May 10, 2002

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: **Disciplinary Docket Nos. 2016-D127**
: **and 2017-D276**
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PETITION FOR NEGOTIATED DISCIPLINE

Disciplinary Counsel and Respondent agree to enter a negotiated discipline pursuant to D.C. Bar Rule XI, § 12.1 and Board Rule 17. 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.

Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals.

I. Statement of the Nature of the Matter

In the first matter, Disciplinary Counsel received a complaint from Luis Alberto Ortiz Canales and his wife Wendy Ordonez, whom Respondent also represented in their immigration matter. Mr. Ortiz Canales and Mrs. Ordonez

alleged that despite several requests, Respondent failed to provide a retainer agreement for the family petition representation.

In the second matter, Disciplinary Counsel received a complaint from Obed Martinez Orellana, whom Respondent represented in his immigration case. Respondent deposited advances of unearned fees and unincurred costs in her business account together with her own funds.

As part of its investigation, Disciplinary Counsel subpoenaed and reviewed bank records relating to Respondent's operating and business accounts from February 2012 through January 2018, and subpoenaed Respondent's own records for the period of the representations. Respondent did not maintain complete financial records. Based on its review of the bank records, and the information Respondent provided during the investigation, Disciplinary Counsel determined that Respondent had commingled her funds with entrusted funds and failed to maintain complete records of the funds she deposited in and withdrew from the business account between February 2012 and the end of 2018. Respondent did not open a trust account until December 2019.

II. Stipulation of Facts and Charges

The conduct and standards that Respondent stipulates to are as follows:

A. Botty/Ordonez, Disciplinary Docket No. 2017-D276

1. On January 23, 2014, Luis Alberto Ortiz Canales retained Respondent to represent him in his removal proceedings.

2. Respondent provided Mr. Ortiz Canales a retainer agreement agreeing to represent him in Immigration Court. The retainer set the legal fee at \$4,500 with an initial payment of \$1,000, and the balance to be paid in monthly increments of \$250.

3. The retainer agreement did not discuss that advanced fees and costs would not be deposited in a trust account.

4. Respondent deposited advanced fees and costs in her SunTrust business account ending in #6405.

5. On July 31, 2014, February 26, 2015, and August 27, 2015, Respondent and Mr. Ortiz Canales attended Master Calendar hearings in Arlington Immigration Court.

6. On August 27, 2015, Respondent submitted an application for Cancellation of Removal for non-permanent residents (Form EOIR-42B) based on a United States citizen child.

7. In February 2016, Mr. Ortiz Canales advised Respondent that he had married his United States citizen girlfriend.

8. Mr. Ortiz Canales and his now wife, Mrs. Ordonez, retained Respondent to represent them in seeking his adjustment of status based on a family petition (Form I-130).

9. Respondent did not provide the clients with a retainer for her joint representation. The clients requested a written contract several times.

10. On February 19, 2016, Respondent submitted an I-130 and it was approved on May 25, 2016.

11. The approved I-130 was sent to the National Visa Center because Mr. Ortiz Canales had entered the United States without inspection and was unable to adjust his status in the United States.

12. On November 11, 2016, Respondent filed a request for prosecutorial discretion seeking to close the removal proceedings administratively.

13. Mr. Ortiz Canales's case was pending without a hearing date for some months.

14. On January 25, 2017, Respondent filed a Motion to Re-calendar and schedule a Master Calendar hearing to request that the proceedings be administratively closed.

15. On July 18, 2017, Respondent told the clients she was withdrawing from their case.

16. On July 29, 2017, a Master Calendar hearing was scheduled for August 23, 2017.

17. On August 23, 2017, Respondent filed a Motion to Withdraw, which was granted in court.

18. On August 25, 2017, Mrs. Ordonez and Mr. Orteza Canales filed a disciplinary complaint with Disciplinary Counsel.

19. Respondent's conduct violated the following District of Columbia Rule of Professional Conduct:

20. Rule 1.5(b) in that Respondent did not communicate to her clients in writing the basis or rate or fee and the scope of the representation before or within a reasonable time after commencing the representation.

B. Botty/Martinez Orellana, Disciplinary Docket No. 2016-D127

21. In or about February 2012, Obed Martinez Orellana, a Salvadorian national, was detained by Immigration and Customs Enforcement (ICE) and placed in removal proceedings.

22. Mr. Martinez Orellana retained Respondent in 2012 to represent him in Immigration Court, five years after he left El Salvador. Respondent secured his release on bond and filed several forms of relief on behalf of Mr. Martinez which

were all denied. In 2014 and Respondent applied on behalf of Ms. Martinez Orellana.

