DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
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WILLIAM H. BRAMMER, JR.,	:	D.C. App. No. 24-BG-0815
	:	Board Docket No. 23-ND-004
Respondent.	:	Disciplinary Docket No. 2022-D024
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 478206)	:	

REPORT AND RECOMMENDATION
OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

An Ad Hoc Hearing Committee recommended that the Court of Appeals approve the parties' agreed-upon resolution of this matter: Respondent violated D.C. Rules 1.4(a), 1.4(b), 1.5(e), and 8.4(c), and should be suspended for ninety days, with all but sixty days stayed in favor of one year of unsupervised probation and consultation with the D.C. Bar's Practice Management Advisory Service. The Public Member of the Hearing Committee dissented from the report, concluding that the sanction was unduly lenient.

In an October 25, 2024 order, the Court of Appeals noted concerns related to (1) "the division among the Hearing Committee's members and several of the points made by the committee's dissenting member" and (2) "the fact that respondent committed this misconduct while on probation in his prior disciplinary matter and where this court stayed his thirty-day suspension in lieu of a one-year period of probation during which time respondent should not engage in any ethical

misconduct," and directed the Board to "provide this court with its views concerning whether the negotiated discipline is appropriate."

We have reviewed the stipulated facts set forth in the Hearing Committee Report, as well as the issues raised by the Hearing Committee Majority and Dissent in the Confidential Appendices to the Report. The issues raised by the Dissent are significant, and it is possible that in a contested hearing a hearing committee could have concluded that Respondent engaged in intentional dishonesty justifying a more serious sanction. On balance, though, we agree with the Hearing Committee Majority that Disciplinary Counsel ("ODC") appropriately assessed the litigation risk of proving that Respondent engaged in more serious misconduct, including intentional fraud against his clients. However, we recommend that the Court reject the agreed-upon sanction as unduly lenient because it does not adequately reflect the significant aggravating factor that Respondent engaged in the misconduct at issue here while on probation for prior misconduct.

Legal Standard

The standard for approval of a Petition for Negotiated Discipline is whether the stipulated sanction is "justified." D.C. Bar R. XI, § 12.1(c). A justified sanction has been defined as one that is not "unduly lenient." *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam). The comparability standard of D.C. Bar Rule XI, § 9(h)(1), which provides for the imposition of consistent sanctions for comparable misconduct and applies to the imposition of sanctions in contested cases, does not apply to negotiated discipline. However, sanctions in contested cases are helpful in

deciding whether a stipulated sanction is "justified" and not "unduly lenient." *See generally In re Mensah*, 262 A.3d 1100, 1104 (D.C. 2021) (per curiam). "[T]he sanctions imposed in negotiated-discipline cases may in some cases be less stringent" than sanctions that would have been imposed in a contested matter, but they may not "become completely unmoored from the sanctions that would be appropriate in contested-discipline cases." *Id.* (noting that "the negotiated-discipline process necessarily contemplates some additional flexibility in determining an appropriate sanction").

I. *The Disagreement Between the Hearing Committee Majority and Dissent Regarding the Nature of Respondent's Misconduct.*

The primary area of disagreement between the Hearing Committee Majority and Dissent centers on the nature and extent of Respondent's misconduct, primarily focusing on whether Respondent was recklessly dishonest (the Majority's conclusion) or intentionally dishonest (the Dissent's conclusion). The Dissent asserts that the Amended Petition "raise[s] significant questions as to whether Respondent committed additional uncharged misconduct" in a number of ways. Dissent at 20-21. The Majority acknowledges that it is possible that Respondent committed additional misconduct, but it concludes that ODC correctly assessed the litigation risk of proving such misconduct.

The Court of Appeals has noted that:

> Negotiated discipline may generally omit to charge a violation if, after reasonable factual investigation, there is a substantial risk that ODC would not be able to establish the violation by clear and convincing evidence. Such a risk can arise not only from uncertainty about the facts but also from uncertainty about unresolved legal issues that would have to be decided in order to establish a violation.

