DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
LEROY M. FYKES, Esquire,	:	**Disc. Docket No. 2017-D315**
Respondent	:	
Member of the Bar of the District of Columbia Court of Appeals	:	
Bar Number 363819	:	
Date of Admission: July 22, 1982	:	

SECOND AMENDED PETITION FOR NEGOTIATED DISCIPLINE

Pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondent Leroy M. Fykes, Esquire ("Respondent") respectfully submit this Amended Petition for Negotiated Discipline 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 exists 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

These proceedings are based on Respondent's conduct as guardian and conservator of a ward in a D.C. probate matter. *See In re James Clinton Brown* (2017 ADM 1391).

Disciplinary Counsel docketed this matter for investigation based on a complaint by Theresa Washington, an heir to the James Clinton Brown estate.

II. STIPULATION OF FACTS AND CHARGES

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on July 22, 1982, and assigned Bar number 363819.

2. James C. Brown owned multiple pieces of real property in multiple jurisdictions. He had three children with Mary Elizabeth Brown, including Theresa Washington, and he had two children with Rose Stevens Pendergast, including Sherry Warren. Ms. Pendergast predeceased Mr. Brown in 1998, and Mary Brown predeceased him in November 2014.

3. On October 30, 2014, Respondent was appointed general guardian and conservator to Mr. Brown, who had been adjudged incapacitated. The relationship between Respondent and Mr. Brown's children with Mary Brown was contentious, and while Respondent served as guardian and conservator, there were frequent disputes about Mr. Brown's care and the disposition of his property. This resulted in multiple filings before the probate court, primarily by Ms. Washington, who wanted to serve as the fiduciary.

4. On December 29, 2014, Respondent filed an inventory. Respondent listed three properties in D.C. belonging to Mr. Brown, including a property at 717 Congress Street, and properties in West Virginia. The inventory also contained the following inaccurate description of the properties: "These are properties solely in the name of the Ward." This statement was incorrect because although Respondent was not aware at the time, Ms. Pendergast was also on the deed to the 717 Congress Street property.

5. Respondent failed to list in the inventory an Industrial Bank certificate of deposit belonging at least in part to Mr. Brown of which Respondent was aware, and a piece of real property (a stretch of timberland) Mr. Brown owned in Virginia.

6. On March 23, 2016, Respondent filed his first accounting. Respondent failed to list the certificate of deposit and the Virginia property as assets.

7. On June 10, 2016, Respondent filed a petition to sell the 717 Congress Street property. When he filed this petition, Respondent believed 717 Congress was solely owned by Mr. Brown based on conversations with the heirs and information he obtained from the D.C. Office of Tax and Revenue indicating Mr. Brown was the sole owner (which he attached to his petition). He was unaware that Ms. Pendergast's name was on the deed.

8. On July 11, 2016, the probate court granted Respondent's petition for authority to sell the 717 Congress Street property.

9. In attempting to sell the 717 Congress Street property, Respondent learned that it was not titled solely in Mr. Brown's name and that selling it would require reopening the Pendergast estate.

10. On November 29, 2016, Respondent filed his second accounting, which again listed 717 Congress as an asset of the estate with the same value listed in the previous accounting. Respondent did not otherwise note the ownership issue. He also failed to list the certificate of deposit and the Virginia property as assets of the estate.

11. Although he failed to list items in his accountings, Respondent was not attempting to conceal the Virginia property, Industrial Bank CD, or 717 Congress ownership issue from the court or Mr. Brown's heirs. He addressed these issues in various filings. *See*, *e.g.*, ¶¶ 11a through 11e, *infra*.

a. For example, on February 23, 2015, Respondent petitioned the probate court to refer the matter to an Auditor Master in connection with his difficulties in obtaining information from an heir regarding Mr. Brown's assets and property. This petition informed the court that Respondent needed to account for Mr. Brown's "properties

in the District of Columbia, Maryland, *Virginia* and West Virginia[.]" (emphasis added, as Mr. Brown's Virginia property was the only property he owned in that state.). In another filing, a December 4, 2015 motion requesting an extension of time to file his first account, Respondent noted that as part of his duties as conservator, he "maintains, rents and sells 15 properties spread over four states."

