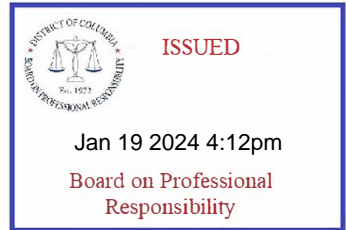


THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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



In the Matter of: :
: :
PJERIN LUMAJ, :
: :
Respondent. : Board Docket No. 22-ND-003
: Disciplinary Docket Nos. 2018-
: D256, 2019-D289, and 2020-
: D130
A Member of the Bar of the :
District of Columbia Court of Appeals :
(Bar Registration No. 984454) :

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

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on June 15, 2023, for a limited hearing on a Petition for Negotiated Discipline (the “Petition”). The members of the Hearing Committee are Kathleen T. Wach, Esquire, Chair; LaVerne Fletcher, Public Member; and Evelyn Tang, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Caroll G. Donayre, Esquire. Respondent, Pjerin Lumaj, was represented by Irwin R. Kramer, Esquire.

The parties agreed that Respondent had failed to maintain complete records of entrusted funds in three client matters and failed to provide a written fee agreement to two clients. They also agreed that Respondent should receive a thirty-

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

day suspension, fully stayed in favor of one year of probation with conditions. On August 14, 2023, this Hearing Committee recommended that the Court approve the negotiated disposition.

In an October 6, 2023 Order, the Court concluded that, on its face, the agreed-upon sanction fell within the range of sanctions for similar Rule violations. Order, *In re Lumaj*, D.C. App. No. 23-BG-0680, at 1 (Oct. 6, 2023). However, the Court rejected the Hearing Committee’s recommendation because the August 14 report did not address whether Disciplinary Counsel (and this Hearing Committee) had considered if Respondent had engaged in other misconduct that would carry a more serious sanction. Specifically, the Court noted that although the stipulated facts implied that Respondent may have engaged in misappropriation and that the client complaints expressed dissatisfaction with Respondent’s representation, the August 14 report did not address Disciplinary Counsel’s investigation of this potential additional misconduct. *Id.* at 1-2. The absence of a record that Disciplinary Counsel and the Hearing Committee considered these issues prevented the Court “from concluding that the agreed-upon sanction is justified.” *Id.* at 2.

The Court denied the Petition, without prejudice to the parties filing a new petition with the same, or different hearing committee. *Id.* Following the Court’s Order, Disciplinary Counsel provided additional information to this Hearing Committee regarding the two issues addressed in the Court’s order. That information is contained in the Confidential Appendix attached hereto. Relying on this additional information, Disciplinary Counsel filed a Joint Motion for Approval

of Negotiated Discipline Petition, seeking this Hearing Committee's approval of the prior negotiated disposition.

II. CONCLUSION AND RECOMMENDATION

For the reasons stated in the August 14, 2023, Report and Recommendation, and the Confidential Appendix to this Supplemental Report (both of which are attached hereto), it is the recommendation of this Hearing Committee that the Joint Motion for Approval of Negotiated Discipline Petition be granted, that the negotiated disposition be approved and that the Court impose the sanction set forth in Paragraph 12 of the August 14 report:

That Respondent should be suspended for thirty days, but that suspension be fully stayed in favor of one year of probation with the following conditions:

- 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. Respondent must certify and provide documentary proof that he has met this requirement to the Office of Disciplinary Counsel within six months of the date of the Court's final order.
- b. Respondent shall not engage in any misconduct in this or any other jurisdiction within a year of the date of the Court's final order. If Disciplinary Counsel has probable cause to believe that Respondent has engaged in any misconduct, Disciplinary Counsel may request that

Respondent be required to serve the suspension previously stayed herein.

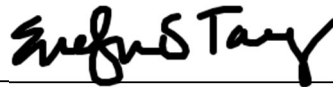
AD HOC HEARING COMMITTEE



Kathleen T. Wach
Chair



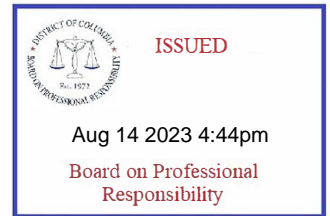
LaVerne Fletcher
Public Member



Evelyn Tang
Attorney Member

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I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on June 15, 2023, for a limited hearing on a Petition for Negotiated Discipline (the “Petition”). The members of the Hearing Committee are Kathleen T. Wach, Esquire, Chair; LaVerne Fletcher, Public Member; and, Evelyn Tang, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Caroll G. Donayre, Esquire. Respondent, Pjerin Lumaj, was represented by Irwin R. Kramer, Esquire.