In re Teitelbaum, 303 A.3d 52, 56 (D.C. 2023). We conclude that ODC conducted a reasonable factual investigation of the nature of Respondent's misconduct, and that there is substantial litigation risk that ODC would not be able to prove by clear and convincing evidence that Respondent had engaged in more serious misconduct, including intentional dishonesty or fraudulent conduct.

A. *Intentional Dishonesty in Fraudulently Inducing the Clients to Retain Respondent*

The Dissent's View – The Dissent suggests that "[t]he Amended Petition alleges facts that strongly suggest that Respondent fraudulently induced the [Clients] to retain him by leading them 'to believe that his law firm had the requisite experience to handle their matter.'" Dissent at 21 (quoting Am. Pet. ¶ 3). Specifically, the Dissent relies on the parties' stipulation that Respondent told the Clients that "he had a team that included a Maryland attorney," but he failed to disclose to the Clients that the Maryland lawyer was not employed at Respondent's firm, that Respondent was the only lawyer at his firm, that he was not licensed in Maryland or Virginia, and that his firm did not have any Maryland or Virginia lawyers. Dissent at 21 (quoting Am. Pet. ¶ 3) (citing Am. Pet. ¶¶ 6-7); *see* HC Report ¶ 9.

The Dissent also cites to [redacted]

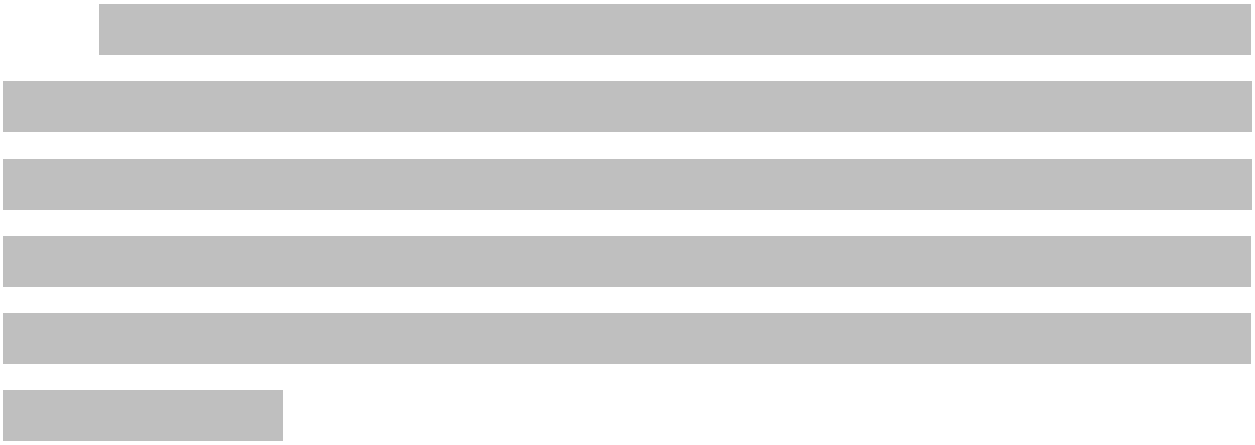
Relatedly, the Dissent notes that Respondent made restitution in Respondent's two earlier disciplinary matters, that the Respondent did not offer to make restitution here, and that "there are good grounds for requiring restitution as a condition of Respondent's reinstatement." Dissent at 19. The Dissent reasons that "there is a

[1] [redacted]

potential claim that Respondent's fee is void *ab initio* and should be refunded in full as restitution because the facts alleged in the Amended Petition and information in the Dissent Confidential Appendix suggest that Respondent may have fraudulently induced the [Clients] to retain him." Dissent at 24; *see also* Dissent at 34.

