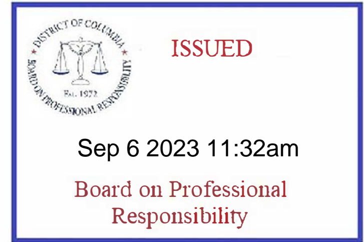
THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE



In the Matter of:	:	
	:	
JOHN K. EVANS,	:	
	:	Board Docket No. 23-ND-001
Respondent.	:	Disciplinary Docket No. 2020-D089
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 362908)	:	

CORRECTED
REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE
APPROVING AMENDED PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before an Ad Hoc Hearing Committee on June 7, 2023, for a limited hearing on an Amended Petition for Negotiated Discipline (the "Amended Petition"). The members of the Hearing Committee are Theodore C. Hirt, Esquire; Lisa Harger; and Jay Brozost, Esquire. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Ebtehaj Kalantar. Respondent, John K. Evans, was represented by Mark H. Tuohey III, Esquire and Fred D. Cooke, Jr., Esquire.

The Hearing Committee has carefully considered the Amended Petition signed by Disciplinary Counsel, Respondent, and Respondent's counsel, the supporting affidavit submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent, Respondent's

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* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

counsel, and Disciplinary Counsel. The Hearing Committee also has fully considered the Chair's *in camera* review of Disciplinary Counsel's files and records, and the Chair's *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, the Hearing Committee finds that the negotiated discipline of a 365-day suspension is justified and recommends that it be imposed by the Court.

II. FINDINGS PURSUANT TO D.C. BAR R. XI, § 12.1(c) AND BOARD RULE 17.5

The Hearing Committee, after full and careful consideration, finds that:

1. The Amended Petition and Affidavit are full, complete, and in proper order.

2. Respondent is aware that there is currently pending against him an investigation into allegations of misconduct. Tr. 19;[1] Affidavit ¶ 6.

3. The allegations that were brought to the attention of Disciplinary Counsel are that, between 2016 and 2019, while a member of the Council of the District of Columbia ("Council") and Chair of the Board for the Washington Metropolitan Area Transit Authority ("WMATA"), Respondent did not accurately report his financial holdings, clients, and income from his employment apart from work at the Council and WMATA. Respondent's failure to accurately report his financial interests and clients constituted reckless misrepresentation in violation of D.C. Rule of Professional Conduct 8.4(c). Amended Petition at 1-2, 11.

[1] "Tr." refers to the transcript of the limited hearing held on June 7, 2023.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Amended Petition are true. Tr. 20-21; Affidavit ¶¶ 3, 7. Specifically, Respondent acknowledges that

(1) In 2005, Respondent purchased 2,047 shares of stock in Fidelity and Trust Bank which was subsequently purchased by Eagle Bancorp, Inc. (hereinafter referred to as Eagle Bank) for $49,990.50 and continued to own the stock until at least November 2019.

(2) From October 2015 to November 2017, Respondent worked at the law firm Manatt, Phelps, & Phillips, LLP.

(3) In July 2016, Respondent established his own consulting firm, NSE Consulting, LLC. Respondent was the sole proprietor of NSE and had no employees.

COUNCIL OF THE DISTRICT OF COLUMBIA

(4) Respondent represented Ward 2 as a member of the Council of the District of Columbia from 1991 to 2020.

(5) As a [C]ouncilmember, Respondent was subject to the Code of Conduct, a set of statutes and regulations applicable to all District of Columbia government officials. The Code of Conduct was enforced by the Board on Ethics and Government Accountability [“BEGA”].

(6) As a [C]ouncilmember, Respondent was required to file with BEGA an annual financial disclosure statement. Respondent understood the statement’s purpose was to identify potential conflicts of interest between his financial interests and his duties as a [C]ouncilmember.

2015 Financial Disclosure Statement

(7) On May 11, 2016, Respondent caused to be filed his financial disclosure statement for the calendar year 2015.

