

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



In the Matter of Michael D.J. Eisenberg, Esquire, Respondent A Member of the Bar of the District of Columbia Court of Appeals Bar Number: 486251 Date of Admission: May 10, 2004	Disciplinary Docket Nos. 2014-D318 (Glaab) 2016-D399 & 2019-D058 (Swain) 2017-D057 (Faust) 2019-D123 (Mitchell) 2020-D239 (Brisendine) 2021-D010 (Travis)
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**ANSWER OF MICHAEL D.J. EISENBERG, RESPONDENT, TO THE
SPECIFICATION OF CHARGES**

Respondent hereby answers and/or pleads to the factual contentions or allegations included within the Specification of Charges as provided below. All prior objections to the pre-charging process and/or to the prejudicial inclusion of prior discredited or disproven contentions in these charges, as asserted in the previously filed Motion to Dismiss, are hereby preserved. Respondent reserves the right to amend his Answer due to the extraordinary amount of time that has passed since these occurrences. Also, discovery, key consultations and investigations are still ongoing including continuing detailed review of almost 60,000 PDF pages of ODC produced documents.

ANSWER

1. Admit.
2. Admit.
3. Admit.

COUNT I: Glaab (2014-D318)

4. Admit.
5. Admit in part and deny in part. Ms. Cain was a statistical clerk. She was Ms. Glaab's Union Representative.
6. Insufficient knowledge. Discovery and investigations are ongoing; therefore, currently denied.
7. Admit.
8. Respondent admits that at this meeting, there was no substantial discussion regarding a potential conflict as no conflict existed then as Ms. Cain and Ms. Glaab possessed no information gleaned from these or earlier discussions that appeared to put them potentially adverse to each other's respective claims in the event of dual representation. Dual representation would potentially enhance each of their respective claims in litigation.
9. Admit that Ms. Glaab signed a retainer agreement on the same day she was deposed in the *Cain* matter. It is specifically denied that she had insufficient

time to either review it or to reasonably understand it. Insufficient knowledge as to any of the remaining contentions.

10. Denied in part. Denied to the extent it implies the \$4,000 retainer was paid the same day of the representation agreement as the initial case commitment retainer was sent by Ms. Glaab on a later date. Otherwise admitted.
11. Denied.
12. Discovery, case investigations and documents review are ongoing; therefore, the allegations are currently denied.
13. Admit.
14. Insufficient knowledge to admit or deny. Respondent did attempt to contact the judge by phone days before the hearing as negotiations between the parties broke down. The judge never returned Respondents' communications.
15. Admit Respondent did not attend the teleconference. Respondent further admits that no associate was asked to cover in advance because Respondent reasonably believed the conference was to be postponed. Respondent's associate did seek to cover for Respondent on the day of the hearing and was available at the time of the teleconference, but the AJ would not allow the associate to participate.
16. Admit that the administrative judge apparently called Ms. Glaab at work when Respondent did not appear for the conference. Respondent admits he

may have told Ms. Glaab the conference would be postponed, as it was Respondent's reasonable belief or expectation it would be postponed. The remaining allegations are denied for want of sufficient knowledge.

17. Denied only to the extent the allegations may incorrectly infer that settlement was likely or reasonably possible at that time, otherwise admitted. The employer's counsel had communicated to Respondent shortly before the hearing that there would definitely be no settlement offer and defense had no objection to postponing the hearing.

18. Denied as stated. Respondent admits he would have advised Ms. Glaab that, based upon what she initially told him, the claim appeared to be worth pursuing. Respondent would have also advised Ms. Glaab that there are no guarantees of success and that the chances of success or the strength of her case could change significantly as additional information or evidence is obtained or presented.