The Majority's View – The Majority concludes that "[t]here is a substantial risk that Disciplinary Counsel would not have been able to sustain a charge of intentional dishonesty" and that "the record does not provide clear and convincing evidence" for the Dissent's conclusion that Respondent fraudulently induced the Clients to retain him. HC Report at 25. [redacted] Respondent "did not misrepresent his licensure status when dealing with his prospective clients, and he identified local Maryland counsel in his retention agreement." HC Report at 25. While Respondent's failure to disclose his licensure status to the Clients was reckless, it was unlikely to be intentional when that information was "knowable had

the clients done any due diligence." HC Report at 20 n.6. Respondent "did not affirmatively misrepresent his . . . credentials," and "it is unreasonable to conclude that [Respondent] would have intentionally concealed facts his clients could have easily learned." *Id*.; *see* HC Report at 25 ("[I]t makes little sense for [Respondent] to hide from his prospective clients things they could easily locate in the public record.").



The Board's Recommendation – The Board agrees with the Majority's conclusion that there was a substantial risk that ODC could not have established by clear and convincing evidence that Respondent intentionally misstated his own state of licensure or his ability to affiliate with lawyers licensed in Maryland and Virginia. Although the parties stipulated that the Clients "would not have retained Respondent if they had known he was the firm's only attorney and lacked a license in either relevant jurisdiction" (HC Report ¶ 12), the Dissent does not identify evidence that Respondent intentionally (as opposed to recklessly) provided incorrect information to the Clients on those points. Indeed, Respondent told the Clients he would need to affiliate with a Maryland attorney with the Clients' matter, did in fact affiliate

with a Maryland attorney, and identified that attorney as working for "Lincoln Park Associates," although he failed to specify that the attorney was not employed at Respondent's firm and the Clients believed that he was. HC Report ¶¶ 9-10; Am. Pet. ¶ 6. The fact that Respondent's licensure status was publicly available could have provided further circumstantial evidence that he did not intentionally mislead the Clients on this issue, since he presumably would have known that such a fraud would have been easily exposed.[2]

[2] The Board does not suggest that the Clients had an obligation to check Respondent's state of licensure before hiring him. As the Amended Petition indicates, Respondent's recklessness on this point rose to the level of dishonesty. Am. Pet. ¶ 31(D). Rather, this consideration goes to the likelihood that ODC could have established intentional fraud by clear and convincing evidence.

[3]

[redacted]

B. *Intentional Dishonesty in Fraudulently Representing to the Clients that Franklin Green Had to Be Brought in to Replace the Maryland Attorney, Who Purportedly Would Be Unavailable Because He Was Traveling Overseas for an Extended Period*

The Dissent's View – Early in the representation Respondent told the Clients that the Maryland attorney on the matter was going to be out of the country for an extended time and that Franklin Green would be brought in "to perform some of the same duties the Maryland attorney would have performed if he had not been traveling." Dissent at 25 (quoting Am. Pet. ¶ 13); *see* HC Report ¶ 17. [5] In fact, the Maryland attorney remained "as involved in the representation as Respondent." Dissent at 25; Am. Pet. ¶ 21. The Dissent notes that "[a]s a result, the [Clients] ended up paying for the work of three people based upon Respondent's misrepresentation that a new person had to be brought in to replace the Maryland attorney." Dissent at 26.

[redacted]

[4] [redacted]

[5] Mr. Green was a convicted felon and former member of the D.C. Bar who had been disbarred for financial misconduct. *See* HC Report ¶19.

The Majority's View – The Majority does not specifically address this issue, but notes generally that it "reaches a different conclusion" than the Dissent

As discussed in Section A, above, the Majority generally concludes that "[t]here is a substantial risk that Disciplinary Counsel would not have been able to sustain a charge of intentional dishonesty." HC Report at 25.

The Board's Recommendation – The Board agrees with the Majority that there was a substantial risk that ODC could not have established by clear and convincing evidence that Respondent intentionally misrepresented the Maryland attorney's travel plans or the need to bring in Mr. Green. Based on the evidence cited by the

Dissent, it is equally possible that the Maryland attorney's travel plans changed or that Respondent was incorrect in his understanding of those plans (or negligent or reckless in learning or communicating them).[6] Respondent told the Clients "early in the representation" that the Maryland attorney would be traveling and that "another person would be brought in." Am. Pet. ¶ 13.