The Hearing Committee has carefully considered the Petition signed by Disciplinary Counsel, Respondent and Respondent’s counsel, the supporting affidavit submitted by Respondent (the “Affidavit”), and the representations during

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the limited hearing made by Respondent, Respondent’s 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 *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, the Hearing Committee finds that the negotiated discipline of a thirty-day suspension, fully stayed in favor of one year of probation, with conditions, 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 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. 9-10, 22;¹ Affidavit ¶ 2.
3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent (1) failed to communicate with a married couple and failed to prepare the couple for their asylum hearing; (2) mishandled an immigration case for another client, and failed to provide that client with a retainer agreement; and (3) failed to provide a retainer agreement to another client. Petition at 1-2.
4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 15, 26-27; Affidavit ¶¶ 4, 6. Specifically, Respondent acknowledges that:

¹ “Tr.” refers to the transcript of the limited hearing held on June 15, 2023.

Count I
(Lumaj/Smajlaj)

(1) In January 2016 Altin and Luiza Smajlaj entered the United States from their native country of Albania.

(2) The Smajlaj's were immediately detained by Immigration and Customs Enforcement (ICE). The couple was then released when they were found to have a credible fear of returning to Albania and were placed in removal proceedings.

(3) On April 23, 2016, Mr. and Mrs. Smajlaj retained Respondent to assist them with their asylum claims, and legal representation before in the Immigration Court.

(4) Respondent presented Mr. Smajlaj with a retainer agreement setting the legal fee at \$5,500 for representation in their asylum case.

(5) On April 23, 2016, Mr. Smajlaj paid Respondent \$1,500.

(6) On September 13, 2016, Respondent filed an asylum and withholding of removal application on behalf of Altin Smajlaj on which Mrs. Smajlaj was a derivative beneficiary.

(7) On October 25, 2016, Mr. Smajlaj paid Respondent \$1,500 in cash.

(8) On April 23, 2017, Mr. Smajlaj paid Respondent \$2,500 in cash.

(9) Respondent gave Mr. and Mrs. Smajlaj receipts for each payment.

(10) Respondent received notice that the Immigration Court scheduled the asylum hearing for July 19, 2017.

(11) The Immigration judge denied their asylum claim at the end of the hearing on credibility grounds.

(12) Mr. and Mrs. Smajlaj filed a complaint against Respondent in 2018.

(13) When Disciplinary Counsel asked Respondent to produce records accounting for the legal fees that he received from Mr. and Mrs. Smajlaj, Respondent did not produce such records. Respondent only provided copies of receipts that he had provided to the clients at the time the payments were made.

(14) Respondent's conduct violated the following District of Columbia Rule of Professional Conduct:

(a) Rule 1.15(a), in that Respondent failed to maintain complete financial records of advance fees or entrusted funds.

Count II
Lumaj/Vukaj

(15) On November 27, 2013, Stela Vukaj entered the United States without inspection or admission.

(16) Ms. Vukaj retained Respondent to assist her in her immigration case and paid Respondent \$3,500 in cash for his representation.

(17) Respondent did not provide Ms. Vukaj any receipts for her cash payments. Respondent also did not provide Ms. Vukaj with a retainer agreement.

(18) The Immigration Court scheduled a Master Calendar hearing in Ms. Vukaj's matter for May 28, 2014.

(19) On May 28, 2014, Respondent entered his appearance and filed an I-589 asylum application on behalf of Ms. Vukaj.

(20) The Immigration Court held an Individual hearing on May 10, 2016.

(21) On December 3, 2019, Ms. Vukaj filed a complaint against Respondent.

(22) During the investigation, Disciplinary Counsel asked Respondent to produce records accounting for the legal fees that he received from Ms. Vukaj. Respondent did not produce such records.

(23) Respondent's conduct violated the following District of Columbia Rules of Professional Conduct:

(a) Rule 1.5(b), in that Respondent failed to communicate to the client, in writing, the scope of the representation and the basis or rate of his fee; and

(b) Rule 1.15(a), in that Respondent failed to maintain complete financial records of advance fees or entrusted funds.

Count III
Lumaj/Nilaj

(24) On November 18, 2014, Drite Nilaj retained Respondent to represent her and her two daughters in their immigration cases.

(25) Ms. Nilaj fled Albania with two of her daughters in fear of religious and political persecution.

(26) Respondent agreed to represent Ms. Nilaj and set the legal fee at \$2,000. Respondent did not provide Ms. Nilaj with a written fee agreement. Ms. Nilaj made two payments to Respondent totaling \$2,000 in cash.

(27) On November 21, 2014, Respondent filed an asylum application, I-589, on behalf of Ms. Nilaj and her two daughters. Ms. Nilaj's asylum hearing was scheduled for January 25, 2017.

(28) Ms. Nilaj attended her asylum hearing with Respondent and testified at the hearing.

(29) On November 7, 2018, the Immigration judge issued a decision denying her asylum claim.

(30) On June 17, 2020, Ms. Nilaj later filed a complaint against Respondent.

(31) When Disciplinary Counsel asked Respondent to produce records accounting for the legal fees that he received from Ms. Nilaj, Respondent did not produce such records.