(8) In response to the question “Did you have any outside employment or engage in any outside business during 2015 for which you received income of $200 or more?”, Respondent answered “Yes”

and disclosed that he worked as Counsel at Manatt Phelps. However, under "Income Received from Outside activity or employment," Respondent stated "None (or less than $1,001)." In fact, Respondent received income from Manatt Phelps in 2015.

(9) In response to the question "Did you have a beneficial interest in or hold any security . . . at the close of 2015 that exceeded in the aggregate $1,000 or that produced income of $200 or more?", Respondent answered "No." The question clarified that "securities" included stocks. In fact, Respondent's shares of Eagle Bancorp were worth approximately $100,000 at that time.

(10) The financial disclosure statement required a certification, which stated, "I understand that the making of a false statement on this form or materials submitted with this form is punishable by criminal penalties pursuant to D.C. Official Code § 22-2405 et seq. (2001)." Respondent electronically certified the financial disclosure statement.

2016 Financial Disclosure Statement

(11) On May 17, 2017, Respondent caused to be filed his financial disclosure statement for the calendar year 2016.

(12) Respondent disclosed that he worked as Counsel at Manatt Phelps and was Principal of NSE.

(13) However, in response to the question "Did you have a beneficial interest in or hold any security . . . at the close of 2016 that exceeded in the aggregate $1,000 or that produced income of $200 or more?", Respondent answered "No." In fact, Respondent's shares of Eagle Bancorp were worth approximately $115,000 at that time.

(14) Respondent electronically certified the financial disclosure statement.

May to November 2017 Financial Disclosure Statement

(15) On November 1, 2017, Respondent caused to be filed his financial disclosure statement for the period of May to November 2017.

(16) Respondent disclosed that he worked as Of Counsel at Manatt Phelps.

(17) Following that disclosure, there was a section titled "Clients", which asked "If you answered 'yes,' because you were paid by a client (as opposed to an employer) please identify which, if any, client had or has a contract with the District or who stands to gain a direct financial benefit from legislation that was pending before the Council in between May 2017 and present day." Respondent used his prior year disclosure form and thereby did not disclose the fact that he was a principal of NSE (which had been formed in the interim), where some of his clients stood to gain a direct financial benefit from legislation that was pending before the Council between May 2017 and November 2017 (see paragraphs 29-49 below). Furthermore, despite answering "yes" to the question of whether he had clients who might gain a financial be[ne]fit from legislation pending before the Council, he did not list those clients.

(18) In response to the question "Did you have a beneficial interest in or hold any security . . . between May 2017 and present day that exceeded in the aggregate $1,000 or that produced income of $200 or more between May 2017 and present day?", Respondent answered ''No." In fact, Respondent's shares of Eagle Bancorp were worth approximately $135,000 at that time.

(19) Respondent certified the financial disclosure statement.

2017 Financial Disclosure Statement

(20) On May 3, 2018, Respondent caused to be filed his financial disclosure statement for the calendar year 2017.

(21) Respondent disclosed that he worked as Of Counsel at Manatt Phelps and was Principal of NSE.

(22) However, in response to the question "Did you have a beneficial interest in or hold any security . . . at the close of the previous calendar year that exceeded in the aggregate $1,000 or that produced income of $200 or more?", Respondent answered "No." In fact, Respondent's

shares of Eagle Bancorp were worth approximately $120,000 at that time.

(23) Respondent certified the financial disclosure statement.

January-June 2018 Financial Disclosure Statement

(24) On December 14, 2018, Respondent caused to be filed his financial disclosure statement for January through June 2018.

(25) Respondent disclosed that he was Principal of NSE.

(26) Following that disclosure, there was a section titled "Clients", which asked "If you answered 'yes,' because you were paid by a client (as opposed to an employer) please identify which, if any, client had or has a contract with the District or who stands to gain a direct financial benefit from legislation that was pending before the Council during the report period." Respondent did not list any clients, despite answering 'yes;' some of Respondent's NSE clients stood to gain a direct financial benefit from legislation that was pending before the Council between January and June 2018 (see paragraphs 29-49 below).

(27) In response to the question "During the reporting period did you have a beneficial interest in or hold any security . . . that exceeded in the aggregate $1,000 or that produced income of $200 or more?", Respondent answered ''No." In fact, Respondent's shares of Eagle Bancorp were worth approximately $100,000 at that time.