b. On July 12, 2016, for further example, Respondent filed his first fee petition (accompanied by a motion to late file). There he noted that "Mr. Brown has 15 properties in Washington DC, Maryland, West Virginia and Virginia conservatively valued at $1.5 million." That petition also included Respondent's invoices, which included charges for three November 2014 trips to Industrial Bank and noting problems with obtaining the CD because one of the heir's names was also "on" the CD.

c. On April 11, 2017, for further example, Respondent filed a Supplemental Expedited Petition to Sell Real Property to obtain permission to sell another one of Mr. Brown's properties located at 1168 Abbey Place. In this petition, Respondent discussed in a footnote how there were four properties of which Mr. Brown did not have sole

ownership control, including 717 Congress. The petition attached notes of a meeting Respondent had with the heirs wherein he discussed title issues with multiple properties, including 717 Congress. Moreover, as reflected in Respondent's third fee petition, no later than July 2017 he began discussing with the heirs the need to reopen the Pendergast estate in order to sell the 717 property.

d. By way of further example, a May 11, 2017 Omnibus Order of the probate court makes specific reference to the timberland in Virginia, demonstrating the court was aware of the Virginia property even though Respondent had failed to list it in his inventory and accountings.

12. In August 2017, Respondent entered into an agreement on behalf of Mr. Brown with Sherry Warren regarding property at 727 (not 717) Congress Street. As Respondent disclosed in his accountings, Mr. Brown and Ms. Warren shared a 50% joint tenancy interest in 727 Congress Street, and Ms. Warren had been collecting rent from a tenant. The agreement obligated Ms. Warren to pay Mr. Brown for his share of past rental proceeds. Pursuant to the agreement, Respondent collected an initial $20,500 payment on behalf of Mr. Brown on or around August 22, 2017, and thereafter collected monthly payments of $1,700 through November

2017, when Mr. Brown died. After Mr. Brown's death, there was at least $20,000 still owing under the agreement.

13. On October 23, 2017, Theresa Washington filed a disciplinary complaint against Respondent.

14. On November 10, 2017, Respondent filed a Petition for Show Cause as to why Industrial Bank should not have to turn over the balance owing on the Industrial Bank CD.

15. Mr. Brown's properties did not generate significant revenue because of their condition and cost of maintenance. Most of Mr. Brown's income was disability pay and tax exempt, and he did not owe taxes in 2013. Therefore, Respondent believed Mr. Brown had minimal tax exposure.

16. While he served as guardian and conservator, Respondent did not file any federal or local tax returns on Mr. Brown's behalf.

17. From November 20, 2017 through November 28, 2017, Respondent was out of the jurisdiction on vacation. On November 26, 2017, Mr. Brown died.

18. The day of or day after Mr. Brown's death, Respondent agreed over the telephone to represent Ms. Warren in filing a petition for probate and to have her appointed as personal representative of Mr. Brown's estate. Another attorney in Respondent's office assisted Ms. Warren in filling out the form, and Ms. Warren

consulted with the attorney over the telephone. Given that Respondent was on vacation, he acknowledges that he did not make appropriate efforts to ensure that the petition was complete.

19. On November 27, 2017, the petition for probate was filed and assigned to a different judge ("the estate matter"). Respondent failed to ensure that Ms. Warren disclosed Mr. Brown's interest in 717 Congress Street or the over $20,000 that Ms. Warren still owed under the 727 Congress Street agreement. Respondent did not believe it appropriate to list the 727 Congress Street property on the petition because the property had a right of survivorship, and thus upon Mr. Brown death, his entire interest in that property passed to Ms. Warren.

20. Respondent offered his assistance to Ms. Warren *pro bono* in preparing and filing the probate petition. He advised her in writing that if she wished to utilize his services any further, a retainer agreement would be prepared. Ms. Warren did not retain Respondent to perform any additional services.

