MEMORANDUM

TO: **Respondent**

FROM: **James T. Phalen, Esquire**
Executive Attorney

RE: **Disciplinary Charges Have Been Filed Against You**

THIS MATTER REQUIRES YOUR IMMEDIATE ATTENTION.

DISCIPLINARY COUNSEL HAS FILED A PETITION AND SPECIFICATION OF CHARGES AGAINST YOU.

THIS MATTER IS BEING REFERRED TO A HEARING COMMITTEE FOR FORMAL DISCIPLINARY PROCEEDINGS.

PLEASE READ THIS ENTIRE MEMORANDUM CAREFULLY, IT CONTAINS IMPORTANT INFORMATION ABOUT SOME OF THE DEADLINES AND PROCEDURES INVOLVED IN ADJUDICATING THE DISCIPLINARY CHARGES THAT HAVE BEEN FILED AGAINST YOU.

PLEASE ALSO READ THE ENCLOSED BOARD RULES, AS THE PROCEDURE FOR LITIGATING DISCIPLINARY CASES DIFFERS FROM THE PROCEDURES EMPLOYED IN CIVIL OR CRIMINAL CASES.

MORE INFORMATION ABOUT THE D.C. ATTORNEY DISCIPLINE SYSTEM IS AVAILABLE AT WWW.DCATTORNEYDISCIPLINE.ORG

NOTICE TO RESPONDENT

You have been served with a Petition and Specification of Charges.

OBLIGATION TO RESPOND

Pursuant to Board Rule 7.5, WITHIN TWENTY (20) DAYS OF THIS SERVICE, you are required to file your Answer with the Office of the Executive Attorney, and serve a copy on Disciplinary Counsel, by email. The Answer must be attached to an email that is sent to casemanager@dcbpr.org and to the Assistant Disciplinary Counsel who signed the Verification attached to the Specification of Charges. Board Rule 19.8 governs the format of documents filed in this case. You will receive a notice from casemanager@dcbpr.org, when the Answer, and any subsequent filings, have been accepted for filing.

If you fail to timely file an Answer, Disciplinary Counsel may file a motion for default. *See* Board Rule 7.8. Even if Disciplinary Counsel does not file a motion for default, the failure to file an Answer may limit your ability to present evidence on your behalf. *See* Board Rule 7.7.

If you intend to raise an alleged disability in mitigation of sanction pursuant to Board Rule 11.13, you are required to file a notice with the Office of the Executive Attorney on Form 7.6(a), which is available on the "Forms" page on the Board's website (www.dcattorneydiscipline.org). Notice of your intent to raise an alleged disability in mitigation of sanction is due on the date that the Answer to the Petition and Specification of Charges is due. *See* Board Rule 7.6(a).

NOTICE REGARDING EMAIL ADDRESS

All notices and case-related documents will be emailed to you at your primary email address on file with the District of Columbia Bar. If you prefer to receive notice at a different email address, please provide it to the Office of the Executive Attorney and the Office of Disciplinary Counsel, at the email addresses above. If you are represented by counsel, all notices and case-related documents will be sent to your counsel.

The address or addresses for you on file with the D.C. Bar are on the attached printout of your D.C. Bar registration information. You are required to keep these records updated. **If these are not correct or if either changes, please notify the D.C. Bar immediately and provide current addresses to the Office of the Executive Attorney and Disciplinary Counsel in writing at the email addresses above.**

THIS IS A PUBLIC PROCEEDING

"All proceedings before the Hearing Committee and the Board shall be open to the public, and the petition, together with any exhibits introduced into evidence, any pleadings filed by the parties, and any transcript of the proceeding, shall be available for public inspection." D.C. Bar R. XI, § 17(a). The Board Chair may issue a protective order prohibiting the disclosure of confidential or privileged information. *See* D.C. Bar R. XI, § 17(d). Please note that Board Rule 19.8(f) requires the redaction of certain information from documents filed in disciplinary matters.