(28) Respondent certified the financial disclosure statement.

The Forge Company

(29) The Forge Company was a holding company which owned a commercial parking company, Colonial Parking, Inc.

(30) On October 1, 2016, Forge entered into a consulting agreement with NSE for one year. Forge paid NSE $25,000 for "information and advice regarding the metropolitan Washington, D.C. business community." On February 20, 2017, NSE and Forge renewed the agreement for a year from that date and increased the payment to $50,000.

(31) Forge had a direct financial interest in the tax rate applicable to commercial parking operations, which was set in the District's annual budget.

(32) In 2015, Mayor Muriel Bowser had proposed raising the parking tax rate from 18% to 22% in her proposed budget for 2016.

(33) From 2015 to 2017, Respondent, serving as Chair of the Council's Finance and Revenue Committee, opposed raising the parking tax rate. The parking tax rate remained the same, which benefited Forge's financial interests.

(34) Respondent did not list Forge as a client in any of his financial disclosure statements.

Eastbanc, Inc.

(35) Eastbanc, Inc. was a commercial real estate and development company.

(36) On November 1, 2016, Eastbanc entered into a consulting agreement with NSE for one year. Eastbanc paid NSE $5,000 for "information and advice regarding the Washington, D.C. business community."

(37) On November 1, 2018, Eastbanc entered into a second consulting agreement for one year. Eastbanc paid $5,000 for "information and advice regarding the Washington, D.C. business community" and "information and advice about federal matters and opportunities."

(38) In 2010, Eastbanc purchased a parcel of land from the District to develop condominiums. As part of the agreement, Eastbanc agreed to also build a new library, fire station, and affordable housing unit on the land. The legislation approving the deal, the West End Parcels Development Omnibus Act of 2010, established a fund to pay maintenance expenses of the library and fire station.

(39) On September 16, 2016, a [C]ouncilmember introduced the West End Parcels Development Omnibus Amendment Act of 2016. The plan for implementing the Act allocated approximately $4.5 million to the maintenance fund.

(40) Eastbanc had a direct financial interest in the Act. An employee of Eastbanc testified in support of the Act.

(41) On January 6, 2017, the Council enacted the Act, with Respondent voting in its favor.

(42) Respondent did not list Eastbanc as a client in any of his financial disclosure statements.

Willco

(43) Willco was a real estate and development company.

(44) On December 1, 2016, Willco entered into a consulting agreement with NSE for one year. Willco had previously been a client of Respondent at Manatt Phelps. Willco paid NSE $50,000 for "information and advice regarding the Washington, D.C. business community."

(45) On November 1, 2018, Willco entered into a second consulting agreement for one year. Willco paid $50,000 for "information and advice regarding the Washington, D.C. business community" and "information and advice about federal matters and opportunities."

(46) On March 31, 2017, Respondent introduced the Relieve High Unemployment Tax Incentives Act of 2017, which included tax incentives for construction of up to three "film, television and digital media construction facilities."

(47) In response to the proposed legislation, Willco developed a proposal for a sound studio that would allow it to take advantage of the tax incentives. A Willco employee testified in favor of the legislation.

(48) On February 27, 2018, Respondent's proposed legislation was ultimately enacted as the Relieve High Unemployment Tax Incentives Act of 2018.

(49) Respondent did not list Willco as a client in any of his financial disclosure statements.

(50) Respondent's conduct violated the following Rule[] of Professional Conduct:

a. Rule 8.4(c) in that he engaged in conduct involving reckless misrepresentation.

WASHINGTON METRO AREA TRANSIT AUTHORITY

(51) Respondent served on the Board of Directors of the Washington Metro Area Transit Authority from January 2015 to June 2019. Respondent served as Chairman of the Board from January 2016 to June 2019.

(52) As a member of the WMATA Board, Respondent was required to submit annual disclosure forms.

2015 Financial Disclosure Form

(53) On September 22, 2015, Respondent caused to be filed his annual disclosure form for the previous calendar year.