21. On November 30, 2017, Theresa Washington filed an objection to Ms. Warren's petition and filed her own petition to probate Mr. Brown's estate and to be appointed the personal representative.

22. The probate judge presiding over the conservator and guardianship proceedings was aware of the competing petitions for appointment as personal

representative of the Brown estate matter. On November 30, 2017, the judge notified the parties, through a written order, that the judge assigned to the estate matter would determine whom would be appointed personal representative.

23. On February 8, 2018, the court in the estate matter held a hearing about who should serve as personal representative. By that time, Respondent had ceased representing Ms. Warren. During the hearing, Respondent acknowledged that the 717 Congress Street property should have been included on Ms. Warren's petition. Respondent also discussed with the court what he understood to be all of Mr. Brown's extant real property interests, including all his properties located outside of the District of Columbia. The court ultimately directed the parties to discuss who should serve as personal representative during a mediation and scheduled another hearing for March 5, 2018.

24. On February 20, 2018, Respondent filed on his own behalf a petition post-appointment to terminate his conservatorship of Mr. Brown. Respondent also filed a certification stating there were no unsettled liabilities for the estate, except for "Vision Builders, LLC" and Soren Juul (a property manager).[1] Respondent did

[1] These charges related to the maintenance of Mr. Brown's properties which were resolved with the disposition of Respondent's fee petitions.

not advise the court that he had not filed federal or local income tax returns for Mr. Brown for tax years 2014-16.

25. On February 20, 2018, Respondent filed a third accounting which again listed 717 Congress as an asset of the estate with the same value reported in previous accountings. Respondent did not otherwise note the ownership issue. Respondent also failed to list as assets the Virginia property, the certificate of deposit, or the money owed under the 727 Congress Street agreement with Ms. Warren. However, this accounting did list the initial $20,500 payment, and three subsequent monthly payments of $1,700 (leading up to the time of Mr. Brown's death), as rental income on the 727 Congress property.

26. The heirs could not agree among themselves who should be personal representative of Mr. Brown's estate.

27. On March 6, 2018, the court appointed Andrea Sloan, Esquire (who was already serving as personal representative to the Mary Brown estate) as personal representative to the James Brown estate.

28. On March 14, 2018, Ms. Sloan emailed Respondent, stating:

> In preparation for the transfer of the conservatorship funds, can you email me your inventory and accountings in the James Clinton Brown matter?

> I would like to talk to you after reviewing this because I want to get a firm handle on the properties and issues as soon as possible.

29. Respondent did not inform Ms. Sloan of the 717 Congress Street Property issue. He also did not directly disclose to Ms. Sloan the money owed under the 727 Congress Street agreement (although the rental proceeds from 727 Congress were referenced in the third accounting which he had already filed), or Mr. Brown's interest in the Industrial Bank certificate of deposit (although Respondent's recent attempt to obtain the balance of the Industrial Bank CD was set forth in his recent filing to show cause and was the subject of a February 13, 2018 hearing before the court).

30. On August 15, 2018, the probate court held a hearing in the conservatorship matter. During the hearing, some of the heirs complained about Respondent's service as guardian and conservator.[2] At the end of the hearing, the court requested that Ms. Sloan "let the Court know whether there is any reason to refer this case to the Auditor Master[.]"

31. By October 11, 2018, Ms. Sloan had learned that the 717 Congress Street property was not fully owned by Mr. Brown (after she had it appraised and

[2] The Special Master appointed by the Court filed a report on October 15, 2019, stating that the heirs had failed to provide any information or documents to support their complaints.

marketed it for sale), and that Respondent had failed to file tax returns for Mr. Brown. On October 11, 2018, she filed a praecipe notifying the court that the estate might be subject to penalties because three properties had been sold during Respondent's tenure and he had not filed any tax returns or paid any taxes on behalf of the ward. She requested that the court hold in abeyance Respondent's two pending fee petitions.

32. On October 12, 2018, the court referred the matter to the Auditor Master and, on November 9, 2018, the court appointed a Special Master to serve in the Auditor Master's place, due to the Auditor Master's recusal.

