

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

In the Matter of	:	
	:	
Pamela A. McLean,	:	
	:	Disciplinary Docket No. 2023-D173
Respondent	:	
	:	
A Member of the Bar of the District:	:	
of Columbia Court of Appeals	:	
	:	
(Bar Registration No. 497891)	:	
	:	

SPECIFICATION OF CHARGES

The disciplinary proceeding instituted by this petition is based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar R. X and XI, § 2(b). Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because:

1. Pamela McLean is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on May 12, 2006, and assigned Bar number 497891.

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

2. In October 2019, Tiffani Jones hired McLean to represent her in a civil suit against the builder of her home. Jones thought that leaks in the plumbing led to toxic mold which resulted in damages to her family's health and the value of her

home.

3. On January 23, 2020, McLean filed a complaint in the D.C. Superior Court on behalf of Jones against the builder, “NVR, Inc. t/a Ryan Homes.” The eight-count complaint alleged “breach of contract, fraud, negligent misrepresentation, breach of express warranty, breach of implied warranty of merchantability, violation of the D.C. Consumer Protections Act, and strict liability.” The complaint sought nearly \$10 million in damages.

4. McLean did not contact expert witnesses or obtain evaluations from experts before filing the complaint.

5. The case was subsequently removed to the United States District Court for the District of Columbia.

6. On April 29, 2020, the court dismissed five of the eight counts for failure to state a claim. Only the breach of contract, breach of express warranty, and strict liability claims remained.

7. On August 3, 2020, the court issued an order setting the schedule for discovery. In accordance with McLean’s request, the court assigned a due date of September 30, 2020, for Jones’s FRCP Rule 26(a)(2)(B) expert witness disclosures.

8. Over the next two months, McLean made minimal efforts to find expert witnesses for Jones’s case. She delegated the task almost entirely to Jones. McLean provided little to no guidance about how to hire an expert, what instructions should

be given to the expert to guide their evaluation, and what kind of report the expert needed to provide.

9. McLean did not explain to Jones that without experts she would not be able to establish liability.

10. Jones's attempts to hire an expert were unsuccessful.

11. On September 29, 2020, McLean filed a Rule 26 disclosure on Jones's behalf, stating therein that Jones "does not have any designated expert witnesses to date."

12. Six months later, on March 12, 2021, the court held a status hearing. During the hearing NVR's counsel told the court he intended to file a Motion in Limine and a Motion for Summary Judgment based on the plaintiff's failure to designate experts. McLean told the court that she had not designated any experts to testify, but that she intended to introduce exhibits and evidence from experts at trial without calling those experts to testify. The court expressed confusion and doubt about McLean's approach, noting that "[u]sually, if an expert prepares something, they're the ones left explaining it, not the person who hired them," but did not press the issue further.

13. Jones was present for the status hearing and became concerned about NVR's plan to file the Motion in Limine and Motion for Summary Judgment. Shortly after the hearing, Jones spoke with McLean on the phone and raised her

concerns. In response, McLean told Jones that the lack of experts would not doom the case. She reiterated what she had told the court, claiming that they had sufficient evidence of wrongdoing to win the case even without the experts. McLean stated that Jones could testify as a layperson and that “[Jones’s] eyeballs are just as valid as an expert’s eyeballs.” McLean did not explain to Jones that her failure to designate experts could be fatal to the case.

14. On March 18, 2021, counsel for NVR sent McLean an email offering to settle the case for \$5,000. It stated in relevant part:

Accordingly, I have been instructed to make a Fed.R.Civ.P. Rule 68 offer of judgment in the sum of \$5,000. Under Rule 68, if a judgment is entered for \$5,000 or less, then Ms. Jones would responsible for payment of NVR’s costs incurred from the date of the offer. Such costs will include costs we will incur with our experts for their assistance with our summary judgment motion and trial, if necessary, which will far exceed \$5,000. We also would seek attorney’s fees under section 12(a) of the contract for enforcing the terms of the contract and/or sanctions under Fed.R.Civ.P. Rule 11(b)(3) because of the lack of evidentiary support (i.e., experts necessary to prosecute the claims).

15. A few hours later McLean forwarded the settlement proposal to Jones.

16. That same afternoon Jones emailed McLean and stated:

*Thanks for sending, just to round up our conversation earlier, I have to accept this offer below for \$5000 or you can no longer move forward with being my attorney? Also see additional questions below:
Can we file a motion to bring in experts or depose witnesses?
Can we file a motion to block his motion to limine and summary judgement?
Have you received motion for limine or summary judgment?
Have you responded to Mervis if so what was your response?
What was deadline for discovery and bringing expert witnesses?*

17. McLean replied to Jones with an email stating:

No, I have not responded to Mr. Mervis' settlement offer. In light of our earlier conversation, you are no longer receptive to my legal advice. Therefore, I'm required to withdraw as your counsel. You may object, retain a new lawyer or proceed with your case pro se (represent yourself). I wish you the very best of luck in this [] case. I'm also happy to recommend other lawyers and forward your records to anyone you designate.

18. McLean then filed a motion to withdraw that same day.

19. The court did not immediately rule on McLean's motion to withdraw.

20. Jones hired another attorney, Jarrett Colby, who informed her that the case was likely lost due to McLean's failure to identify experts. Colby did not enter his appearance in the case.