[redacted]

[6] [redacted]

C. *Intentional Dishonesty in Fraudulently Concealing from the Clients Mr. Green's Criminal History and Disbarment for Financial Misconduct*

The Dissent's View – The Dissent points out that Respondent did not disclose to the Clients that Mr. Green was "a disbarred convicted felon who had committed financial misconduct." Dissent at 26. The Clients' matter was "a sensitive matter involving potential financial misconduct by a fiduciary." Dissent at 27. ODC and Respondent stipulated that the Clients "would not have retained Respondent or his firm if they had known about Mr. Green's criminal and disciplinary history." Dissent at 26 (quoting Am. Pet. ¶ 17).

The Majority's View –

As with Respondent's licensure status, the Majority suggests that while Respondent's failure to disclose this material fact to the Clients was reckless, it was unlikely to be intentional when Mr. Green's disciplinary history and bar status "were knowable had the clients done any due diligence." HC Report at 20 n.6. Respondent "did not affirmatively misrepresent his or Mr. Green's credentials," and "it is unreasonable to conclude that

[Respondent] would have intentionally concealed facts his clients could have easily learned." *Id.* In addition, the Majority notes that it is not "misconduct for a lawyer to work with a disbarred lawyer such as Mr. Green." HC Report at 22 n.7;

As discussed in Section A, above, the Majority generally concluded that "[t]here is a substantial risk that Disciplinary Counsel would not have been able to sustain a charge of intentional dishonesty." HC Report at 25.

The Board's Recommendation – The Board concludes that ODC correctly assessed the litigation risk of a contested proceeding on this issue. ODC's decision not to charge Respondent with intentional misconduct on this point does not render the proposed sanction unduly lenient.

D. *Intentional Dishonesty in Leading the Clients to Believe that Mr. Green Worked for Respondent's Firm*

The Dissent's View – [redacted]

7 [redacted]

[redacted]

The Majority's View – The Majority does not specifically address this issue, apart from its general discussion of ODC's assessment of the litigation risk in charging Respondent with intentional fraud. *See supra* Section A.

The Board's Recommendation – The evidence cited by the Dissent does not suggest that ODC incorrectly assessed the litigation risk [redacted]

[redacted]

[redacted]

E. *Intentional Dishonesty in Leading the Clients to Believe that Mr. Green Was an Attorney*

The Dissent's View – The Dissent also asserts that Respondent intentionally misrepresented that Mr. Green was *an attorney* at Respondent's firm. The Dissent relies on [redacted]

[redacted]

[9] [redacted]

The Majority's View – The Majority does not specifically address this issue, apart from its general discussion of ODC's assessment of the litigation risk in charging Respondent with intentional fraud. *See supra* Section A.

The Board's Recommendation – The evidence cited by the Dissent does not suggest that ODC incorrectly assessed the litigation risk in seeking to prove by clear and convincing evidence that Respondent intentionally misrepresented Mr. Green as an attorney. The discrepancy between the original Petition and the Amended Petition in this matter does not provide evidence that Respondent's misconduct was intentional rather than reckless. There is no explanation in the record for that change, and the Dissent does not cite to any factual background suggesting that the initial Petition described Respondent's statements more accurately than the Amended Petition. Respondent's alleged statement that Mr. Green was going to "fill in" for the Maryland attorney and was "brought in to pick up the slack" could suggest an intentional misrepresentation that Mr. Green was an attorney, but it could also indicate "reckless conduct rising to dishonesty" (Am. Pet. ¶ 31(D)) in failing to define Mr. Green's role with precision.

F. *Intentional Dishonesty in Underestimating the Clients' Likely Fees*

The Dissent's View –

The Majority's View – The Majority does not specifically address this issue, apart from its general discussion of ODC's assessment of the litigation risk in charging Respondent with intentional fraud. *See supra* Section A.