19. Denied.

20. Insufficient knowledge to admit or deny due to the extraordinary time that has passed since these occurrences.

21. Denied.

22. Denied.

23. Denied as specifically summarized as the contentions prejudicially omit essential exculpatory facts. Respondent admits the witness list was to be submitted at the conference but wasn't because Respondent reasonably thought the conference was or would be postponed. Respondent further admits that in response to these contentions, he was specifically rebuked by the judge to not request formal reconsideration of his exclusion order as such a request would be summarily denied and "not well received." Therefore, Respondent complied with the judge's admonition and did not move for reconsideration in advance of the hearing.

24. Denied.

25. Admitted only in part. It is admitted that the judge sanctioned Ms. Glaab by prohibiting her from calling live witnesses not also listed on the employer's list during her case in chief at the hearing. Respondent admits he possibly advised Ms. Glaab that Ms. Cain may still be able to be called as a rebuttal witness to employer witness testimony at the hearing or the judge, pursuant to the MD110, could still call Ms. Cain to fulfill his duty to develop a complete record. The sworn statements of witnesses were in the ROI which was already a matter of record and would be before the administrative judge for consideration. Depositions of witnesses had not been stricken by the exclusion order. Ms. Cain had been deposed.

26. Denied as stated. Admit that the judge did not conduct a complete hearing and terminated the case via directed verdict without receiving additional evidence or witnesses due to inconsistent statements during Ms. Glaab's testimony that undermined her credibility with the judge, who also questioned her. Admit that Ms. Cain, who was present at the hearing, never testified as a live witness at the hearing, in rebuttal or otherwise, due to the preceding events.

27. Denied.

28. Due to the extraordinary length of time that has passed, i.e., from the hearing to today, Respondent has insufficient knowledge to admit or deny; however, Cain's sworn statement was already part of the case through the ROI and Cain's deposition had already been taken which could be entered into the record at the hearing. The AJ's exclusion order did not expressly prohibit the introduction of depositions or the use of deposition testimony for impeachment.

29. Discovery, case investigations are ongoing; therefore, the allegations are currently denied.

30. Discovery, case investigations and massive documents review are still in progress; therefore, the allegations are currently denied.

31. Discovery, case investigations and massive documents review are still in progress; therefore, the allegations are currently denied.

32. Discovery, case investigations including massive documents review is in progress; therefore, the allegations are currently denied.
33. Denied.
34. Denied to the extent it is suggested that a complete hearing occurred. The hearing was peremptorily concluded when the judge determined Ms. Glaab's testimony at the hearing lacked veracity. Otherwise admitted to the extent not inconsistent with the above.
35. It is admitted that Ms. Glaab was the only live witness offered by Respondent before directed verdict was granted for the employer based upon preceding material inconsistencies in Ms. Glaab's testimony at the hearing.
36. Denied.
37. Admit.
38. Admit.
39. Discovery, case investigations and massive documents review are still in progress; therefore, the allegations are currently denied.
40. Admit.
41. Respondent has not seen a decision on the appeal in question within the Master File as of this date. Lack of sufficient knowledge at present to admit or deny.

42. Discovery, case investigations and review of voluminous documents are still in progress; therefore, the allegations are currently denied.

43. Admit in part only. Respondent had been working with Ms. Cain for many months to get her bill for costs up to date. Despite many assurances from Ms. Cain, she never made restitution to Respondent. Further, Respondent did not participate in the “loan” between the Complainant and Ms. Cain; he was also unaware if Ms. Cain owed the Complainant any other money from past or subsequent loans. It is unknown when or if Ms. Cain paid back the money in question.

44. Insufficient knowledge to admit or deny.

45. Due to the extraordinary length of time that has passed, i.e., from the hearing to today, Respondent has insufficient knowledge to admit or deny.

46. Admit in part and deny in part. Respondent did not see any true conflict of interest issue between the two parties. As a prophylactic measure, he obtained testimonial waivers during Complainant and Ms. Cain’s depositions. Ms. Glaab stated she waived a conflict of interest. However, this was not a genuine conflict situation as fully briefed in Respondent’s prior counsel’s letter to ODC of November 2, 2023.

