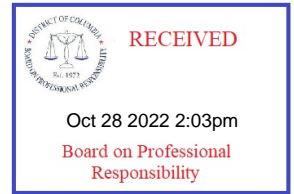


**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



In the Matter of : **Bd. Dkt. No. 22-BD-045**
: **GEMMA ANTOINE-BELTON, ESQUIRE,** : **Dis. Dkt. No. 2017-D134**
: **Respondent** :
: **A Member of the Bar of the District of** :
: **Columbia Court of Appeals** :
: **Bar Number: 405604** :
: **Date of Admission: 12/5/1986** :
: _____ :
:

PETITION FOR NEGOTIATED DISPOSITION

Pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondent Gemma Antoine-Belton, Esquire (“Respondent”) respectfully submit this Petition for Negotiated Disposition in the above-captioned matter. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because Respondent is a member of the Bar of the District of Columbia Court of Appeals.

I. STATEMENT OF THE NATURE OF THE MATTER BROUGHT TO DISCIPLINARY COUNSEL’S ATTENTION

Disciplinary Counsel received a complaint from the Probate Court alleging that Respondent had engaged in improper conduct while appointed as conservator

and/or guardian for several incapacitated adult wards. Disciplinary Counsel's investigation revealed that, on two occasions, Respondent assisted her wards in generating rental income that Respondent did not collect for the ward's estate and did not report to the Court as income in her annual accountings. Instead, arrangements were made to have the wards paid directly. On two occasions, Respondent also hired her husband to perform tasks for her wards; and, on three occasions, she hired her sister to perform accounting services for her wards. Finally, Respondent took one of her wards as a tenant in an apartment she owned, not charging rent or utilities until after the Court permitted her to resign as Guardian. After expressing dismay at the situation, the Court permitted Respondent to resign and appointed a Successor Guardian. Because disputes soon arose, landlord-tenant issues were litigated in the adult intervention proceedings. In sum, Respondent's conduct violated her duty of competence, her duty to avoid conflicts in her service as a fiduciary or otherwise resolve conflicts of interest, and her duty not to engage in conduct that seriously interfered with the administration of justice.

STIPULATION OF FACTS AND RULE VIOLATIONS

1. Respondent Antoine-Belton is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on December 5, 1986, and assigned Bar number 405604. Respondent also is admitted to practice in Pennsylvania and New York.

2. In April or May 2011, Respondent was appointed to the Fiduciary Panel of the D.C. Superior Court. As a member of the fiduciary panel, Respondent was eligible to be appointed by Superior Court judges, *inter alia*, to serve as counsel, guardian *ad litem*, permanent guardian, or conservator in intervention matters pending before the Probate Court.

COUNT I:

In re Keefer, 2011 INT 437

3. On February 17, 2012, Respondent was appointed as Guardian and Conservator for adult incapacitated ward Thomas Keefer. This was Respondent's first appointment as Conservator, although she had been appointed as guardian and guardian *ad litem* on several occasions.

4. Respondent hired her sister, Patricia Antoine, who is also an accountant, to perform accounting tasks to assist in the preparation of Respondent's First Accounting as Mr. Keefer's Conservator. On March 27, 2013, Respondent signed a check drawn on Mr. Keefer's conservatorship account made out to Ms. Patricia Antoine for \$400 to pay for her sister's services in preparing Mr. Keefer's First Accounting.

5. In April and June 2012, Respondent hired her husband, Gerald Belton, Esq. (who also was appointed to the Fiduciary Panel), to assist her in obtaining and subsequently replacing a refrigerator for Mr. Keefer. The new refrigerator accepted

by the ward cost less than \$150. Mr. Belton charged \$864 (at \$90 per hour) for his services, and on July 26, 2013, Respondent paid her husband \$864 by a check drawn on Mr. Keefer's conservatorship account.

6. On March 29, 2014, Respondent wrote a check for \$925 on Mr. Keefer's conservatorship account to pay for her sister's additional accounting services.

