DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
BERNARD C. COLEMAN, JR.,	:	
	:	Board Docket No. 16-ND-010
Respondent.	:	Bar Docket No. 2012-D437
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Membership No. 437011)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. Procedural History

This matter came before this Ad Hoc Hearing Committee on March 31, 2017, for a limited hearing on a Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Robert L. Walker, Chair, Carol Ido, Public Member, and Nicole Porter, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Sean P. O'Brien. Respondent, Bernard C. Coleman, appeared *pro se*.

The Hearing Committee has carefully considered the Petition for Negotiated Discipline signed by Disciplinary Counsel and Respondent, the supporting affidavit submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent and Disciplinary Counsel. The Hearing Committee also has fully considered its *in camera* review of Disciplinary

Counsel's files and records and its *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, we approve the Petition. We find the negotiated discipline of a thirty-day suspension, stayed in favor of one year of supervised probation with conditions, is justified and recommend that it be imposed by the Court.

II. Findings Pursuant to D.C. Bar R. XI, § 12.1(c) and Board Rule 17.5

The Hearing Committee, after full and careful consideration, finds that:

1. The Petition and Affidavit are full, complete, and in proper order.

2. Respondent is aware that there is currently pending against him an investigation into allegations of misconduct. Tr. 30-31; Aff. ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent violated Rules 1.1(a) and (b) (failure to provide competent representation to his clients and failure to serve his clients with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters); 1.3(a) and (c) (failure to represent his clients zealously and diligently and failure to act with reasonable promptness in representing his clients); 1.4(a) and (b) (failure to keep his clients reasonably informed about the status of their matter and failure to explain the matter to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation); and 1.6(a) (knowingly revealing information gained in the professional relationship, the disclosure of which would be embarrassing, or would likely be detrimental to his clients). Petition at 11.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 31; Aff. ¶ 4. Specifically, Respondent acknowledges that:

4.1. On January 7, 2010, a building located adjacent to the Southern Homes and Garden Cooperative at 5929 East Capitol Street, S.E., Washington, D.C. 20019 (the "Building") collapsed during demolition.

4.2. The residents of the Southern Homes and Garden Cooperative (the "Residents") alleged that the collapse of the Building produced a severe dust cloud that caused them to have various respiratory illnesses.

4.3. On or about November 18, 2010, Respondent entered into retainer agreements with various Residents that provided Respondent would represent them "in connection with [their] claim[s] against the District of Columbia Housing Authority and others for negligence" involving the demolition of the Building.

4.4. On May 9, 2011, one of the Residents, Simon Carter, died.

4.5. Mr. Carter's death changed the deadline for Respondent to file certain claims related to Mr. Carter because the statute of limitations for negligence actions in the District of Columbia is three years whereas the statute of limitations for wrongful death at the time of Mr. Carter's death was only one year.

4.6. On May 7, 2012, Respondent filed a complaint in the Superior Court for the District of Columbia (the "Lead Complaint"), which was docketed as Case No. 2012 CA 3913B.

4.7. The Lead Complaint stated a wrongful death claim based on Simon Carter's death. Respondent represented Renee Carter, Simon Carter's daughter and the personal representative for the Estate of Simon Carter.

4.8. The Lead Complaint named as the defendant the building owner and operator, the District of Columbia Housing Authority ("DCHA"). Respondent did not identify any other defendants.

4.9. On June 20, 2012, Respondent amended the Lead Complaint to add a claim for negligence.

4.10. To identify the proper parties in this matter, Respondent relied on information provided to him from individuals associated with DCHA. From this information, Respondent identified only one demolition contractor, a company called Wrecking Corporation of America ("WCA"). Respondent relied on this information and did not take other steps to identify that he had correctly identified all potential defendants.

4.11. On January 3, 2013, Respondent filed complaints on behalf of fifteen other Residents (hereinafter, the "Individual Plaintiffs").[1] The complaints asserted claims against DCHA, which owned and operated the Building, and Wrecking Corporation of America ("WCA"), a contractor alleged to have carried out the demolition.