33. On January 25, 2019, the Special Master held a status hearing. By this time, Respondent had retained counsel, Allison Alvarado, Esq., to represent him in the proceedings before the Special Master. Ms. Sloan raised multiple concerns about Respondent's fee petitions and accountings. At the hearing, Respondent testified that items on his accountings "were inadvertently left out, there was no intent to deceive anybody, there was no[] intent to create problems for anybody, I can do these things and bill."

34. On May 22, 2019, at an evidentiary hearing before the Special Master, Respondent and Ms. Sloan began to discuss a possible settlement to resolve the outstanding issues surrounding Respondent's accountings and fee petitions. The

parties orally agreed that Respondent could include Ms. Alvarado's fees related to the Special Master proceedings as part of his final fee petition, but that he would first have to contact his legal liability carrier to see if the carrier would pay for some or all of Ms. Alvarado's fees.

35. On or around September 24, 2019, Respondent sent information regarding the claim to his insurance carrier.

36. On or around September 30, 2019, Respondent discussed with his insurance carrier both the disciplinary counsel complaint that had been filed against him and Ms. Alvarado's representation of him in the probate proceedings. In discussing whether the carrier would cover Ms. Alvarado's fees in connection with the Special Master proceedings, Respondent informed the carrier that the fees were approximately $25,000. Respondent further advised that if the fees were not covered by the carrier, the personal representative would be willing to pay them. At the time Respondent made this representation to the carrier, he was estimating what the representation could cost. Ms. Alvarado had not yet provided him with her final bill and would not do so until around November 11, 2019).

37. During the September 30, 2019 conversation, Respondent concluded that the carrier would not be providing coverage, at least in part because the claim pre-dated the inception of Respondent's current policy.

38. On October 1, 2019, Respondent's insurance carrier sent Respondent an email requesting further information clarifying for which court proceeding he was seeking coverage and the court documents in which allegations were made, so that the carrier could evaluate whether to provide coverage. Respondent failed to provide the carrier with any further information or otherwise follow up.

39. In October 2019, Respondent and Ms. Sloan submitted to the Special Master a signed settlement agreement. The agreement provided, among other things, that Respondent would pay any penalties imposed by the IRS for his failure to file tax returns for Mr. Brown and provide Ms. Sloan with a copy of any denial letter if his insurance carrier denied coverage for Ms. Alvarado's representation.

40. On or around October 15, 2019, the Special Master issued his final report recommending that the court ratify the settlement agreement.

41. On November 20, 2019, the insurance carrier e-mailed Respondent a letter noting that Respondent had failed to respond to its request for further information. The carrier stated it was denying coverage for Ms. Alvarado's fees in both the Special Master proceedings and the disciplinary matter. As grounds, the carrier stated Respondent's claim pre-dated the inception of his policy (in February 2019). Respondent did not provide this letter to Ms. Sloan.

42. In or around March 2020, the IRS assessed approximately $1,100 in penalties in connection with Respondent's failure to file a tax return for tax year 2014. Respondent promptly paid Ms. Sloan the amount in accordance with the settlement agreement.

43. On March 10, 2020, Respondent filed a fourth petition for compensation. He included a charge of $49,992.76 for Ms. Alvarado's fees—the amount indicated on her November 11, 2019 invoice, which he submitted with his petition.

44. By March 17, 2020, Ms. Sloan had obtained the denial of coverage letter from Respondent's insurance carrier and provided it to the court.

45. On August 18, 2020, the court ordered the Special Master's Report approved, in part, subject to the court's own review of Respondent's fees for reasonableness.

46. On August 22, 2020, the court issued an order regarding Respondent's fees. The court, noting the disparity between the $25,000 amount Respondent discussed with his insurance carrier and the over $49,000 he attempted to charge for Ms. Alvarado's fees, found that Respondent violated "the terms and spirit of the settlement agreement" and "failed to act in good faith." The court denied Respondent's request as to Ms. Alvarado's fees and made other reductions to his

own fee request. It also ordered that Respondent file a third and final account within 30 days.

