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April 22, 2025

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RE: In the Matter of Carlos H. Acosta, Jr.

Docket No. DRB 25-041

District Docket No. XIV-2021-0024E

Dear Counsel:

The Disciplinary Review Board (the Board) considered respondent's April 18, 2025 motion to declare the pending disciplinary stipulation void and to remand this matter to the District VI Ethics Committee (the DEC). After careful review, the Board determined to deny the motion.

As counsel is aware, on February 14, 2025, the Court remanded this matter to the Board “to consider the expanded record, and upon completion of its review, file with the Court a revised decision.” In advance of oral argument, respondent filed with the Board the expanded record and an accompanying brief, arguing for the imposition of a censure. The Office of Attorney Ethics (the OAE) submitted a letter-brief in reply, in which it recommended the imposition of a six-month suspension.

After the OAE filed its brief, respondent filed the instant motion. Specifically, he argued that the disciplinary stipulation is void because the OAE purportedly “breached [it] by recommending a six-month suspension” or, in the alternative, because it does not comply with R. 1:20-10(b) (governing motions for discipline by consent). Thus, he asserted, the Board should remand the matter to the District VI Ethics Committee for further proceedings.

Respondent’s argument that the disciplinary stipulation is void because it does not conform with R. 1:20-10, which governs motions for discipline by consent, is misplaced. The instant matter is a disciplinary stipulation, a disciplinary case type which the Board has adjudicated 360 times since 1996, and via which the Court has imposed discipline in hundreds of cases. It was entered into by respondent while represented by counsel, and includes the standard provision that it is being submitted to the Board pursuant to R. 1:20-15(f) – that is, as a “recommendation[] for discipline received by the Board . . . [unlike] those consent matters that are reviewable only as to the recommended sanction” (to which R. 1:20-15(g) applies). Rather, pursuant to R. 1:20-15(f), this stipulation and other such stipulations are reviewed by the Board *de novo* on the record and are not subject to the unique procedural requirements or quantum limitations restricting the Board in motions for discipline by consent.

Further, the Board rejected respondent’s contention that the disciplinary stipulation is void because the OAE has now recommended a six-month suspension. Respondent’s comparison of the disciplinary stipulation to a plea bargain lacks merit, because plea bargaining is prohibited in the attorney disciplinary system. See In the Matter of Emmanuel Coffy, DRB 20-128 (October 22, 2020) (rejecting the outcome of a District Ethics Committee presentment, finding that the parties had engaged in improper plea bargaining, following which the attorney agreed to stipulate to violating RPC 3.1 in exchange for a reprimand and the dismissal of two RPC 3.3(a) violations).

Again, both the Board and the Court conduct a de novo review of disciplinary stipulations, regardless of the parties' positions.

Finally, in the Board's view, any discussions between the parties to "withdraw" the disciplinary stipulation were moot – jurisdiction was with the Board, then the Court, and again with the Board following the parties' entry into the disciplinary stipulation.

Having determined to deny respondent's motion to declare the disciplinary stipulation void and remand this case to the DEC, the Board considered the expanded record – as directed by the Court in connection with this disciplinary stipulation – and will render its decision on the merits in due course.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg

c: Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair
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