The Board's Recommendation – Apart from the notable (and troubling) discrepancy between the estimated fee and the actual fee, the Dissent does not provide evidence that Respondent intentionally understated the estimate. The Dissent does not cite evidence, for example, that the Respondent knew that the estimate was unduly low based on his previous work. That discrepancy is significant, and it is certainly possible that Respondent intentionally understated his estimate to induce the Clients to hire him, as the Dissent argues. However, that discrepancy also could arise because Respondent was negligent or reckless in calculating the estimate or because unexpected factors in the case increased the bill.

Under the circumstances, the Board does not believe that ODC incorrectly assessed the risk of proving that Respondent intentionally misrepresented his estimated fees or that this consideration suggests that the proposed sanction is unduly lenient.

G. [redacted]

[redacted]

[redacted]

[redacted]

II. *Additional Aggravating Factors, Particularly Including Misconduct Committed During Probation*

As discussed above, ODC's assessment of the litigation risk of proving additional misconduct does not make the sanction unduly lenient. However, the

Board concludes that the proposed sanction does not appropriately consider the significance of Respondent's probationary status at the time of the misconduct.

Respondent committed the underlying misconduct here while he was serving one year of probation, during which he was not to engage in any ethical misconduct. This fact weighs in favor of a more serious sanction.[10] Respondent's failure to avoid

[10] The other aggravating factors identified by the Dissent do not suggest that the proposed sanction is unduly lenient. Dissent at 18-19, 28-31. The sanction takes into account Respondent's dishonesty and "significant disciplinary history," presumably including the "escalating nature of Respondent's misconduct." Am. Pet. at 12-13, 16; Dissent at 19. The other factors the Dissent identifies related to that previous misconduct (that Respondent's "misconduct occurred over a period of 16 years," the number of rules it violated, and the number of clients affected) do not indicate that the present sanction is unduly lenient.

The question of whether the Clients were prejudiced by Respondent's misconduct raises a more troubling issue. The Amended Petition does not address whether or not the Clients were prejudiced. That information would be highly relevant to determining whether the sanction was appropriate in this case. *See*, *e.g.*, *In re Chapman*, 962 A.2d 922, 927 (D.C. 2009) (per curiam) (noting that "prejudice [a lawyer] caused his client" as a factor in determining sanction). The Dissent suggests that the Clients were prejudiced because they "were forced to abandon their potential claim against a fiduciary as a result of Respondent's actions." Dissent at 31. The Dissent relies on a statement by the Complainant in response to an earlier proposed petition for negotiated discipline. Dissent at 31 (citing Statement of Complainant that "[w]e were forced to abandon this investigation [into potential mismanagement of Clients' mother's financial affairs] when presented with the outrageous bill by [Respondent]. We simply could not afford to continue. We fear this situation is still ongoing, and were it not for the financial predation of [Respondent], we could potentially have put a stop to it. We're out thousands of dollars at this time and fear that the financial abuse of my mother continues and could render her completely out of money when she will need it most"). The Client did not submit a statement in connection with the Amended Petition. HC Report at 15. The record does not address in detail the substance of the Client's concerns about the potential mismanagement of her mother's finances, and so despite the

engaging in misconduct while on probation, at a time when he would be expected to be particularly scrupulous, suggests that the protection of the public requires at least a longer probationary period and additional conditions on that probation than might be justified in another case.

There does not appear to be District of Columbia authority addressing how we should weigh an attorney's failure to complete a probationary period without further misconduct in assessing the appropriate sanction for that further misconduct. Under Rule IX, § 3(a)(7), "[v]iolation of any condition of probation shall make the attorney subject to revocation of probation and the imposition of any other disciplinary sanction listed in this subsection, but only to the extent stated in the order imposing probation." The Court's order in Respondent's previous disciplinary matter does not specifically impose an additional sanction if Respondent engages in misconduct during the probation period. *See In re Brammer*, 243 A.3d 863 (D.C. 2021) (per curiam). Thus, we conclude that because Respondent had violated his

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Client's earlier Statement, the Board cannot conclude that ODC could have established prejudice to the Clients by clear and convincing evidence.