47. Denied in part. Admitted subject to the following exceptions. The representation agreement indicated she would be responsible for costs

reimbursement beyond the initial retainer plus a contingency fee. The representation agreement discusses how she would not be charged any hourly attorney fees for representation. The agreement does not address quantum meruit rights of the attorney should the agreement be terminated before all goals of the representation were achieved. In the event the claim prevailed, the employer (not the client) would be asked to reimburse for billable hour attorney fees that often fluctuate according to the *Laffee* index, as indicated in the agreement. Ms. Glaab did not have a billable hour attorney fee contract with Respondent.

48. Admit.

49. Admit that Ms. Glaab traveled to D.C. with a friend, however, Respondent is without sufficient knowledge to admit or deny the remaining allegations.

“When the parties settled the case and Respondent waived the remaining balance, Complainant nor her counsel asked for costs, e.g., travel, attorney fees., etc.”

50. Admit.

51(A)-(F). Discovery, key consultations, case investigations and reviews of massive documents are in progress. The allegations are currently denied. (G)-(I) Denied.

COUNT 2: Swain (2016-D399 & 2019-D058)

[What should now be 52 was misnumbered as “49” in the Specifications of Charges].

49. Admit that she traveled to D.C. Deny for lack of knowledge if she could not afford counsel. Acknowledge she represented herself pro se. It is unknown if Complainant made any attempt to be accommodated for an appearance by phone.

50. Admit.

51. Admitted in part only. Admit that Ms. Swain was charged a \$3000 “non-refundable” true retainer (which was never paid by Ms. Swain in full) and that a low 20% contingency was charged in addition to the low statutory fees that might be recovered against the employer if the claim prevailed. The remaining contentions are a misinterpretation of the contract terms and are not accurately summarized, therefore, are denied.

52. Admit.

53. Admit.

54. Denied except as noted below:

A. Insufficient knowledge to admit or deny due to the extraordinary time that has passed since these occurrences. Respondent was aware that she had specious and non-meritorious complaints that did not seem to warrant litigation and would undermine the credibility of other pending claims if pursued.

B. Deny.

C. Deny in part - specifically denied as it misstates the purpose of the prior investigation. The investigation is not an adversarial process.

55. Admit.

56. Denied in part and admit in part. Respondent asked for the maximum pecuniary and nonpecuniary damages.

57. Denied as stated. The settlement included other benefits to Ms. Swain not mentioned in this incomplete summary of the settlement provisions.

58. Admitted in part and denied in part. It is specifically denied that Respondent had few substantive discussions with his client and did not consult with her regarding strategies. It is specifically denied that all strategic strategies or tactical decisions regarding case management needed to be specifically discussed in advance of proper management of the case.

59. Denied.

60. Denied.

61. Denied.

62. Admit.

63. Admit.

64. Admit.

65. Case discovery, additional investigations and document reviews are ongoing; currently denied for want of knowledge.
66. Admit.
67. Admitted in part and denied in part. The order was ambiguous or vague and it is not clear what was being mandated.
68. Case discovery, additional investigations and document reviews are ongoing; currently denied for want of knowledge.
69. Admitted in part and denied in part. The order is ambiguous and vague. It seems to suggest that continuing garnishment of any additional funds would be inappropriate, but the order is not clear on whether all past garnished wages since inception of the garnishment were required to be refunded.
70. Admitted in part and denied in part. It is admitted that certain funds were kept in trust while Respondent openly collaterally challenged the order consistent with ethical rules.
71. Admitted in part and denied in part. The judge allowed modification of the Motion of Dismiss to convert it to a Motion to Reopen the bankruptcy estate.
72. Admitted in part and denied in part. The entire exchange between Respondent and the judge is not fairly or adequately summarized.