(54) Under the section "Ownership in Parties or Properties," the form called for Respondent to "[r]eport for yourself and all Household Members any reportable ownership interests in Parties . . . held at the time of filing this form that . . . [h]ave a fair market value greater than $15,000." The form listed stocks as an example of such an ownership interest. In response, Respondent answered "N/A". In fact, Respondent's shares of Eagle Bancorp were worth approximately $90,000 at that time.

(55) The disclosure form required a certification that stated "I CERTIFY that the statements I have made on this form are true, complete and correct to the best of my knowledge. I further acknowledge my continuing obligation to report any changes in the above information to the Board Secretary in writing within 10 days of change." Respondent certified the disclosure form.

2016 Financial Disclosure Form

(56) On April 29, 2016, Respondent caused to be filed his annual disclosure form for the previous calendar year.

(57) Under the section "Ownership in Parties or Properties," the form called for Respondent to "[r]eport for yourself and all Household

Members any reportable ownership interests in Parties . . . held at the time of filing this form that . . . [h]ave a fair market value greater than $15,000." In response, Respondent answered "N/A" In fact, Respondent's shares of Eagle Bancorp were worth approximately $100,000 at that time.

(58) Respondent certified the disclosure form.

2017 Financial Disclosure Form

(59) On May 17, 2017, Respondent caused to be filed his annual disclosure form for the previous calendar year.

(60) Under the section "Employment", the form called for Respondent to "[r]eport any paid or self-employed positions (whether full, part-time, or temporary, regardless of duration) held by you . . . other than government employment." In response, Respondent disclosed his employment as Counsel for Manatt, and sole proprietor of NSE.

(61) Under the section "Ownership in Parties or Properties," the form called for Respondent to "[r]eport for yourself . . . any reportable ownership interests in Parties . . . held at the time of filing this form that . . . [h]ave a fair market value greater than $15,000." In response, Respondent disclosed his ownership of NSE. Respondent did not disclose any ownership interest in Eagle Bancorp, Inc.

(62) In fact, Respondent's shares of Eagle Bancorp were worth approximately $115,000 at that time.

(63) The disclosure form required a certification that stated "I CERTIFY that the statements I have made on this form and on any continuation pages attached to form are true, complete and correct to the best of my knowledge. I acknowledge my continuing obligation to report any changes in the above information to the Board Corporate Secretary in writing within 10 days of change. I understand and agree to comply with the Code of Ethics for Members of the WMATA Board of Directors." Respondent certified the disclosure form.

(64) On August 18, 2017, Phillip Staub, a WMATA Ethics Officer, sent a memo to Respondent related to his disclosure form.

(65) In the memo, Mr. Staub stated, "Reporting your interests helps to identify and appropriately respond to conflicts. An interest becomes an Actual Conflict when it is in a . . . business that has or is seeking a contract or agreement with WMATA." With respect to employment, Mr. Staub stated, "[P]lease note that the Code of Ethics includes personal representation as a type of interest. This means anyone for whom you provide professional services, regardless of the matter or compensation received, can give rise to a conflict. Please ensure that you have reported all people and business for which you provide professional services, or, if that is impractical, update your disclosures and recuse yourself whenever such a party seeks a contract or agreement with WMATA, has interests that can be directly affected by WMATA or may realize a benefit or detriment from Board action."

(66) After receiving the memo, Respondent did not disclose that he was providing professional services to parties that had or were seeking a contract or agreement with WMATA (see paragraphs 78-84 below).

2018 Financial Disclosure Form

(67) On April 2, 2018, Respondent caused to be filed his disclosure form for the previous calendar year.

(68) Respondent disclosed his employment as an attorney for Manatt.

(69) Under the section "Ownership in Parties or Properties," the form called for Respondent to "[r]eport for yourself . . . any reportable ownership interests in Parties . . . held at the time of filing this form that ... [h]ave a fair market value greater than $15,000." In response, Respondent disclosed his ownership of NSE. Respondent did not disclose any ownership interest in Eagle Bancorp, Inc. Respondent's shares of Eagle Bancorp were worth approximately $120,000 at that time.

(70) Respondent certified the disclosure form.