47. Respondent did not file a final account until May 2021.

48. Respondent's conduct violated the following provisions of the Rules of Professional Conduct:

a. Rule 1.1(a) in that Respondent failed to provide competent representation;

b. Rule 1.1(b) in that Respondent failed to serve with the skill and care commensurate with that generally afforded by other lawyers in similar matters;

c. Rule 1.3(a) in that Respondent failed to represent the ward zealously and diligently within the bounds of the law;

d. Rule 1.3(c) in that Respondent failed to act with reasonable promptness;

e. Rule 1.16(d), in that in connection with the termination of a representation, Respondent failed to take timely steps to protect the ward's interests; and

f. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

In connection with this Amended Petition for Negotiated Discipline, 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.

IV. AGREED UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed in this matter is a 60-day suspension, fully stayed in favor of a one-year probation. The fully-stayed suspension takes into consideration the mitigating factors described herein. *See* Sections V-VI.

Respondent will begin his one-year probationary period when the Court issues its Order approving the negotiated discipline. The Court's order should include a condition that if probation is revoked, Respondent will be required to serve the entire suspension and demonstrate his fitness prior to reinstatement.

Within the first 30 days of the one-year probationary period, Respondent shall consult with the D.C. Practice Management Advisory Service (PMAS) about his case management system and provide Disciplinary Counsel with written confirmation of such consultation from PMAS. This consultation shall include discussion of how to ensure all filing deadlines and other obligations are timely met

and the appropriate workload Respondent should maintain in the event health issues resurface. Within the first 90 days of the one-year probationary period, Respondent shall provide written confirmation that he has complied with the recommendations made by PMAS. Within the first six months of the one-year probationary period, Respondent shall attend six hours of continuing legal education courses in ethics, approved by Disciplinary Counsel, and provide written confirmation of his attendance. Further, during the entire one-year period, Respondent shall not be found to have engaged in any misconduct in this or any other jurisdiction. If Disciplinary Counsel has probable cause to believe that Respondent has violated any of the terms of his 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 suspension previously stayed herein, consecutively to any other discipline or suspension that may be imposed, and that his reinstatement to the practice of law will be conditioned upon a showing of fitness.

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

V. THE COURT OF APPEALS REJECTION OF THE FIRST AMENDED PETITION

The First Amended Petition for Negotiated Discipline in this matter was filed on March 9, 2023. The presiding Ad Hearing Committee issued a Report and Recommendation recommending approval of the petition on July 28, 2023. On September 18, 2023, the Court of Appeals rejected the First Amended Petition. The Court found that the proposed sanction would be appropriate for the violations to which the parties stipulated, but that the stipulated facts also gave the court "pause as to whether respondent committed four other serious Rules violations, which, at a minimum, requires the Hearing Committee to explain why it believes Disciplinary Counsel is not offering an unduly lenient sanction after having reviewed Disciplinary Counsel's files and considered Disciplinary Counsel's explanation for not pursuing those violations."

The Court was concerned that Respondent's failure to disclose information on accountings or share information with others in certain contexts was dishonest and may have prejudiced the Brown estate, its heirs, and/or the presiding court. Disciplinary Counsel does not believe it could prove that Respondent's conduct was dishonest. Disciplinary Counsel and Respondent have endeavored in this, the Second Amended Petition, to include additional facts to show that while Respondent failed to exercise the appropriate care and diligence in certain aspects of his representation,

his actions were not intended to conceal information from the court and others.

Specifically, the parties address the Court's four stated concerns in its September 18, 2023 Order:

Potential Conflict of Interest in Connection With the Warren Probate Petition:

The Court expressed concern about a potential conflict of interest in connection with Respondent's representation of Sherry Warren. Specifically, the Court highlights Respondent's service as Mr. Brown's conservator (in the period after Mr. Brown died) and simultaneous representation of Sherry Warren in her filing for a petition to probate Mr. Brown's estate the day after Mr. Brown's death. The Court raises concern about the potential existence of a conflict under Rule 1.7(b)(2) and (3), particularly given Ms. Warren's agreement "that required her to pay Brown $20,000 as his share of past rental proceeds generated by their jointly owned property located at 727 Congress Street SE ("727 property").