73. Admitted in part and denied in part. The bankruptcy judge allowed Respondent to redesignate his motion to dismiss as a motion to reopen the bankruptcy and to submit briefs in accordance with that ruling.
74. Denied as stated. The contention does not accurately summarize the events. However, it is admitted that the findings included in the block quote are accurate.
75. Admit.
76. Admit.
77. Admit.
78. Admit.
79. Admit.
80. Discovery and further case investigations are in progress; insufficient knowledge, therefore, to currently admit or deny.
81. Deny to the extent that this paragraph mischaracterizes the facts. Upon entry of the Order and Mr. Eisenberg's inability to stay the proceedings, he timely applied for and filed a bond with the Court for the amount in question. Mr. Eisenberg pursued his due process rights in an appeal before the District of Columbia Court of Appeals. Once Mr. Eisenberg exhausted his appeals and seeing no further legal recourse, he sent Complainant the money in question. Based upon initial cursory the review of the Master File, there does not appear

to be an order to pay lost interest. Additionally, Ms. Swain had indicated in prior testimony that she no longer wanted the money, in order to resolve the dispute.

82. See below:

A. Discovery, key consultations and case investigations are ongoing; therefore, the allegations are currently denied.

B. Discovery, key consultations and case investigations are ongoing; therefore, the allegations are currently denied.

C. Discovery, key consultations and case investigations are ongoing; therefore, the allegations are currently denied.

D. Discovery, key consultations and case investigations are ongoing; therefore, the allegations are currently denied.

E. Denied.

F. Denied.

COUNT 3: Faust (2017-D057)

83. Admitted in part and denied in part. It is denied for want of knowledge that

Ms. Faust had health problems that she originally suffered “on the job.”

Otherwise admitted.

84. Admit. Denied in part as the statement is incomplete. On December 15, 2011, the DOL overturned the September 13, 2011, decision for denial of due process.

85. Denied in part only. The hourly rates were to advise her of what attorney fees would be sought as against the defendant or agency in the event she prevailed, otherwise admitted.

86. Denied in part. There had been prior insufficient time to review what she sent earlier to determine if more information would be required.

87. Denied

88. Denied.

A. Discovery and case investigations are ongoing; therefore, the allegations are currently denied.

B. Discovery and case investigations are ongoing; therefore, the allegations are currently denied.

C. Denied as stated. Respondent notified the EEOC which is the proper entity to be notified versus the employer.

D. Discovery and case investigations are ongoing; therefore, the allegations are currently denied.

E. Denied for want of knowledge.

F. Discovery and case investigations are ongoing; therefore, the allegations are currently denied.

G. Discovery and case investigations are ongoing; therefore, the allegations are currently denied.

H. Discovery and case investigations are ongoing; therefore, the allegations are currently denied.

89. Denied.

90. Admit in part and deny in part. Complainant had a final accounting and had all of her current cases. Respondent admits that he did not provide a list of her cases.

91. Admit.

92. Denied.

92. Denied.

A. Denied.

B. Denied.

C. Denied.

D. Denied.

93. Denied.

94. Denied.

95. Admitted in part and denied in part. Respondent asserts that based on the records he had, and his understanding at the time, and as reported by his former bookkeeper, the amount was due. Respondent had attempted to work with Complainant to settle the matter prior to filing suit. The presentations at the small claims proceeding more clearly identified an accounting error regarding the amount she still owed. Respondent's admission of the accounting error led to a mediated result. The smaller residual amount she owed was also waived.

96. Admit in part and deny in part. See 95 above.

97. Admitted in part and denied in part. It is denied "...she was compelled to retain local counsel."

98. Admit.

101. Admit in part and denied in part. Admit her local D.C. counsel was present. The remaining allegations are denied for insufficient knowledge.

102. Admitted in part and denied in part. The office bookkeeper had verified the amount.

103. See below:

103(A) Denied as material discovery, key consultations and further case investigations are ongoing.

103(B) Denied.

103(C) Denied as material discovery, key consultations and further case investigations are ongoing.

103(D) Denied.

103(E) Denied.