4.12. The complaints alleged that as a result of inhaling airborne toxins from the demolished building, the Individual Plaintiffs suffered "chronic serous otitis media, asthma, hay fever, allergic rhinitis, atopic dermatitis, watery eyes, runny nose and sneezing, itching, coughing, wheezing and impaired breathing, headaches and fatigue."

4.13. On January 7, 2013, Respondent similarly added WCA as a defendant in the Lead Complaint.

4.14. The contractors that carried out the demolition, however, were actually Wrecking Corporation of America, St. Louis, Inc. ("WCASL"), a company affiliated with WCA, and Celtic Demolition, Inc. ("Celtic"), which was not affiliated with WCA.

4.15. By Order on April 4, 2013 and May 7, 2013, the court consolidated all sixteen cases. The Estate of Simon Carter's action, Case No. 2012 CA 3913B, was deemed the Lead Case along with the fifteen Individual Plaintiffs' negligence actions.

4.16. On May 10, 2013, Respondent filed a Third Amended Complaint for the Lead Case that removed WCA as a defendant and added the correct contractors, WCASL and Celtic, as defendants for the first time.

[1] Renee Carter was one of the fifteen Residents to assert individual claims. Ms. Carter was thus a plaintiff in two cases—one as the personal representative of the Estate of Simon Carter and one in her individual capacity.

4.17. On May 27, 2013, Respondent similarly filed Amended Complaints for the Individual Plaintiffs, removing WCA and naming WCASL and Celtic as defendants.

4.18. The claims filed against Celtic on May 10 and May 27, 2013 were filed after the applicable statutes of limitations expired on January 7, 2013.

4.19. Similarly, the wrongful death claims against WCA and WCASL were filed after the applicable statute of limitations expired on May 9, 2012.[2]

4.20. On November 21, 2013, the court dismissed with prejudice all claims against Celtic as time-barred under the applicable statutes of limitations. In a separate order, the court also dismissed the wrongful death claim against WCASL with prejudice.

4.21. Respondent did not appeal these orders.

4.22. Respondent did not send copies of these orders to his clients.

4.23. Respondent had established a "phone tree" to communicate with his clients whereby he would orally inform Renee Carter about case developments. Respondent then relied on Ms. Carter to communicate with the other Residents.

4.24. Either Respondent did not inform Renee Carter about the November 21 Orders, or he did not adequately explain the Orders so that Renee Carter could understand them. The other Residents were not informed about the November 21 Orders.

4.25. While the court found that the negligence claims against WCASL were not time-barred under the statute of limitations, the court dismissed the negligence claims against WCASL based on a failure to timely serve WCASL.

[2] The negligence claims against WCASL were deemed filed within the statute of limitations. Given the affiliation between WCA and WCASL, the court found the personal injury claims filed against WCA in January 2013 effectively put WCASL on notice of the claim. Because the negligence claims filed in January were within the three-year statute of limitations, the court treated the personal injury claims against WCASL in May 2013 as if they were timely filed because they related back to the January 2013 filing.

4.26. Under Superior Court Rule 4(m), because the Third Amended Lead Complaint, which added WCASL as a defendant, was filed on May 10, 2013, Respondent had sixty days from that date—until July 9, 2013—to effect service.

4.27. Similarly, because the Individual Plaintiffs' Amended Complaints were filed on May 27, 2013, Respondent had sixty days from that date—until July 26, 2013—to effect service on WCASL for the Individual Plaintiffs.

4.28. Corporation Service Company was WCASL's registered agent in the District of Columbia and was identifiable through online searches with the District of Columbia Department of Consumer and Regulatory Affairs. Respondent did not identify Corporation Service Company as WCASL's D.C. registered agent.

4.29. Instead, on July 8, 2013, Respondent attempted to serve WCASL himself by hand-delivering a copy of the summons and complaint to an office in Alexandria, Virginia, that Respondent had identified as being associated with WCA. The WCA office denied Respondent entry to the secure facility.

4.30. Respondent assumed WCASL was attempting to evade service and that his attempt to serve WCASL in person and their refusal to accept him into the office constituted service.