(71) On May 8, 2018, Mr. Staub sent a memo to Respondent related to his disclosure form.

(72) The memo contained the same reminders as the previous year.

(73) Respondent did not disclose that he was providing professional services to parties that had or were seeking a contract or agreement with WMATA (see paragraphs 78-84 below).

2019 Financial Disclosure Form

(74) On January 10, 2019, Respondent caused to be filed his disclosure form for the previous calendar year.

(75) Respondent disclosed his employment as principal of NSE.

(76) Under the section "Ownership in Parties or Properties," the form called for Respondent to "[r]eport for yourself . . . any reportable ownership interests in Parties . . . held at the time of filing this form that . . . [h]ave a fair market value greater than $15,000." In response, Respondent answered "N/A." Respondent's shares of Eagle Bancorp were worth approximately $105,000 at that time.

(77) Respondent certified the disclosure form.

The Forge Company

(78) The Forge Company was a holding company which owned a commercial parking company, Colonial Parking, Inc. On October 1, 2016, Forge entered into a consulting agreement with NSE for one year. Forge paid NSE $25,000 for "information and advice regarding the metropolitan Washington, D.C. business community." On February 20, 2017, NSE and Forge renewed the agreement for a year from that date and increased the payment to $50,000.

(79) At the time Respondent entered into the agreement with Forge, Forge's subsidiary, Colonial Parking, was a potential bidder for a WMATA Request for Proposal, seeking bids to finance, operate, and maintain WMATA's parking portfolio. A Colonial representative attended an information meeting about the RFP and met with WMATA's Director of Parking about WMATA's parking operations.

(80) Another potential bidder was Laz Parking, a competitor of Colonial, which was already providing parking services to WMATA under a previous RFP. In November 2016, WMATA discovered that its Parking Director had improperly shared internal WMATA information with Laz. After a WMATA Office of Inspector General investigation, the Parking Director was fired, and the RFP was canceled due to the conflict of interest. Laz continued to provide parking services to WMATA under the previous RFP.

(81) In 2017, WMATA hired a new Inspector General, Geoff Cherrington. Respondent asked Mr. Cherrington to open a new investigation of Laz. Mr. Cherrington agreed and, on July 27, 2017, issued a report concluding that no additional action was warranted.

(82) On August 3, 2017, Respondent asked Mr. Cherrington to open another investigation based on communications between Laz and WMATA officials. Mr. Cherrington agreed to do so.

(83) Shortly after receiving Mr. Cherrington's response, Respondent forwarded the email to the Forge and Colonial CEO.

(84) Respondent did not disclose his relationship with Forge or Colonial on any disclosure forms or otherwise disclose to WMATA the relationship during this period.

(85) Respondent's conduct violated the following Rule[] of Professional Conduct:

a. Rule 8.4(c) in that he engaged in conduct involving reckless misrepresentation.

Amended Petition at 2-18 ("Stipulation of Facts and Charges [numbered 1 to 85]" (hereinafter "stipulated facts")).

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 18; Affidavit ¶ 8.

6. Disciplinary Counsel has made no promise to Respondent other than what is contained in the Amended Petition. Affidavit ¶ 5. That promise is that Disciplinary Counsel will recommend the sanction set forth in the Amended Petition. Amended Petition at 18. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Amended Petition. Tr. 21.

7. Respondent has conferred with his counsel. Tr. 12.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Amended Petition and agreed to the sanction set forth therein. Tr. 20-21; Affidavit ¶ 3.

9. Respondent is not being subjected to coercion or duress. Tr. 21; Affidavit ¶ 3.

10. Respondent is competent and was not under the influence of any substance or medication that would affect his ability to make informed decisions at the limited hearing. Tr. 12-13.

11. Respondent is fully aware of the implications of the disposition being entered into, including, but not limited to, the following:

a) he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;

b) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;

c) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;

d) the negotiated disposition, if approved, may affect his present and future ability to practice law;

e) the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and

f) any sworn statement by Respondent in his affidavit or any statements made by Respondent during the proceeding may be used to impeach his testimony if there is a subsequent hearing on the merits.