COUNT 4: *Mitchell* (2019-D123)

104. Admit in part. The statement "and had an attorney handling her **EEO** administrative process when Respondent undertook to represent her..." is currently denied as material discovery and further case investigations are ongoing.

105. Admit in part and denied in part. Originally, Respondent was just representing her with the EEOC claim. Respondent would not have been representing her as to collective bargaining agreement issues.

106. Denied.

107. Admit.

108. Admit.

109. Admit with exception that Mrs. Mitchell had been on medical leave for nearly a year by this time.

110. Denied as material discovery and further case investigations are ongoing.

111. See below:

a. Insufficient knowledge to admit or deny due to the extraordinary time that has passed since these occurrences; Respondent had many ongoing conversations with Complainant about the status of her cases; this would include when and what extensions were sought.

b. Denied as material discovery and further case investigations are ongoing.

c. Insufficient knowledge to admit or deny due to the extraordinary time that has passed since these occurrences; Respondent had many ongoing conversations with Complainant about the status of her cases before the government; this would include why some cases should move forward and why some cases were incorporated into others.

112. Insufficient knowledge to admit or deny due to the extraordinary time that has passed since these occurrences and material discovery and further case investigations are ongoing.

113. Admit the first sentence. Deny the second sentence as stated.

114. Admit the first sentence. Deny the second sentence as stated.

115. Admit in part and deny in part. Mrs. Mitchell was terminated because her license was no longer active, it had not lapsed, otherwise admitted.

116. As to the first sentence, admitted except Respondent is without knowledge as to how soon after the termination he was advised of the occurrence by Mrs. Mitchell. The second sentence is denied.

117. Admit.

118. Due to the extraordinary length of time that has passed, respondent has insufficient knowledge to admit or deny and discovery and further case investigations are ongoing.

119. Admit.

120. Admit.

121. Admitted in part and denied in part. The request was filed within the deadline. Also, a social security number is another means of properly identifying claimant.

122. Admit.

123. Admit the first sentence. Deny the second sentence as misleading. The agency was completely non-responsive during this period regarding requests.

124. Denied in part. The date was February 15, 2017, not February 7.

125. Denied in part. An amended writ was filed not a second writ.

126. The first sentence is admitted. The second sentence is incorrect as stated.

The applicable statute was mentioned and there was an application for EAJA fees.

127. Denied as stated.

128. Admit.

129. Insufficient knowledge to admit or deny.

130. Admit in part and denied in part. The purpose of the mandamus was to get the OWCP to acknowledge the timely appeal. This was accomplished.

Therefore, the mandamus was moot. Meanwhile, complainant was combative as there were attempts to seal the record of her personal information which she mistakenly took as an effort to conceal the overall action. Despite several assurances, she remained combative.

131. Admit in part and deny in part. See # 130 above.

132. Admit.

133. Denied.

134. Admit except as to who filed the appeal as there is currently insufficient knowledge to admit or deny.

135. Admit in part and deny in part as the contention mischaracterizes the facts - this Answer adopts and incorporates the Answer in 153, *infra*. The action was taken as a prophylactic measure.

136. Admit in part and deny in part. The case needed to be stayed pending resolution of the EEOC and OSC activity.

137. Admit the first and the second sentence. The third sentence is currently denied as discovery and further case investigations are ongoing.

138. Admit.

139. Admit the first sentence. Discovery and further case investigations are ongoing; therefore, the remaining allegations are currently denied.
140. Admit.
141. Denied as stated - you do not have to "refile ... [the] appeal" as pursuant to Board rules it is done automatically. The second sentence is admitted.
142. Admit.
143. Admit.
144. Admit.
145. Admit.
146. Admit.
147. Denied as to the date of the document in question. Further, as discovery and further case investigations are ongoing; the allegations are currently denied.
148. Discovery and further case investigations are ongoing; therefore, the allegations are currently denied.
149. Discovery and further investigations are ongoing; therefore, the allegations are currently denied.
150. Discovery and case investigations are ongoing; therefore, the allegations are currently denied.
151. Discovery and further investigations are ongoing; therefore, the allegations are currently denied.