4.31. On July 10, 2013, after being denied entry into the WCA office building two days earlier, Respondent attempted to serve WCASL via certified mail at the Virginia address, but he never received a return card indicating the summons and complaint were delivered.

4.32. Even though Respondent knew he had not effected personal service on WCASL, and even though he had not received a certified mail receipt for service, Respondent did not move for an extension of time to serve WCASL.

4.33. On November 21, 2013, the court dismissed all claims against WCASL without prejudice based on Respondent's non-compliance with Superior Court Rule 4(m).

4.34. Respondent did not send copies of the court's order to the Plaintiffs. And, either Respondent did not inform Renee Carter about the

order, or he did not adequately explain the order so that Renee Carter could understand it. The other Residents were not informed about the order.

4.35. On November 27, 2013, Respondent filed a Motion to Vacate the court's Order of Dismissal.

4.36. On March 6, 2014, the court denied Respondent's Motion to Vacate the court's Order of Dismissal, finding no good cause for Respondent's failure to timely effect service or to file a motion to extend the time for service.

4.37. Respondent did not appeal the court's March 6 order.

4.38. Respondent did not send copies of the court's order to the Plaintiffs. And, either Respondent did not inform Renee Carter about the order, or he did not adequately explain the order so that Renee Carter could understand it. The other Residents were not informed about the order.

4.39. The court also dismissed all claims against DCHA based on Respondent's failure to timely file a proper Rule 26(b)(4) expert disclosure statement.

4.40. On March 29, 2013, Respondent filed an unopposed motion for an enlargement of time to file Plaintiffs' Rule 26(b)(4) expert disclosure statement. After the cases were consolidated, the court granted the motion, giving Plaintiffs until October 14, 2013 to file their Rule 26(b)(4) statement and disclose their expert witnesses.

4.41. On October 18, 2013, with the consent of the other parties, Respondent submitted a statement to the parties designating three experts, including Dr. Elena Reece. This statement was not filed with the court, however. Also, the statement did not list the specific opinions of the experts nor the bases for their opinions. For example, Respondent simply said that Dr. Reece would testify about the "condition, diagnosis, prognosis, and quality of life to be expected by each plaintiff."

4.42. Respondent planned to use Dr. Reece as his expert to opine that harmful demolition particles were the cause of the Residents' respiratory problems.

4.43. In late 2013 and early 2014, after the deadline for expert disclosures had already passed, Dr. Reece informed Respondent that she

could not opine that the Residents' respiratory problems were caused by demolition particles and then stopped communicating with Respondent entirely.

4.44. On March 2, 2014, Respondent filed a motion titled "Leave to Extend the Scheduling Order Deadlines and Leave to Amend the Supplement Expert Designation." In the motion, Respondent (1) requested that the court extend the discovery schedule, and (2) sought leave to "amend and supplement" the Plaintiffs' Rule 26(b)(4) statement.

4.45. Respondent sought to locate other potential experts who could testify that the Residents' respiratory problems were caused by demolition particles. Respondent contacted several potential experts. But none of the experts was able to offer a medical opinion that demolition particles caused the Residents' respiratory problems.

4.46. On March 6, 2014, the court issued an order extending the discovery deadlines but denying Plaintiffs' motion to amend and supplement their Rule 26(b)(4) expert disclosure statement. The court ordered Respondent to "submit a separate motion, to which defendants may respond, should they seek to late-substitute their expert witness."

4.47. On March 10, March 13, and March 17, 2014, Defendants DCHA, Celtic,[3] and WCASL filed Oppositions to Respondent's March 2, 2014 motion for "Leave to Extend the Scheduling Order Deadlines and Leave to Amend the Supplement Expert Designation."

4.48. Respondent did not file a separate motion to late-substitute their expert witness as directed by the court. Rather, Respondent filed a Reply to Defendants' Oppositions. But a Reply is not provided for under the D.C. Superior Court Rules of Civil Procedure. So, Respondent styled the Reply as an "Opposition" to the Defendants' Oppositions. The court later struck this filing as improper under the D.C. Superior Court Rules of Civil Procedure.

4.49. On March 25, 2014, Respondent filed a document titled "Supplemental to Rule 26(b)(4) Statement" without seeking leave of the court.