Disciplinary Counsel does not believe it could prove by clear and convincing evidence a conflict of interest. To the extent that there had been any dispute between Ms. Warren and Mr. Brown's interests, it had to be resolved by an agreement. The agreement with Ms. Warren was *not* limited to Ms. Warren agreeing to pay $20,000 (which had not been paid at the time of Mr. Brown's death). To the contrary, Respondent had *already* collected a lump sum payment of $20,500 from Ms. Warren

and thereafter collected three monthly payments on behalf of Mr. Brown before his death. He had also deposited these amounts in Mr. Brown's account. Ms. Warren owed an additional amount, but she had been making regular and timely payments, and there is no reason to believe she would not continue to do so pursuant to the agreement. *See* Stipulated Facts at ¶ 12, 25.

In addition, Respondent's agreed-upon representation of Ms. Warren was limited to assisting her with the filing of the petition. Respondent did not charge for this service. *See* ¶ 20. The only other filing Respondent made on her behalf was a January 2, 2018 Motion for Continuance of the initial hearing, which the probate court granted, and by the time of that continued hearing Respondent was no longer representing Ms. Warren. *See* ¶ 23.

Respondent's assigned task as conservator and Ms. Warren's desired role as personal representative would have been largely overlapping, in that they both would have entailed a marshaling of all of Mr. Brown's assets. It might be that a situation could have arose where Ms. Warren was no longer willing to make payments, and Respondent would have been placed in a position adverse to her in trying to collect as Mr. Brown's conservator, but given that Ms. Warren had already begun making payments to the Brown estate and that Respondent's assistance to her was essentially limited to helping her file an initial petition, Disciplinary Counsel does not believe

that when Respondent undertook his brief representation of Ms. Warren (in addition to serving as Conservator), it was in any way clear that one representation would, or likely would, be adversely affected by the other. *See* Rule 1.7(b)(2) and Rule 1.7(b)(3). In any event, even if Disciplinary Counsel had believed otherwise and Respondent had agreed to stipulate to a violation of Rule 1.7, it would not have changed Disciplinary Counsel's recommended sanction in this matter because no one was prejudiced by Respondent's brief and limited representation of Ms. Warren.[3]

The Court's Concern About the Failure to Disclose Information in the Warren Probate Petition:

Relatedly, the Court questioned why Ms. Warren's probate petition did not list as an asset 1) the 717 Congress property, and 2) the rental proceeds agreement

[3] The Court has imposed a range of sanctions for violations of Rules 1.7 and 8.4(d), ranging from non-suspensory to suspensory sanctions. *See In re Rachel*, 251 A.3 1038 (D.C. 2021) (30-day suspension, stayed with CLE requirement, for violating Rule 1.7(b)(1) and (2), as well as Rule 1.3(b)(2)); *In re Robbins*, 192 A.3d 558 (D.C. 2019) (60-day suspension for violating Rule 1.7(b)(2) and (4), and Rule 1.4(a)); *In re Evans*, 902 A.2d 56 9 (D.C. 2006) (six-month suspension, with three months stayed and probationary terms, for violating Rules 1.7(b)(4) and 8.4(d), as well as Rule 1.1); *In re Ponds*, 888 A.2d 234 (D.C. 2005) (30-day suspension with CLE requirement for violating Rules 1.7 and 1.16(d)). Moreover, in a recent negotiated discipline matter, the Court approved a 30-day suspension, stayed in its entirety (with conditions), for conduct violating Rule 1.7(b)(4) and Rule 8.4(d).

as to the 727 property.[4]

As noted in the Second Amended Petition, Respondent was on vacation at the time of the filing of the probate petition, consulted with Ms. Warren over the phone about the petition (relying on another lawyer in his office to otherwise assist Ms. Warren), and acknowledged that he did not make appropriate efforts to ensure that the petition was complete. *See* Stipulated Facts at ¶ 15, 18. Given, *inter alia*, that Respondent had already disclosed the 717 Congress Property in the intervention matter, and had already collected over $25,000 on behalf of Mr. Brown pursuant to the rental agreement, Disciplinary Counsel credits his assertion that he was not intentionally concealing assets from the court.