152. Admit.

153. Admit in part/deny in part - it was Respondent's impression under all the circumstances at the time, including earlier interactions with opposing counsel, that to accepting "\$300,000" would settle the case.

154. Admit that on January 12, 2018, Respondent moved to recuse the presiding AJ in MSPB claim-0139-W-3 on the grounds that the judge had "yelled" at Respondent for not settling Mrs. Mitchell's case.

155. Admit in part and deny in part. Admit the judge denied the motion. Deny that there was no settlement as based on all of Respondent's prior interactions with counsel, it appeared that they were making an offer at \$300,000 if accepted.

156. The contention mischaracterizes the facts. Respondent filed an appeal with the MSPB in order to preserve any necessary appeal that may fall in the Board's jurisdiction. It was believed that either the Whistleblower claim may need to be followed through with OSC first or if any issues from the EEOC that was not an EEO issue would need to be appealed from the EEOC to the MSPB - which is why the Board dismissed without prejudice the appeal before it.

157. Admit.

158. Admit.

159. Admit in part and deny in part. The judge, who was earlier irate that the case had not been settled, lamented about how life was not fair as exemplified by the doctors cutting of the wrong leg leaving him a paraplegic.

160. Admit.

161. Admit first sentence. Deny second sentence.

162. Admit.

163. Deny.

164. Deny.

165. Admit.

166. Admit.

167. Admit.

168. Admit.

169. Denied as stated.

170. (A - D) Insufficient knowledge to currently admit or deny as discovery, key consultations and case investigations are ongoing.

171. First sentence admit. Second sentence denied as the funds were not intrabank or electronically transferred as suggested. The third sentence is denied as the contention mischaracterizes the nature of the \$5000.00. See footnote 8 on page 23 of the Motion to Dismiss filed May 24, 2024.

172. Deny.

173. Admit.

174. Admit.

175. Admit in part and deny in part. She told Respondent but not the exact date.

176. Admit.

177. Admit in part and denied in part. When the check was deposited in 2018, Respondent did not understand or remember that it was the earlier so-called “lost in the mail” check.

178. Denied as stated.

179. Admit.

180. Admit with exceptions. The money was deposited but at the time it was deposited Respondent did not know or then believe that it was the so-called “lost in the mail” check.

181. Denied for want of knowledge but Respondent reserves the right to amend his Answer as an extraordinary amount of time that has passed since these occurrences and discovery, key consultations and investigations are still ongoing.

182. Denied for want of knowledge.

183. Admit.

184. Admit in part only. The check was dated May 3, 2019, but insufficient knowledge as to when it was received.

185 (A)-(H) Denied.

185 (I) Case investigations and consultations are in progress, therefore, presently denied.

185 (J) and (K). Denied.

COUNT 5: *Travis* (2021-D010)

186. Admit the first and second sentences. The third sentence is overly vague, therefore, denied.

187. The last sentence is admitted. The first two sentences leave out vital information, therefore, are only partially admitted. This prior service member was administratively discharged based upon misconduct that included assaultive/abusive behaviors toward a woman. He received a general discharge. He did not receive an honorable discharge certificate. He was still eligible for service-related benefits, but his service record was not spotless or stellar. He withheld the information about his misconduct, and Respondent did not learn about it until he received his OMPF much later in the representation.

188. Discovery, key consultations and investigations are ongoing; therefore, the allegations are currently denied.

189. Admit in part only. It is denied that retroactive payments for PTSD was his only project.

190. A. Admit. B. Deny as stated - Respondent does not help with applications only VA Disability Benefit appeals. C. Deny as stated- Respondent would assist with any provable service-connected medical condition under the VASRD that were denied or decided in error before the VA. Respondent was not assisting the Complainant with charges against the military for the vaccination itself. See also 199, below.