[3] Although the claims against Celtic had been dismissed with prejudice as time-barred under the applicable statute of limitations, Celtic filed a motion joining the opposition filed by DCHA.

4.50. On April 28, 2014, the court precluded Plaintiffs from late-designating an expert witness, acknowledging that Plaintiffs "would be severely prejudiced."

4.51. With no expert, Plaintiffs could not prove the required elements of their claims.

4.52. Respondent did not appeal the court's April 28 order precluding Plaintiffs from designating an expert witness.

4.53. Respondent did not send copies of the court's order to the Plaintiffs. And, either Respondent did not inform Renee Carter about the order, or he did not adequately explain the order so that Renee Carter could understand it. The other Residents were not informed about the order.

4.54. On May 28, 2014, the parties filed Cross Motions for Summary Judgment, with the Defendants filing one Joint Motion for Summary Judgment.

4.55. Respondent moved for summary judgment based on the lone theory that DCHA had conceded liability because (1) DCHA made payments to a Resident for damage to her furniture, and (2) a DCHA employee allegedly said on the day of the demolition that DCHA would "pay all damages."

4.56. Defendants, on the other hand, argued that because the court precluded Plaintiffs from designating an expert witness, Plaintiffs could not carry their burden of proof to establish the required elements of a prima facie case for negligence.

4.57. On June 25, 2014, the court rejected Respondent's argument and awarded summary judgment in favor of the Defendants.

4.58. Respondent did not inform Renee Carter or the other Residents that the court had granted summary judgment against them, and Respondent did not send them a copy of the order.

4.59. On July 18, 2014, Respondent appealed the June 25, 2014 Summary Judgment Order without discussing the appeal with his clients.

4.60. On April 3, 2015, the Court of Appeals for the District of Columbia affirmed the Summary Judgment Order in a Memorandum Opinion and Judgment.

4.61. On April 23, 2015, Respondent sent letters to his clients informing them that the Court of Appeals had affirmed the Superior Court's summary judgment order, effectively dismissing their case.

4.62. In addition to the conduct described above, Respondent also submitted improper motions to withdraw as counsel for four of his clients.

4.63. On December 21 and December 22, 2013, Respondent filed motions to withdraw as counsel for four Residents.

4.64. In the motions to withdraw, Respondent stated that these four clients had "failed to keep scheduled appointments, failed to return telephone calls, failed to participate in discovery and failed to respond to several letters from counsel."[4]

4.65. The court did not immediately rule on the motions, and Respondent remained counsel of record for these four clients.

4.66. On March 6, 2014, the court ordered each of the four clients to show cause why they had not participated in discovery and noted that the court was prepared to dismiss their claims if they failed to show cause.

4.67. The four Plaintiffs never filed any statement to show cause.

4.68. On April 2, 2014, the court dismissed the four Plaintiffs' claims and granted Respondent's motions to withdraw.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 30; Aff. ¶ 5.

[4] Because the four clients at issue are not individually named in the Petition, this Committee is satisfied that including a description of the disclosures in Respondent's motion to withdraw in this Report and Recommendation does not repeat Respondent's disclosure of client secrets.

6. Disciplinary Counsel has made no promises to Respondent. Aff. ¶ 7. Respondent confirmed during the limited hearing that there have been no promises or inducements. Tr. 37-38.

7. Respondent is aware of his right to confer with counsel and is proceeding *pro se*. Tr. 24-25; Aff. ¶ 1.

8. Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition for Negotiated Discipline and agreed to the sanction set forth therein. Tr. 36, 38; Aff. ¶ 4.

9. Respondent is not being subjected to coercion or duress. Tr. 38; Aff. ¶ 6.

10. Respondent is competent and was not under the influence of any substance or medication that would affect his participation at the limited hearing. Tr. 25.

11. Respondent is fully aware of the implications of the disposition being entered into, including, but not limited to, the following:

a) he has the right to assistance of counsel if he is unable to afford counsel;

b) he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;

c) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;

d) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;

e) the negotiated disposition, if approved, may affect his present and future ability to practice law;

f) the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and

g) any sworn statement by Respondent in his affidavit or any statements made by Respondent during the proceeding may be used to impeach his testimony if there is a subsequent hearing on the merits.