Tr. 14-17; Affidavit ¶¶ 4, 10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a 365-day suspension. Amended Petition at 18-19; Tr. 20-21.

a) Respondent further understands that he must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for his suspension to be deemed effective for purposes of reinstatement. Tr. 23; Affidavit ¶ 14.

13. The Amended Petition contains no additional facts in aggravation of sanction, and no such evidence was presented during the limited hearing.

14. The Amended Petition sets forth the following circumstances in mitigation of sanction, to which both parties stipulate: (a) Respondent has no prior discipline; (b) Respondent has taken responsibility for his misconduct and has demonstrated remorse; and (c) Respondent has fully cooperated with Disciplinary Counsel. Amended Petition at 20; Tr. 21-22; Affidavit ¶ 15.

15. There were no complainants to be notified of the limited hearing. Tr. 9.

III. DISCUSSION

The Hearing Committee shall recommend approval of a petition for negotiated discipline if it finds:

> (1) The attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition and agreed to the sanction set forth therein;
>
> (2) The facts set forth in the petition or as shown at the hearing support the admission of misconduct and the agreed upon sanction; and
>
> (3) The sanction agreed upon is justified. . . .

D.C. Bar R. XI, § 12.1(c)(1)-(3); *see also* Board Rule 17.5(a)(i)-(iii).

A. Respondent Has Knowingly and Voluntarily Acknowledged the Facts and Misconduct and Agreed to the Stipulated Sanction.

The Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Amended Petition and agreed to the sanction therein. Respondent, after being placed under oath, admitted the stipulated facts and charges set forth in the Amended Petition, and denied that he is under duress or has been coerced into entering into this disposition. *See supra* Paragraphs 8-9. Respondent understands the implications and consequences of entering into this negotiated discipline. *See supra* Paragraph 11.

Respondent has acknowledged that any and all promises that have been made to him by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the Amended Petition and that there are no other promises or inducements that have been made to him. *See supra* Paragraph 6.

B. The Stipulated Facts Support the Admissions of Misconduct and the Agreed-Upon Sanction.

The Hearing Committee has carefully reviewed the facts set forth in the Amended Petition and established during the hearing and concludes that they support the admission of misconduct and the agreed-upon sanction. Moreover,

Respondent is agreeing to this negotiated discipline because he believes that he could not successfully defend against the misconduct described in the Amended Petition. *See supra* Paragraph 5.

With regard to the second factor, the Amended Petition states that Respondent violated Rule of Professional Conduct 8.4(c) in that he made reckless misrepresentations.[2] The evidence supports Respondent's admission that he violated Rule 8.4(c) in that the stipulated facts describe that Respondent made numerous reckless misrepresentations regarding his clients, income, and/or holdings in disclosure forms that he was required to file by virtue of his membership on the Council of the District of Columbia, and his membership on the WMATA Board.

In this case, the agreed-upon facts in the Amended Petition demonstrate that Respondent engaged in a pattern of serious misconduct over the course of a four-year period. At the time that he was a member of the District of Columbia City Council and served as Chair of the WMATA Board, Respondent consistently filed misleading financial disclosure statements – between 2016 and 2019. *See supra* Paragraph 3. These statements were filed annually and contained reckless misrepresentations – the omission of Respondent's income from outside sources and the identification of his private clients. *See, e.g.*, *supra* stipulated facts 8-9, 13, 18, 22 (all as to income); 34, 42, 49, 84 (all as to clients). For example, according to the stipulated facts, the monetary value of Respondent's shares of Eagle Bank stocks

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[2] Recklessness is a sufficient state of mind for misrepresentations under Rule 8.4(c). *See In re Brown*, 112 A.3d 913, 916, 918 (D.C. 2015) (per curiam).

varied over a five-year period from $90,000 to $135,000, but Respondent never disclosed his ownership of the stock. *See supra* stipulated facts 9, 13, 18, 22, 27, 54, 57, 62, 69, 76.[3] In addition, Respondent's consulting company NSE received monies for annual consulting agreements with private clients ranging from $10,000 to $100,000 total per client. *See supra* stipulated facts 30, 36-37, 44-45, 78. Respondent certified the accuracy of each financial disclosure statement. *See supra* stipulated facts 10, 14, 19, 23, 28, 55, 58, 63, 70, 77.