The Court's Concern About the Failure to Disclose the Shared Ownership of the 717 Congress Street Property:

The Court also expressed concern about Respondent's failure to disclose that the 717 Congress property was not solely owned by Mr. Brown, and whether Respondent knew it was not solely owned by Mr. Brown, including when he

[4] In discussing its concerns about the Warren probate petition, the Court also raised concerns about whether it disclosed the 727 property and whether Respondent had previously identified the 727 property as an estate asset in the conservatorship case. In fact, Respondent had disclosed the 727 property in his accountings, and his first accounting made explicit that Mr. Brown's was a 50% joint tenancy interest in the property shared with Ms. Warren. Moreover, given that the property passed to Ms. Warren upon Mr. Brown's death, Respondent did not believe that it should be noted as an asset of Mr. Brown on the probate petition. *See* ¶ 19.

petitioned the court to sell it. Disciplinary Counsel credits Respondent's claim that he initially believed that Mr. Brown was the sole owner of 717 Congress both because of what the heirs informed him and based on information he obtained from the D.C. Office of Tax and Revenue (which he filed with the probate court). *See* Stipulated Facts at ¶ 7. Moreover, after discovering that Ms. Pendergast also was on the deed, Respondent did not conceal it, but discussed it with the heirs and disclosed it in writing in at least one filing with the court. *See* ¶ 11(d).

The Court's Concern About the Respondent's Attempt to Seek Reimbursement for His Attorney's Fees:

Finally, the Court also questioned whether Respondent was dishonest in connection with his attempt to seek reimbursement for the fees of the attorney he retained for proceedings before the Special Master. Specifically, the court notes that Respondent submitted a claim for approximately $50,000 in attorney's fees to the probate court, when he had previously told his insurance carrier that attorney's fees were about $25,000. The Court noted that Respondent had agreed to provide Ms. Sloan with any denial of coverage letter but then failed to do so.

Respondent did not have a copy of Ms. Alvarado's bill when he contacted the insurance carrier. *See* Stipulated Facts at ¶ 36. Respondent explained to Disciplinary Counsel that the amount he quoted to the insurance carrier was his estimate at the time of what his counsel's total bill would be. *Id.* Moreover, after speaking with the

carrier, Respondent believed it was a foregone conclusion that the carrier would deny coverage because the claim pre-dated his policy coverage. ¶ 37. Disciplinary Counsel credits Respondent as to this point, particularly because this is the grounds upon which the carrier explicitly denied coverage. *See* ¶ 41. Accordingly, his subsequent failure to provide the carrier further information and provide Ms. Sloan proof of the denial sound more in a lack of diligence in abiding by the letter of his settlement agreement with Ms. Sloan, rather than any sort of dishonest motive to hurt the Brown estate.

VI. RELEVANT PRECEDENT

The agreed-upon sanction in a negotiated discipline case must, *inter alia*, be supported by relevant precedent under D.C. Bar R. XI § 12.1(b)(1)(iv) and justified when taking into consideration the record as a whole under Board Rule 17.5(a)(iii). As set forth below, the agreed-upon sanction in this matter is appropriate given the mitigating factors present.

Sanctions for violations of Rule 1.1, Rule 1.3, and related violations, range from an informal admonition issued by Disciplinary Counsel to a suspension from the practice of law.[5] Where the attorney's conduct is significantly protracted, the

[5] *See*, *e.g.*, *In re Murdter*, 131 A.3d 355 (D.C. Feb. 4, 2016) (six-month suspension, all but 60 days stayed and subject to conditions, for failing to pursue five

Court has imposed a suspension. However, those cases often involve aggravating factors and situations where the attorney largely abandoned the underlying matter.[6] In contrast, Respondent here performed significant services, albeit not with the thoroughness and diligence that the Rules require.