7. At a hearing on November 26, 2014, Judge John Campbell discussed with Respondent the concerns that arise when a fiduciary hires a relative to perform services for a ward. He removed Respondent as Conservator and ordered her to repay Mr. Keefer's conservatorship estate the \$864 that she paid her husband, which she did on December 3, 2014.

8. By Order dated April 10, 2015, Judge Gerald Fisher ordered Respondent to explain in writing why the \$925 accounting fee was justified for a conservatorship estate valued at less than \$25,000. Ultimately, Respondent's sister wrote off \$500 from her bill.

COUNT II:

In re Budway, 2012 INT 448

9. Respondent was appointed Guardian and Conservator for incapacitated adult, Kathleen Budway, on April 4, 2013. This was also one of

Respondent's early appointments as Conservator, however she had previously been appointed on several occasions as guardian and guardian *ad litem*.

10. On May 24, 2013, Respondent paid her husband \$945 by a check drawn from Ms. Budway's conservatorship account for his services in traveling to Florida to secure the ward's condominium and automobile.

11. Respondent also hired her sister to perform bookkeeping services and assist her in the preparing the First Accounting in the Budway matter. On July 23, 2013, Respondent paid her sister \$280 by check from Ms. Budway's conservatorship account as the first in a series of payments.

12. Respondent made three additional payments to her sister from Ms. Budway's conservatorship account: 1) \$1,500 on May 27, 2014 (as further payment for assistance preparing the First Accounting); 2) \$1,650 on June 4, 2014 (as further payment for assistance preparing the First Accounting); and 3) \$425 on July 18, 2014 (for general bookkeeping). The Court reviewed and approved these fees in this complicated initial accounting.

13. On December 3, 2014, days after the hearing before Judge Campbell when she was removed as Conservator in the *Keefe* matter and after being questioned about the payment, Respondent refunded the \$945 she paid her husband to the Budway estate.

14. Beginning in February 2016, Maureen Murphy leased a room in the condominium that Respondent purchased on Ms. Budway's behalf. Respondent drafted and co-signed the lease with Ms. Budway. The lease required Ms. Murphy to pay the \$725 monthly rent directly to the ward. Respondent did not collect the funds for the conservatorship estate or disclose the payments as income in her annual accounting.

COUNT III:

In re Kalinichenko, 2013 INT 257

15. On September 24, 2013, Respondent was appointed as Guardian and Conservator for Irina Kalinichenko, an adult incapacitated ward.

16. Respondent hired her sister to assist her in preparing the First Accounting. On November 25, 2014, Respondent paid her sister \$100 from Mrs. Kalinichenko's conservatorship account as the first in what was intended to be a series of payments.

17. By order dated March 16, 2016, Judge Russell Canan ordered Respondent to explain whether she was related to Patricia Antoine. Respondent told Judge Canan that she had repaid the Kalinichenko estate \$100 on March 21, 2016, and that she would discontinue using her sister's services and make no further payments to her.

18. On or around November 5, 2014, Respondent moved Sylvia Becraft, another of Respondent's wards, into Mrs. Kalinichenko's home to rent one of the bedrooms for \$500 per month.

19. Respondent paid rent from Ms. Becraft's guardianship account directly to Mrs. Kalinichenko for five months but did not deposit the income into Mrs. Kalinichenko's conservatorship account or disclose it when she submitted her Second Accounting in the Kalinichenko matter.

20. When Respondent moved Ms. Becraft into Mrs. Kalinichenko's home, Respondent did not have a lease signed (so both wards were unprotected); the home was still being renovated; and the house was subject to a reverse mortgage.

COUNT IV:

In re Becraft, 2014 INT 355

21. Respondent was appointed as Guardian for adult incapacitated ward, Sylvia Becraft, on October 20, 2014.

22. On April 6, 2015, Respondent moved Ms. Becraft from Mrs. Kalinichenko's house into a two-bedroom rental property that Respondent owned.

23. Respondent knew the situation created a conflict of interest. She did not present Ms. Becraft with a lease; nor did she charge Ms. Becraft for rent and utilities.