23. Respondent provided Mr. Martinez Orellana a retainer agreement agreeing to represent him in Immigration Court. The retainer set the legal fee at \$4,500 with an initial payment of \$1,500, and the balance to be paid in monthly increments of \$200.

24. The retainer agreement did not discuss that advanced fees and costs would not be deposited and maintained in a trust account.

25. Respondent deposited advanced fees and costs in her SunTrust business account ending in #6405.

26. On February 22, 2013, Respondent and Mr. Martinez Orellana attended a Master Calendar hearing in Baltimore Immigration Court.

27. On June 3, 2014, Respondent filed an application for Asylum (Form I- 589) in open court. An individual hearing was scheduled for August 4, 2015.

28. In January 2015, Mr. Martinez Orellana received a letter from Respondent requesting a meeting to go over his asylum application.

29. Mr. Martinez Orellana did not attend the August 2015 asylum hearing because he was afraid to appear without counsel.

30. Unbeknownst to Mr. Martinez Orellana, Respondent had filed a Motion to Withdraw as his attorney of record on July 21, 2015, two weeks before the hearing. In her motion, Respondent alleged that she had been unable to get in touch with Mr. Martinez Orellana.

31. In February 2016, Mr. Martinez Orellana got a call from Respondent after almost a year since they had last spoken. Respondent was calling in connection with his bond.

32. From at least February 2012 through January 2018, Respondent maintained a business account at Sun Trust Bank.

33. During this period, Respondent engaged in commingling when she deposited advances of unearned fees and unincurred costs in her business account together with her own funds.

34. Respondent failed to keep and maintain complete records of all the entrusted funds deposited in the business account. Although most of the funds deposited in the account could be traced to a particular client, there were several cash deposits for which Respondent had no records.

35. Respondent also failed to keep and maintain records for several withdrawals from the account. Respondent wrote herself several checks for earned fees but did not note on the check the client matter associated with the payment.

Respondent also had no other records that would indicate what fees the checks covered.

36. Respondent failed to keep and maintain a general ledger reflecting the entrusted funds deposited in and withdrawn from the business account. Respondent also failed to keep and maintain individual client ledgers reflecting the money she received on behalf of the client and how she had handled the clients' funds.

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

a. Rule 1.15(a) and (e), in that Respondent failed to maintain complete financial records, failed to hold advances of unearned fees and unincurred costs that were in her possession in connection with a representation separate from her own funds, failed to obtain informed consent from the client to a different arrangement and thereby engaged in commingling.

III. Statement of Promises

38. Disciplinary Counsel has not made any promises regarding the underlying matter other than to recommend the sanction set forth in this negotiated disposition.

IV. The Agreed-Upon Sanction

A. Agreed Sanction

39. Respondent and Disciplinary Counsel have agreed that the appropriate sanction for the stipulated misconduct and rule violations in these matters is a 60- day suspension, 30-day stayed, provided Respondent comply with the conditions of probation set for the below:

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

a. Respondent must take three hours of pre-approved continuing legal education related to the maintenance of trust accounts, record keeping, and/or safekeeping client property, including advanced costs, and Respondent must certify and provide documentary proof that she has met this requirement to the Office of Disciplinary Counsel within six months of the date of the Court's final order;

b. Respondent must meet with Dan Mills, Esquire, the Manager of the Practice Management Advisory Service of the District of Columbia Bar, in Respondent's office within two months of the date of the Court's final order. At that time, Respondent must execute a waiver allowing Mr. Mills and/or the practice monitor to communicate directly with the Office of Disciplinary Counsel regarding her compliance. When Respondent meets with Mr. Mills in her office, Mr. Mills shall conduct a full assessment of Respondent's business structure and her practice,

including but not limited to reviewing financial records, client files, engagement letters, supervision and training of staff, responsiveness to clients. Mr. Mills and/or the assigned practice monitor shall ensure that Respondent maintains complete records relating to maintenance of client funds and that Respondent complies with all of the practice monitor's recommendations. Respondent must be in full compliance with the practice monitor's requirements for a period of twelve consecutive months. After the practice monitor determines that Respondent has been in full compliance for twelve consecutive months, Respondent must sign an acknowledgement that she is in compliance with the practice monitor's requirements and file the signed acknowledgement with the Office of Disciplinary Counsel. This must be accomplished no later than two years after the date of the Court's final order.