191. Denied for want of knowledge. Admit that he likely reported that he did not have a lot of money, but how precarious his finances were was not specifically known.

192. Admitted in part and denied in part. It was effectively communicated to the client that Respondent would not be representing him regarding the adverse reaction to the anthrax vaccine, i.e., a claim against the military. It is admitted as stated in 190(c), above. See also 199, below.

193. Admit.

194. Denied.

195. Admitted in part and denied in part. It is denied that Respondent represented this former client regarding the anthrax vaccine. The prior service member was originally discharged in 1993 so there were thirty (30) years of claim

related documents in his C-file, which was requested at that time Respondent made his Notice of Appearance. It can take a year, sometimes longer, to obtain a C-file after requesting it even when less voluminous or all-encompassing.

Often, despite waiting many months for the C-file, the file is incomplete.

196. Admit in part and denied in part. Mr. Travis was cc'd on correspondence and pleadings. Matters were discussed but Mr. Travis often did not like or agree with the responses. This former client was frequently abrupt and excessively demanding. He was extremely challenging to work with.

197. Denied.

197(A). Admitted in part and denied in part. Denied as to issues of costs. Several matters would be on separate or independent tracks, irrespective of the clients wishes for complete consolidation.

197(B). The first sentence is denied. The second sentence is denied in part. Mr. Travis did not meet the criteria for advancing on the docket until his circumstances substantially changed later during the relationship.

197(C). Admitted in part and denied in part. Admit that Mr. Travis was advised that claims were likely delayed because of his prior records or C-file were unusually large. This former client was discharged over thirty (30) years prior to the representation with prior post-service submission of VA claims resulting in earlier disability ratings, petitions and proceedings.

198. Admitted in part and denied in part. Key records had not been received and/or had not been provided with the C-file. Mr. Travis had initiated so many prior appeal streams that it was prudent to clarify with the judge which issue was then being adjudicated.
199. Admitted in part and denied in part. It is admitted that a relatively low 20% contingency fee for back benefits was received for success on some of the benefit claims, with those attorney fees totaling \$1,780. It is specifically denied that a claim for the anthrax vaccine was being pursued as part of the representation. A tort claim for the anthrax was not on appeal - that is a separate type of claim handled in the U.S. Court of Federal Claims. Respondent attempted to obtain any medical condition reasonably related to his military service. Discovery and case investigations are ongoing, therefore, allegations inconsistent with this response are currently denied.
200. Admitted in part and denied in part. It was clearly communicated between attorney and client that the anthrax vaccine claim against the military was not part of the representation. See 191, 192, & 199, above.
201. Discovery and case investigations are ongoing. The allegation is currently denied.
202. Admitted in part and denied in part. Admit that Mr. Travis wanted to discuss certain concerns otherwise denied for want of knowledge.

203. Admit.

204(A). Discovery, key consultations and case investigations are ongoing. The allegation is currently denied.

204(B) Denied.

204(C) Discovery, key consultations and investigations are ongoing. The allegation is currently denied.

204(D)-(E). Denied.

COUNT 6: *Brisendine* (2020-D239)

206. Admitted in part. Denied in part. The system does not function as well, and fewer options for obtaining examinations may exist when the veteran resides outside the continental United States or is fairly itinerant with frequent changes of permanent or residential addresses.

207. Admitted in part. Denied in part. The exact date Respondent received the signed agreement may have been after July 17, 2014.

208. Denied for insufficient knowledge. Mr. Brisendine often had credibility issues from his psychiatric condition or disorder, and it was never definitively proven why he missed the VA exam. Mr. Brisendine alleged the VA sent the notice to the wrong address.

209. Admitted in part. In addition to (a) and (b), Mr. Brisendine had failed to demonstrate nexus. He was missing another proof component because he did not have a nexus letter.

210.

(A) Admit.

(B) Discovery and case investigations are ongoing. The allegation is currently denied.