24. On July 8, 2015, Respondent petitioned the Court to allow her to resign and permit her to charge rent and utilities to Ms. Becraft. Respondent also asked the Court to appoint a successor guardian. At a September 3, 2015, hearing before Judge Russell Canan on Respondent's petition, Ms. Becraft told the Court through appointed counsel that she wanted to keep Respondent as her Guardian and to continue to stay in Respondent's apartment. After expressing dismay at the situation, Judge Canan ultimately accepted Respondent's resignation and appointed a Successor Guardian for Ms. Becraft.

25. Landlord-tenant disputes arose involving Ms. Becraft's tenancy in Respondent's apartment. Successor Guardian had to negotiate for a lease agreement for Ms. Becraft and seek a civil protective order against Ms. Becraft's roommate. Successor Guardian had to file or amend two petitions with the Court to resolve these disputes.

26. Respondent violated the following District of Columbia Rules of Professional Conduct:

A. Rule 1.1(a) and (b), because Respondent failed to serve competently as a fiduciary for Mr. Keefer, Ms. Budway, Mrs. Kalinichenko, and Ms. Becraft, and failed to serve with the skill and care generally afforded wards by other fiduciaries;

B. Rule 1.7(b)(4), because Respondent's service as fiduciary for Mr. Keefer, Ms. Budway, Mrs. Kalinichenko, and Ms. Becraft reasonably could have been adversely affected by her own personal interests in employing her relatives or having Ms. Becraft become a tenant and later seeking to be paid rent and utilities from Ms. Becraft's estate; and

C. Rule 8.4(d), because Respondent seriously interfered with the administration of justice by taking Ms. Becraft as a tenant, which led to further proceedings, and a series of petitions to address the conflicts that arose.

II. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

In connection with this Petition for Negotiated Disposition, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II, *supra*, other than those set forth above, or any sanction other than that set forth below.

III. AGREED UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed in this matter is a 60-day suspension, with 30 days stayed in favor of a one-year period of probation with conditions. The period of suspension shall begin 30 days after the Court enters its final order imposing the sanction. The one-year probationary period shall begin immediately after the period of suspension ends.

The Court's order should include a condition that, if probation is revoked, Respondent will be required to serve the remaining 30 days of her suspension.

Respondent and Disciplinary Counsel also have agreed to the following conditions of this negotiated disposition:

(a) Respondent must take the Basic Training and Beyond two-day course offered by the District of Columbia Bar and must take an additional eight hours of pre-approved continuing legal education, at least five of which hours are related to probate law and/or elder law, and at least three of which hours are related to attorney ethics including dealing with conflicts of interest. Within ten days of the Court's final order, Respondent must read the cases on conflicts of interest and the national guardianship standard on conflicts of interest as set forth in the list provided by the Office of Disciplinary Counsel. Respondent must certify and provide documenting proof that she has met these requirements to the Office of Disciplinary Counsel within six months of the date of the Court's final order; and

(b) Respondent must meet with Dan Mills, Esquire, the Manager of the Practice Management Advisory Service of the District of Columbia Bar (or his successor or designee) in person or virtually within two months of the date of the Court's final order. At that time, Respondent must execute a waiver allowing Mr. Mills and/or his designee (an assigned practice monitor) to communicate directly with the Office of Disciplinary Counsel regarding her compliance. When

Respondent meets with Mr. Mills or his designee virtually or in person, she will make any and all records relating to her practice available for his review. Respondent shall ask Mr. Mills or his designee to conduct a full assessment of Respondent's business structure and her practice, including but not limited to all law firm processes and procedures, reviewing financial records, client files, engagement letters, supervision and training of staff, and responsiveness to clients. Respondent shall also ask Mr. Mills or his designee to advise her about how to maintain complete records relating to maintenance of client funds and monitor her compliance with all of Mr. Mills' and/or his designee's recommendations. Respondent shall adopt all recommendations and implement them in the law firm when she resumes practice following her suspension. At the end of her suspension, Respondent shall begin her one-year probation. During her probation, Respondent shall consult regularly with Mr. Mills or his designee on the schedule he or she establishes. Respondent must be in full compliance with Mr. Mills' and/or his designee's requirements for a period of twelve consecutive months, and it is Respondent's sole responsibility to demonstrate compliance. Respondent must sign an acknowledgement under penalty of perjury affirming that she is in compliance with Mr. Mills' and/or his designee's requirements and file the signed acknowledgement with the Office of Disciplinary Counsel. This must be

accomplished no later than seven business days after the end of Respondent's period of probation.