The Dissent also suggests that it may be appropriate to impose a fitness requirement because of "the nature and circumstances of the misconduct, the attorney's conduct since discipline was imposed, including committing additional misconduct while on probation for earlier misconduct, the attorney's character, and two matters in which Respondent was found to have violated the competence Rules." Dissent at 35. The Majority suggests that the requirement that Respondent "obtain practice-management assistance achieves the same end." HC Report at 22 n.8. The Board does not believe the record in this matter indicates that the proposed sanction is unduly lenient because it fails to include a fitness requirement. Apart from the fact of Respondent's previous misconduct, there is not clear evidence of a "'serious doubt' as to the respondent's fitness to practice law." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005).

probation by failing to avoid ethical misconduct, he could have been required to serve the thirty-day suspension that had been stayed in lieu of probation.

Generally, "[t]he purpose of imposing discipline is to serve the public and professional interests identified and to deter future and similar conduct rather than to punish the attorney." *In re Zamora*, 310 A.3d 1074, 1081 (D.C. 2024). As a matter of policy, it would be appropriate to impose a more severe sanction on an attorney who engages in misconduct during a probationary period. An attorney on probation has recently been required to consider his or her ethical obligations and can be expected to be particularly sensitive to the requirements of the Rules. The failure to comply with the Rules under those circumstances justifies a more serious sanction.

In the present case, for example, an appropriate adjustment might be extending the period of Respondent's probation, requiring more supervision of Respondent's work during the probationary period, and specifying an additional sanction if Respondent violates the Rules during that probationary period.

It could also be appropriate to decline to stay the remaining thirty days of Respondent's ninety-day suspension. As a comparison, in Respondent's previous disciplinary matter, the Court imposed a thirty-day suspension for a matter that did not involve dishonesty and did not involve misconduct during a probationary period. *See Brammer*, 243 A.2d 863; Petition for Negotiated Discipline, *In re Brammer*, Board Docket No. 19-ND-007 (May 22, 2019). The proposed sanction in this matter would effectively also be a thirty-day suspension (plus an additional thirty-day

suspension representing the unserved suspension from the earlier matter). It would be appropriate to impose a more severe sanction in this case than in Respondent's earlier matter. However, even taking Respondent's failure to complete his probation into account, a ninety-day suspension with sixty-days served and thirty days stayed in favor of probation would not be unduly lenient if the sanction includes a longer probationary period, and the probation terms are more focused to specifically address Respondent's misconduct.

This matter arose from Respondent's failure to exercise sufficient care when communicating about his firm's ability to serve his client's needs. He failed to inform the Clients of his firm's in-house limitations, or warn them when the actual fees exceeded the upper limit of his original estimate, even though all of the work was not complete. He allowed publication of inaccurate information on his firm's website. Recognizing that this matter arose from Respondent's reckless communication, the parties agreed that Respondent would

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

HC Report ¶ 43(c). The emphasis on clear and effective communication should focus on avoiding the communication failures that resulted in this disciplinary matter. Specifically, Respondent's consultation with PMAS should address (1) the manner in which Respondent describes his firm's capabilities (both in communicating with his clients (or prospective clients) and on the firm's website),

and (2) Respondent's billing practices, including the necessity of regular billing and other steps to avoid unnecessary surprises regarding the size of his bill.

III. *Conclusion*

For the foregoing reasons, the Board recommends that the Court reject the proposed negotiated disposition as unduly lenient.

BOARD ON PROFESSIONAL RESPONSIBILITY

Leslie H. Spiegel

By: Leslie H. Spiegel

All members of the Board concur in this Report and Recommendation, except Mr. Tigar, who is recused.