Moreover, in August 2017, despite the fact that a WMATA ethics officer counseled Respondent as to the importance of his reporting any outside interests and related disclosures, Respondent still failed to disclose "that he was providing professional services to parties that had or were seeking a contract or agreement with WMATA." *See supra* stipulated facts 64-66. In May 2018, the ethics officer sent Respondent a reminder of those obligations, yet Respondent again "did not disclose that he was providing professional services to parties that had or were seeking a contract or agreement with WMATA." *See supra* stipulated facts 71-73.

Respondent also failed to disclose his financial relationships during time periods in which matters of direct interest to his private clients were pending before the Council. *See supra* stipulated facts 30-34, 36-42, 44-49. First, from 2015 to 2017, Respondent, while serving as Chair of the Council's Finance and Revenue Committee, opposed raising the City's parking tax rate (from 18% to 22%). *See*

[3] In 2005, Respondent purchased the stock for $49,990.50. *See supra* stipulated fact 1. Within fifteen years, the stock had doubled in value. *See supra* stipulated fact 27.

supra stipulated facts 32-33. Yet Respondent failed to disclose that his client, the Forge Company, had a direct financial interest in the tax rate applicable to commercial parking. *See supra* stipulated facts 30-31, 34. The Forge Company had paid $25,000 and $50,000 to NSE in 2016 and 2017, respectively, for Respondent's consulting services. *See supra* stipulated fact 30.

Second, in January 2017, Respondent, in his capacity as a Councilmember, voted in favor of legislation that allocated approximately $4.5 million to a maintenance fund supporting development on a parcel of land in the West End of the District. *See supra* stipulated facts 38-39, 41. Yet Respondent did not identify his client, Eastbanc, Inc., a commercial real estate and development company that had a "direct financial interest" in that legislation, in any of his financial disclosure statements. *See supra* stipulated facts 35-42.

Third, in March 2017, Respondent, in his capacity as a Councilmember, introduced legislation that included tax incentives for construction of various media facilities, a statute ultimately enacted in February 2018. *See supra* stipulated facts 46-48. During that time period, Willco, one of Respondent's clients, developed a proposal that would allow it to take advantage of those tax incentives. *See supra* stipulated fact 47. Willco paid NSE a total of $100,000 for Respondent's consulting services during 2016 and 2018. *See supra* stipulated facts 44-45. Yet, Respondent did not list Willco or the received payments in any of his financial disclosure statements. *See supra* stipulated fact 49.

Additionally, in 2017, while serving as the Chair of the WMATA Board, Respondent asked WMATA's Inspector General to open two separate investigations into a company that had held a parking services contract with WMATA. *See supra* stipulated facts 80-82. At that time, however, Respondent was representing the Forge Company which owned a commercial parking company that was a competitor for such services, and NSE, as noted above, had received $75,000 in 2016-2017 for Respondent's consulting services described as "'information and advice regarding the metropolitan Washington, D.C. business community.'" *See supra* stipulated facts 78-80. Yet, Respondent did not disclose his financial relationship with the Forge Company on any disclosure statements or otherwise disclose to WMATA his relationship to the competitor parking company during the relevant time period. *See supra* stipulated fact 84.

These four examples of Respondent's involvement in Council and WMATA legislative and regulatory activities over a multiyear period – while simultaneously representing private clients who had a direct interest in those activities – form a pattern of reckless disregard of Respondent's ethical obligations to provide accurate and complete financial disclosure statements. As noted in the Amended Petition, "[s]everal of Respondent's clients during the relevant reporting period had a financial interest in legislation before the Council or other business with the city or WMATA over which Respondent had influence," and his failure to report these financial interests and identities of clients constituted reckless misrepresentation in violation of Rule 8.4(c). Amended Petition at 2.