Accordingly, the appropriate sanction in this case should be a suspension, but stayed in favor of probationary terms. *See, e.g.*, *In re Mance*, 869 A.2d 339, 341

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criminal appeals in which Court had appointed lawyer to represent convicted defendants under the Criminal Justice Act, in violation of Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(c), 3.4(c), 8.4(d)); *In re Thai*, 987 A.2d 428 (D.C. 2009) (60-day suspension, with 30 days stayed and subject to probationary terms (including restitution), for conduct violating Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), and 1.16(d)); *In re Chapman*, 962 A.2d 922, 926 (D.C. 2009) (60-day suspension, with 30 days stayed in favor of probation with terms, for incompetence and neglect with aggravating factors of dishonesty in dealings with Bar Counsel and testifying in a non-credible manner; Court noted that generally, in absence of aggravating factors, "a first instance of neglect of a single client matter warrants a reprimand or public censure"); *In re Schlemmer*, 870 A.2d 76 (D.C. 2005) (Board Reprimand for violation of Rule 1.3(a) and Rule 1.4(a); Board did not find Rule 1.3(b) violation); *In re Joyner*, 670 A.2d 1367, 1368 (D.C. 1996) (30-day suspension with CLE requirement for neglect and intentionally failing to seek client's objectives in one matter; lawyer had two prior informal admonitions for neglect).

[6] *See In re Douglass*, 859 A.2d 1069, 1086 (D.C. 2004). *In Douglass*, the Court imposed a 90-day suspension for neglect, incompetent handling of a personal injury matter, a conflict of interest, and failure to promptly return papers to a client following termination. The Court adopted the Board Report, describing Douglass's "extraordinary" failure to take action in the case for two years. *Id*. at 1072. Douglass had prior discipline although he had never previously been suspended. *Id.* at 1086. *See also In re Speights*, 173 A.3d 96 (D.C. 2017) (attorney suspended for six months in matter involving protracted neglect, as well as failure to accept responsibility and dishonest testimony before the hearing committee).

(D.C. 2005) (30-day stayed suspension, with probationary terms, for conduct violating Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b), 1.4(a), 1.16(a)(3), and 8.4(d), where attorney also had two prior informal admonitions); *In re Baron*, 808 A.2d 497 (D.C. 2002) (30-day stayed suspension and probation with terms for failing to communicate with client in criminal appeal and ignoring court requests to contact the client); *In re Vohra*, 762 A.2d 544 (D.C. 2000) (30-day stayed suspension, with probationary terms, for neglect, misrepresentations, and allowing firm to seek reimbursement for fees not incurred; lawyer suffering from depression at the time of misconduct); *In re Dunietz*, 687 A.2d 206 (D.C. 1996) (30-day stayed suspension, with probationary terms, for neglecting legal matter, intentionally failing to seek lawful objectives of client, failing to act with reasonable promptness, and failing to keep client reasonably informed; lawyer's depression considered a mitigating factor).

Mitigating Factors

Mitigating factors include that Respondent: 1) has acknowledged his misconduct; and 2) provided significant services to his ward as guardian and conservator.

Aggravating Factor

Respondent received an informal admonition more than ten years ago for a

violation of Rule 1.6(a) and an informal admonition more than twenty years ago for violations of Rules 1.2(a) and 1.2(c).[7] The parties agree they are not aware of any aggravating factors other than those described in this petition.

VII. RESPONDENT'S AFFIDAVIT

Accompanying this Petition in further support of this Petition for Negotiated Discipline is Respondent's Affidavit pursuant to D.C. Bar R. XI, § 12.1(b)(2).

VIII. 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: March 13, 2024

Hamilton P. Fox, III
Hamilton P. Fox, III
Disciplinary Counsel

Leroy M. Fykes, Esquire
Respondent

[7] Particularly given the remoteness of this prior discipline, it is not a significant aggravating factor. *See In re Mance*, *supra*, 869 A.2d 339 at 341, n.5 (D.C. 2005) (Court notes that Board concluded two prior informal admonitions were "not a significant aggravating factor" in case where 30-day stayed suspension was imposed).

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