RIGHT TO COUNSEL

The disciplinary proceeding instituted by Disciplinary Counsel against you is an adversarial proceeding. You have a right to be represented by counsel in this matter, or to proceed without counsel. *See* D.C. Bar Rule XI, § 8(d); Board Rule 19.5(a).

As noted above, the procedure for litigating a disciplinary case differs from the procedures employed in civil or criminal cases. The Office of the Executive Attorney maintains a list of counsel who have experience handling disciplinary cases. This list is available upon request. Please note that this is not a complete list of all attorneys for respondents, and the fact that an attorney appears on the list does not represent a recommendation, endorsement or evaluation of his or her qualifications or competence.

Pursuant to Board Rule 19.5(b), you may request that the Board compensate your counsel and pay reasonable and necessary expenses, pursuant to the Board's Policy on Compensation of Counsel for Indigent Respondents, which is available on the "Forms" page of the Board's website.

If you wish to request compensation of counsel, you must file a motion, and an Affidavit in Support of Motion for Compensation of Counsel Based on Financial Hardship, which is available on the "Forms" page identified above. Because a Specification of Charges has been filed in this case, the motion requesting compensation of counsel and the supporting affidavit are not confidential. *See* Board Policy on Compensation of Counsel, ¶ 3.

HEARING SCHEDULE

1. Pre-Hearing Conference. This matter will be scheduled for a pre-hearing scheduling conference within six (6) weeks of service of the Petition and Specification of Charges. As discussed above, notice of the date for the pre-hearing scheduling conference will be sent to your primary email address on file with the D.C. Bar, unless you provide written notice of another address, as described above.

The purpose of the pre-hearing scheduling conference is to clarify issues, determine whether the parties can agree to stipulations, set dates for the exchange of evidence and witness lists, determine the length of the hearing and schedule the hearing. Thus, it is important that you or your counsel attend the pre-hearing scheduling conference, or else the hearing date may be set without your input.

The prehearing conference may be cancelled at the discretion of the Hearing Committee Chair if you and Disciplinary Counsel agree on a hearing date and pre-hearing deadlines, and have no other matters to address.

2. **Evidentiary Hearing. The evidentiary hearing will be held in person in Courtroom II of the D.C. Historic Courthouse, 430 E Street, N.W., Washington, D.C., unless you request that it be held over Zoom.** ***See*** **Administrative Order 2023-1.**

At the evidentiary hearing, you will have the right to cross-examine witnesses and present evidence on your behalf in defense of the charges against you or mitigation of any possible sanction if the charges are proven. *But see* Board Rule 7.7 (discussing limitations following a failure to file an Answer). You may obtain a subpoena from the Office of the Executive Attorney to compel the attendance of witnesses and/or documents at the hearing.

Please review Chapter Three of the Board Rules regarding pre-hearing discovery, especially Board Rule 3.2 (regarding discovery from non-parties).

Pursuant to the Board's Policy on Hearing Scheduling, the evidentiary hearing and post-hearing briefing should be completed within 180 days after service of the Specification of Charges. The following is the presumptive schedule to be used for non-complex matters before Hearing Committees:

Proof of Service filed:	Day 1
Pre-hearing conference held:	No Later Than 42 Days Later
Hearing complete:	No Later Than 90 Days After Pre-hearing
Briefing complete:	No Later Than 48 Days After Hearing

The Hearing Committee Chair may extend any of these dates in the interests of justice, but extensions are disfavored and you should not expect that any extensions will be granted.

HEARING PRIORITY

Under an arrangement among the Superior and U.S. District Courts for the District of Columbia, and the Board on Professional Responsibility, the precedence for an appearance in those courts and for a matter before a Hearing Committee or the Board is determined by the date on which the appearance is scheduled.

During the pre-hearing scheduling conference, when discussing possible hearing dates, you should notify the Hearing Committee Chair of court appearances

that will take precedence over this matter. If a conflicting court appearance is scheduled after this matter has been set for a hearing, you should notify the judge or clerk of the pendency of this matter.

Please see: Board Rules (version effective January 19, 2023)
Administrative Order 2023-1

(Revised 8/2023)