(32) Respondent's conduct violated the following District of Columbia Rules of Professional Conduct:

(a) Rule 1.5(b), in that Respondent failed to communicate to the client, in writing, the scope of the representation and the basis or rate of her fee; and

(b) Rule 1.15(a), in that Respondent failed to maintain complete financial records of advance fees or entrusted funds.

Petition at 2-7.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 21-22; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promise to Respondent other than what is contained in the Petition. Affidavit ¶ 7. That promise is that Disciplinary Counsel will recommend the sanction set forth in the Petition. Petition at 7. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 26.

7. Respondent has conferred with his counsel. Tr. 15; Affidavit ¶ 1.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 14-15, 22-23; Affidavit ¶¶ 4, 6.

9. Respondent is not being subjected to coercion or duress. Tr. 14-15, 27; Affidavit ¶ 6.

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. 15-16.

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. 17-20; Affidavit ¶¶ 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a thirty-day suspension, fully stayed in favor of probation with the following conditions:

- 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. Respondent must certify and provide documentary proof that he has met this requirement to the Office of Disciplinary Counsel within six months of the date of the Court's final order.
- b. Respondent shall not engage in any misconduct in this or any other jurisdiction within a year of the date of the Court's final order. If Disciplinary Counsel has probable cause to believe that Respondent has engaged in any misconduct, Disciplinary Counsel may request that Respondent be required to serve the suspension previously stayed herein.

Petition at 7-8; *see* Tr. 25-26.

- 13. The record contains no circumstances in aggravation of sanction.
- 14. The parties have stipulated to the following circumstances in mitigation of sanction: (a) Respondent has no prior discipline; (b) Respondent has taken full

responsibility for his misconduct and has demonstrated remorse; and (c) Respondent has fully cooperated with Disciplinary Counsel, including meeting with Disciplinary Counsel and providing written responses and client records. Petition at 9; Tr. 27-28.

15. The complainants were notified of the limited hearing but did not appear and did not provide any written comment. Tr. 5, 10-11. Counsel for two of the complainants appeared at the hearing, but did not make a statement. Tr. 5, 28.

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 Petition and agreed to the sanction therein. Respondent, after being placed under oath, admitted the stipulated facts and charges set forth in the 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 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 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 Petition. *See supra* Paragraph 5.

With regard to the second factor, the Petition states that Respondent violated Rule of Professional Conduct 1.15(a) (recordkeeping) in all three Counts. *See* Petition at 4-5, 7 (¶¶ 14a, 23b and 32b). The evidence supports Respondent's admission that he violated Rule 1.15(a) in all three client matters because he did not maintain records of his handling of entrusted funds, the fee advances paid by his clients. The Petition also states that Respondent violated Rule 1.5(b) (requiring a writing setting forth the basis or rate of the fee and other information) in Counts II and III. *See* Petition at 5-6 (¶¶ 23a and 32a). The evidence supports Respondent's

admission that he violated Rule 1.5(b) in the Vukaj and Nilaj matters because he did not provide an engagement agreement to either client.

C. The Agreed-Upon Sanction Is Justified.

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 fact that Respondent has no prior discipline, has taken full responsibility for his misconduct and demonstrated remorse, and has fully cooperated with Disciplinary Counsel during the course of these proceedings, as well as the Hearing Committee Chair’s *in camera* review of Disciplinary Counsel’s investigative file and *ex parte* discussion with Disciplinary Counsel, 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:

Violations of Rule 1.5(b) (failure to provide engagement letters) and Rule 1.15(a) (failure to maintain records of the handling of advance fees) generally result

in the imposition of relatively minor sanctions. Informal admonitions are frequently imposed for the failure to provide written engagement agreements setting forth the relevant fee information. *In re Williams*, 693 A.2d 327 (D.C. 1997) (informal admonition for violation of Rule 1.5 (b) and (c)); *In re Confidential (J.E.S.)*, 670 A.2d 1343 (D.C. 1996) (informal admonition for violation of Rule 1.5(e)(2)); *In re Szymkowitz*, 124 A.3d 1078, 1088 (D.C. 2015) (per curiam) (informal admonition for violation of Rule 1.5(b)). Informal admonitions are also routinely imposed where a lawyer fails to maintain records of fee advances or other entrusted funds. *In re Lowe*, Bar Docket No. 2005-D344 (Letter of Informal Admonition May 5, 2006) (violations of Rules 1.15(a) and 1.16(d) for failure to maintain client records and failure to return client file promptly after termination of the representation); *In re Tun*, Bar Docket No. 2003-D385 (Letter of Informal Admonition Feb. 4, 2004) (violations of Rules 1.15(a) and 1.16(d) for failure to maintain records and failure to return client file promptly after the matter was concluded). Based on the foregoing, the stipulated sanction does not appear to be unduly lenient.

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 impose the sanction set forth in Paragraph 12.

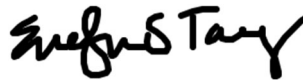
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