211. Deny as stated.

212. Admit in part. Denied in part. You always had to be cautious with Mr. Brisendine because of his mental condition and occasional alcohol abuse episodes. He once bragged he purchased a classic car for \$2,500. He was not indigent, but he said he was living in Mexico to save on living expenses because he did not have a lot of money.

213. Deny as stated.

214. Denied.

215. Denied.

216. Deny as stated as it raises incorrect inferences about the processes.

217. Discovery and case investigations are ongoing. The allegation is currently denied.

218. Admit the first sentence. Deny the second sentence as stated. The Regional Office will not touch the Navy's discharge decision.
219. Deny as stated as it raises incorrect inferences about the processes.
220. Admitted with exception that Respondent did not yet have Mr. Brisendine's claims folder as it takes time to acquire it. Key information could not be asserted or verified without access to the complete claims file.
221. Admit the first sentence and deny the second sentence as stated. There were challenging, if not insurmountable, logistical problems given this client's special circumstances setting up a video conference from Mexico with the veterans' law judge in the U.S.
222. Admit.
223. Admit.
224. Admit first sentence. Deny second sentence as stated. Respondent was terminated as counsel by Mr. Brisendine before the information was submitted. Respondent's Notice of Withdrawal as counsel requested a 30-day extension to protect the client's interests despite Mr. Brisendine prematurely or rather hastily terminating the representation. The client was instructed to provide the information within the extension period.
225. Denied as stated.
- A. Deny as stated as it raises incorrect inferences about the processes.

- B. Deny as stated as it raises incorrect inferences about the processes.
- C. Admit in part and denied in part. Respondent believed the judge understated what was required from Complainant's prior medical providers.
- D. The second sentence is admitted. The first and third sentences are denied as stated.

226. Admit.

227. Admit in part and deny in part. Respondent did file a 30-day extension for Complainant.

228. Admit in part and denied in part. Mr. Brisendine had been a resident and worked in the Washington, D.C. metropolitan area. Mr. Brisendine came to Washington D.C. multiple times during the representation, he had friends and colleagues in the area (as reported by him to Respondent) and maintained a P.O. box in D.C. Respondent had successfully corresponded with Mr. Brisendine in the past at that P.O. box address. Once advised Respondent immediately sent the materials to the former client to his address in Mexico.

229. Admitted in part and denied in part. The medical paperwork in question was not filed. Respondent was fired before he could file the paperwork that had been gathered or assembled. The crux of the case was his testimony and by

the Complainant's own admission it was in fact quite compelling to the Veterans Law Judge, which vindicated the decision to appear live.

230. Denied as stated. Mr. Brisendine was volatile at many points during our relationship and histrionics were not uncommon. Complainant and Respondent's relationship was characterized by Complainant being abusive then later apologizing for his inappropriate behavior.

231. Deny for lack of knowledge. Further deny as the contention mischaracterizes the facts, it is Respondent's understanding that the decision made in September 2018 was to a large extent due to his work and earlier representation, e.g., during the January hearing, that significantly helped to achieve the positive decision subsequently in September 2018.

232. Admit. The Veteran then settled the case, paid Respondent, then he filed an appeal. Respondent informed Complainant that since the matter had been settled the case was over and his appeal was in error. Complainant informed Respondent "Yes, Mike. I have a new address. Good luck updating it! I know this is a whole new mountain for you to climb. I don't think you need to get excited or start making stinky little threats just yet. It's just a request for judicial review. The Judge does all the work. All you have to do is sit there and wait for the bad news. Really, is that so hard?" Complainant moved to

dismiss for lack of jurisdiction as the matter had been settled. The Motion was granted.

233. (A)-(E) Denied.

Respectfully submitted,

Michael D.J. Eisenberg

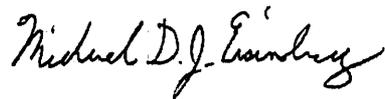
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Date: May 29, 2024

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been filed by e-mail on May 29, 24, and that all of the parties were served by e-mail:

Respectfully submitted,



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