C. <u>The Agreed-Upon Sanction Is Justified.</u>

The third factor the Hearing Committee must consider is whether the sanction agreed upon is justified. *See* D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(iii) (explaining that hearing committees should consider "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"); *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam) (providing that a negotiated sanction may not be "unduly lenient"). Based on the record as a whole, including the stipulated circumstances in mitigation, the Hearing Committee Chair's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* discussions with Disciplinary Counsel, the Confidential Appendix, and the Committee's review of relevant precedent, the Hearing Committee concludes that the agreed-upon sanction is justified and not unduly lenient, for the following reasons:

The stipulated facts, as described above, support Respondent's admissions that he violated Rule 8.4(c) in his role both as a Councilmember and as Chair of WMATA's Board. The Hearing Committee concludes that Respondent was credible during his limited hearing testimony. Because the limited hearing was conducted remotely via Zoom, understandably the Hearing Committee did not have an opportunity, equivalent to an in-courtroom proceeding, to view Respondent's

demeanor as he answered the questions posed to him. Nevertheless, the Hearing Committee observed that Respondent answered all of the questions posed to him in a straightforward, coherent, and unwavering voice. The Hearing Committee observed no hesitation or equivocation in his answers. *See, e.g.*, Tr. 18-21.

As discussed above, Respondent's violations of Rule 8.4(c) are based upon a series and pattern of misrepresentations in his financial disclosure statements over an approximately four-year period. The proposed sanction of a 365-day suspension from the practice of law is justified and not unduly lenient in light of sanctions imposed for cases involving similar misconduct in contested cases. As in this case, where an attorney has engaged in repeated acts of dishonest behavior, the Court has imposed a one-year suspension. *See, e.g.*, *In re Belardi*, 891 A.2d 224, 224-25 & n.1 (D.C. 2006) (per curiam) (one-year suspension without a fitness requirement where the respondent had pleaded guilty to three counts of making false statements to a government agency); *In re Bowser*, 771 A.2d 1002, 1003 (D.C. 2001) (per curiam) (one-year suspension for making false statements to the Immigration and Naturalization Service ("INS") in connection with a client's effort to become a naturalized citizen); *In re Thompson*, 538 A.2d 247, 247-48 (D.C. 1987) (per curiam) (one-year suspension for knowingly assisting in the presentation of false statements to the INS in connection with a client's effort to become a lawful permanent resident alien).[4] Respondent's violations of Rule 8.4(c), which involved serious, repeated

[4] *See also In re Rigas*, 9 A.3d 494, 496-99 (D.C. 2010) (approving a one-year suspension in a negotiated discipline case for making a false statement in connection with a stock purchase, a misdemeanor, in violation of 47 U.S.C. § 220(e)).

misrepresentations to two government entities, merit the proposed suspension under a long line of Court decisions.

For example, in *Thompson*, the attorney had knowingly assisted his client's presentation of false statements to the INS, and subsequently was convicted of the applicable federal statute, 18 U.S.C. § 1001. 538 A.2d at 247. The Court observed that "misrepresentation to a federal agency is quite serious." *Id.* at 248. Moreover, "it is beyond argument that there was a clear failure of the obligation to the public and to the profession to be scrupulously honest." *Id.*; *see also In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc) ("Lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is basic to the practice of law." (internal quotations omitted)). In this case, Respondent's misrepresentations were to two government entities on which he served.[5]

Finally, in mitigation of any proposed sanction, the Hearing Committee finds that Respondent (1) has no prior discipline, (2) has taken responsibility for his misconduct and has demonstrated remorse, and (3) has fully cooperated with Disciplinary Counsel. *See* Paragraph 14. There are no facts in aggravation of the proposed sanction. *See* Paragraph 13.

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[5] *See also In re Clinesmith*, 258 A.3d 161 (D.C. 2021) (per curiam) (approving a negotiated discipline of a one-year suspension for attorney who pleaded guilty to modifying a document while employed by the FBI as an Assistant General Counsel in violation of 18 U.S.C. § 1001(a)(3) and Rules 8.4(b) and (c)).

IV. CONCLUSION AND RECOMMENDATION

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court suspend Respondent for 365 days.

AD HOC HEARING COMMITTEE

Theodore C. Hirt, Esquire
Chair

Lisa M. Harger
Public Member

Jay Brozost, Esquire
Attorney Member