B. Relevant Precedent

41. The range of sanction for violations of Rule 1.5(b) and 1.16(d) in a single client matter is an Informal Admonition to a short suspension.

a. Disciplinary Counsel issued an Informal Admonition for failure to provide the client with a retainer agreement. *In re Dhali*, Disciplinary Docket No. 2016-D411 (March 13, 2018).

b. Disciplinary Counsel issued an Informal Admonition in the following matters: *In re Romney Wright*, Bar Docket No. 2007-D193

(October 29, 2007) (attorney failed to communicate with the client and withdrew from the representation at a point when the client likely could not hire new counsel to handle the matter); *In re Andrea Merritt-Bagwell*, Bar Docket No. 2007-D051 (July 31, 2007) (failed to withdraw when she could no longer handle the matter); *In re Alan Toppelberg*, Bar Docket No. 2005-D213 (December 20, 2006) (attorney failed to communicate with client and delayed returning unearned fees); *In re Samuel Bailey*, Bar Docket No. 2005-D136 (August 3, 2007) (attorney failed to protect her interests upon withdrawal); and *In re Sosnick*, Bar Docket No. 2004- D416 (September 1, 2005) (attorney failed to communicate with the client and failed to promptly transfer the client file to successor counsel);

c. The Court imposed a Public Censure in the matter of *In re Bland*, 714 A.2d 787 (D.C. 1998) (attorney failed to competently and diligently represent the client, to act with reasonable promptness communicating with the client, and to protect the client's interests when attempting to withdraw);

d. The Court imposed a 30-day stayed suspension in the matter of *In re Baron*, 808 A.2d 497 (D.C. 2002) (attorney failed to communicate with her client, ignored Court's requests to contact client, and failed to forward case file to client).

42. Violations of Rule 1.15(a) may result in different sanctions depending

upon the misconduct

43. Disciplinary Counsel issued an Informal Admonition based on a respondent's failure to maintain complete and accurate records in violation of Rule 1.15(a) in the following matters: *In re Allen J. Lowe*, Bar Docket No. 2005- D344 (May 5, 2006) and *In re Harry Tun*, Bar Docket No. 2003-D385 (February 4, 2004) (attorneys failed to maintain records and failed to return client file promptly after the matter was concluded).

44. The Court imposed a Public Censure based on a respondent's commingling of client funds with attorney funds in the following matters: *In re Mott*, 886 A.2d 535 (D.C. 2005) (attorney failed to deposit client funds in a designated escrow account, failed adequately to safeguard client funds, and failed to keep appropriate records); *In re Clower*, 831 A.2d 1030 (D.C. 2003) (attorney failed to maintain complete records and failed promptly to notify a third party of settlement funds); *In re Goldberg*, 721 A.2d 627 (D.C. 1998) (attorney commingled law firm operating funds with the firm's escrow account); *In re Osborne*, 713 A.2d 312 (D.C. 1998) (attorney's funds were deposited into firm trust account); *In re Teitelbaum*, 686 A.2d 1037 (D.C. 1996) (attorney deposited settlement check into non-escrow checking account, and the Court considered that attorney had prior Informal Admonition); *In re Millstein*, 667 A.2d 1355 (D.C. 1995)

(attorney deposited settlement check into operating account); *In re Ingram*, 584 A.2d 602 (D.C. 1991) (attorney deposited settlement check into his personal bank account).

45. The Court imposed a 30-day suspension based on a respondent's commingling of client funds with attorney funds and failure to maintain complete records in the following matters: *In re Iglehart*, 759 A.2d 203 (D.C. 2000) (attorney who commingled funds in his trust account and failed to maintain adequate trust account records received a 30-day suspension); and *In re Ross*, 658 A.2d 209 (D.C. 1995) (attorney who deposited settlement check into operating account and failed to promptly pay a medical provider received a 30-day suspension.)

C. Mitigating Circumstances

46. A 60-day suspension, 30-day stayed is justified in this case because it is within the range of sanctions and takes into account the mitigating factors, which include: (a) Respondent has no prior discipline; (b) Respondent has taken full responsibility for her misconduct and has demonstrated remorse; (c) Respondent has fully cooperated with Disciplinary Counsel, including meeting with Disciplinary Counsel, and providing written responses and client records; and (d) prior to agreeing to this negotiated disposition, Respondent contacted Dan Mills to begin the process of having her practices and procedures assessed and modified to comply

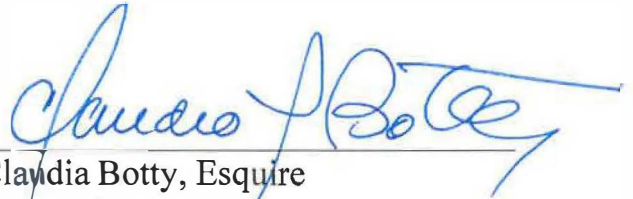
with the requirements of the Rules.

WHEREFORE, the Office of Disciplinary Counsel 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).

Respectfully submitted,



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Disciplinary Counsel
Bar Number: 113050



Claudia Botty, Esquire
Respondent
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