21. On May 27, 2021, the court denied McLean's motion to withdraw.

22. On May 28, 2021, NVR filed the Motion in Limine to Exclude Testimony and the Motion for Summary Judgment.

23. On May 30, 2021, McLean sent emails to various potential expert witnesses asking them for assistance with the case.

24. On June 14, 2021, McLean filed an opposition to NVR's motion in limine.

25. On June 25, 2021, McLean filed an opposition to NVR's motion for summary judgment. McLean attached 32 exhibits to the summary judgment opposition, including affidavits, reports and resumes from several experts.

26. On July 9, 2021, more than nine months after the deadline for expert disclosures, McLean filed Plaintiff's Supplemented Disclosures, in which she identified three expert witnesses: Dr. James Pearl (pulmonary and critical care medical expert); Dr. Joseph Spurgeon (certified industrial hygienist); and Ken Broughton (mold testing and remediation). McLean did not seek leave of the court or move to reopen discovery before filing the supplemental disclosures.

27. On July 12, 2021, NVR moved to strike many of the exhibits McLean had attached to her opposition to the motion for summary judgment because they were evidence from experts who had never been identified by McLean.

28. On March 29, 2022, the court issued a memorandum opinion addressing the defendant's Motion in Limine and Motion to Strike. The court explained the history of McLean's repeated failures to identify expert witnesses as required by Fed. R. Civ. P. 26(a)(2) before granting NVR's motion in limine to preclude McLean from relying on testimony or evidence from experts. The court also struck thirteen of the exhibits McLean had attached to her opposition to the motion for summary judgment.

29. In a separate memorandum opinion issued that same day, the court granted summary judgment for NVR because Jones would not be able to prove any of her remaining claims without expert testimony.

30. McLean's conduct violated the following Rules of the District of

Columbia Rules of Professional Conduct:

- a. Rule 1.1(a), in that she failed to provide competent representation to Jones;
- b. Rule 1.1(b) in that she failed to serve Jones with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters;
- c. Rules 1.3(a), in that she failed to represent Jones zealously and diligently within the bounds of the law;
- d. Rule 1.3(c), in that she failed to act with reasonable promptness in representing a client;
- e. Rule 1.4(b), in that she failed to explain the matter to the extent reasonably necessary to permit Jones to make informed decisions regarding the representation.

Respectfully submitted,

/s/

Hamilton P. Fox, III
Disciplinary Counsel

/s/

Jelani C. Lowery
Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
515 Fifth Street, N.W.

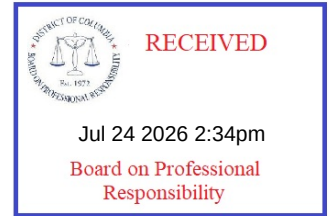
Building A, Room 117
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VERIFICATION

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

/s/
Jelani Lowery
Assistant Disciplinary Counsel

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



In the Matter of

PAMELA A. McLEAN, ESQUIRE,

Respondent,

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:

: Disciplinary Docket No. 2023-D173

PETITION INSTITUTING FORMAL DISCIPLINARY PROCEEDINGS

A. This Petition (including the attached Specification of Charges which is made part of this Petition) notifies Respondent that disciplinary proceedings are hereby instituted pursuant to Rule XI, § 8(c), of the District of Columbia Court of Appeals' Rules Governing the Bar (D.C. Bar R.).

B. Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals on the date stated in the caption of the Specification of Charges.

C. A lawyer member of a Hearing Committee assigned by the Board on Professional Responsibility (Board) pursuant to D.C. Bar R. XI, § 4(e)(5), has approved the institution of these disciplinary proceedings.

D. **Procedures**

(1) **Referral to Hearing Committee** – When the Board receives the Petition Instituting Formal Disciplinary Proceedings, the Board shall refer it to a Hearing Committee.

(2) **Filing Answer** – Respondent must respond to the Specification of Charges by filing an answer with the Board and by serving a copy on the Office of Disciplinary Counsel within 20 days of the date of service of this Petition, unless the time is extended by the Chair of the Hearing Committee. Permission to file an answer after the 20-day period may be granted by the Chair of the Hearing Committee if the failure to file an answer was attributable to mistake, inadvertence, surprise, or excusable neglect. If a limiting date occurs on a Saturday, Sunday, or official holiday in the District of Columbia, the time for submission will be extended to the next business day. Any motion to extend the time to file an answer, and/or any other motion filed with the Board or Hearing Committee Chair, must be served on the Office of Disciplinary Counsel at the address shown on the last page of this petition.

(3) **Content of Answer** – The answer may be a denial, a statement in exculpation, or a statement in mitigation of the alleged misconduct. Any charges not answered by Respondent may be deemed established as provided in Board Rule 7.7.

(4) **Mitigation** – Respondent has the right to present evidence in mitigation to the Hearing Committee regardless of whether the substantive allegations of the Specification of Charges are admitted or denied.

(5) **Process** – Respondent is entitled to fifteen days’ notice of the time and place of hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

E. In addition to the procedures contained in D.C. Bar R. XI, the Board has promulgated Board Rules relating to procedures and the admission of evidence which are applicable to these procedures. A copy of these rules is being provided to Respondent with a copy of this Petition.

WHEREFORE, the Office of Disciplinary Counsel requests that the Board consider whether the conduct of Respondent violated the District of Columbia Rules of Professional Conduct, and, if so, that it impose/recommend appropriate discipline.

/s/ Hamilton P. Fox, III

Hamilton P. Fox, III
Disciplinary Counsel

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