If Disciplinary Counsel has probable cause to believe that Respondent has violated the terms of her probation, Disciplinary Counsel may seek to revoke Respondent's probation pursuant to D.C. Bar R. XI, § 3 and Board Rule 18.3, and request that Respondent be required to serve the remaining 30 days of suspension.

Respondent and Disciplinary Counsel have agreed that there are no additional conditions attached to this negotiated disposition that are not expressly agreed to in writing in this Petition.

Relevant Precedent

Under Board Rule 17.5(a)(iii), the agreed-upon sanction in a negotiated discipline case must be "justified, and not unduly lenient, taking into consideration the record as a whole." A justified sanction "does not have to comply with the sanction appropriate under the comparability standard set forth in D.C. Bar Rule XI, § 9(h)." Bd. R. 17.5(a)(iii).

Sanctions for conduct involving conflicts, lack of competence, and conduct prejudicial to the administration of justice typically range from public censure to a suspension for ninety days or more. *In re Evans*, 902 A.2d 56, 74 (D.C. 2006). *See, e.g., In re Robbins*, 192 A.3d 558 (D.C. 2018) (60-day suspension for attorney who engaged in conflicts and failure to communicate); *In re Rachal*, 251 A.3d 1038 (D.C.

2021) (30-day suspension and six hour CLE requirement for attorney who engaged in conflicts and conduct that prejudiced the client); *In re Wilson*, 241 A.3d 309 (D.C. 2020) (30-day suspension for attorney who failed to competently represent his client, failed to seek his client's objectives, had a conflict, and failed to communicate with his client).

Here, a 60-day suspension is appropriate. Although Respondent has no prior history of discipline, her misconduct involved four incapacitated adult wards and on at least one occasion she stood to potentially benefit financially from placing a ward in one of her properties.

Mitigating Factors

Mitigating circumstances include that Respondent: 1) has no prior disciplinary history; 2) was a relatively inexperienced probate practitioner at the time of the violations; 3) did not seek any compensation in the *Becraft* matter and routinely did not seek compensation in the three other probate matters involved for otherwise compensable services; 4) has cooperated with Disciplinary Counsel; and 5) has expressed remorse.

Aggravating Factors

In aggravation, Respondent violated multiple Rules in probate matters involving incapacitated adult wards. In at least one instance, she acted in a way that

would ultimately end up with her resigning as Guardian and being paid rent out of the funds of her former ward.

The parties agree they are not aware of any additional aggravating factors outside of the conduct as it is described in this petition.

Given these mitigating and aggravating factors, the parties submit that the agreed-upon sanction is appropriate.

IV. RESPONDENT'S AFFIDAVIT

In further support of this Petition for Negotiated Discipline, attached is Respondent's Affidavit pursuant to DC. Bar R. XI, § 12.1(b)(2).

CONCLUSION

Wherefore, Respondent and Disciplinary Counsel request that the Executive Attorney assign a Hearing Committee to review the petition for negotiated discipline pursuant to D.C. Bar R. XI. § 12.1(c).

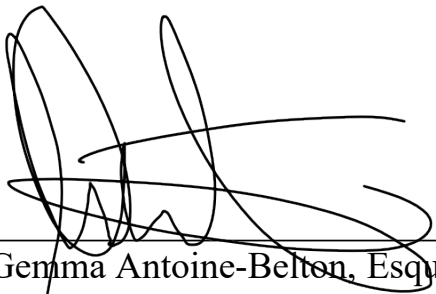
Dated: October 28, 2022

Hamilton P. Fox, III

Hamilton P. Fox, III
Disciplinary Counsel

Jerri Dunston

Jerri Dunston
Assistant Disciplinary Counsel



Gemma Antoine-Belton, Esquire
Respondent



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