Tr. 24-25, 28-29, 41-43; Aff. ¶ 9.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a 30-day suspension, stayed in favor of supervised probation for one year. The probation term will begin to run on the day the D.C. Court of Appeals approves the negotiated discipline. Respondent understands that the agreed-upon sanction is subject to the following conditions: (1) Respondent will not be the subject of a disciplinary complaint that results in a finding that he violated the disciplinary rules of any jurisdiction in which he is licensed to practice during the probationary period; (2) within 30 days after the Court approves the negotiated discipline, Respondent must contact the District of Columbia Bar's Practice Management Advisory Service ("PMAS") to schedule an assessment, and Respondent will then attend any and all follow-up sessions recommended by PMAS and comply with and implement any of PMAS's recommendations; (3) Respondent will provide PMAS a signed release waiving confidentiality to permit PMAS to communicate with Disciplinary Counsel about the assessment and any follow-up sessions and/or reporting, and the steps Respondent has taken to address problems or deficiencies in the management of his law practice; and (4) Respondent will attend 10 hours of Continuing Legal Education classes offered by the D.C. Bar, pre-approved by Disciplinary Counsel, with proof of attendance provided to Bar Counsel within 30

days of attendance, all of which must be done at least 30 days before the probation term expires. If Respondent fails to meet any of the conditions set forth above, he agrees that the Court should suspend him for the 30 days that have been stayed. Petition at 11-12; Tr. 34-36.

13. In aggravation of sanction, the parties stipulate that the circumstances in aggravation are that, within one consolidated matter involving sixteen clients, there were multiple instances of neglect and improper client communication, and Respondent's clients' claims were dismissed with prejudice. Petition at 15; Tr. 39-40.

14. In mitigation of sanction, the parties stipulate that (1) Respondent provided his clients with his malpractice insurance information; (2) While Respondent showed poor judgment in his attempts to comply with deadlines and court rules, he nonetheless remained actively involved in pursuing his clients' claims; (3) Respondent cooperated with Disciplinary Counsel's investigation, including providing documents and written responses to all of Disciplinary Counsel's requests and meeting with Disciplinary Counsel in person to provide additional information and answer questions; and (4) Respondent has accepted responsibility and has shown remorse for his misconduct. Petition at 15; Tr. 38-39.

15. The complainants were notified of the limited hearing but did not appear and did not provide any written comment. Tr. 44-45.

III. Discussion

The Hearing Committee shall approve an agreed negotiated discipline if it finds:

> a) that the attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein;
>
> b) that the facts set forth in the Petition or as shown during the limited hearing support the attorney's admission of misconduct and the agreed upon sanction; and
>
> c) that the agreed sanction is justified.

D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(i)-(iii).

A. Respondent Has Knowingly and Voluntarily Acknowledged the Facts and Misconduct and Agreed to the Stipulated Sanction.

The Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein. Respondent, after being placed under oath, admitted the stipulated facts and charges set forth in the Petition, and denied that he is under duress or has been coerced into entering into this disposition. Tr. 31, 38. Respondent understands the implications and consequences of entering into this negotiated discipline. Tr. 40-42. Respondent has acknowledged that no promises or inducements have been made to him as part of this negotiated discipline. Tr. 37-38.

B. The Stipulated Facts Support the Admissions of Misconduct and the Agreed-Upon Sanction.

The Hearing Committee has also carefully reviewed the facts set forth in the Petition and established during the hearing and concludes that they support the admission(s) of misconduct and the agreed upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because he believes that he could not successfully defend against the misconduct described in the Petition. Tr. 30.

With regard to the second factor, the Petition states that Respondent violated Rules of Professional Conduct 1.1(a) and (b) (failure to provide competent representation to his clients and failure to serve his clients with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters). The evidence supports Respondent's admission that he violated Rules 1.1(a) and (b) in that the stipulated facts describe Respondent's failure to timely file negligence and wrongful death claims against one of the demolition contractors, Celtic, because he did not identify that contractor as a defendant in a timely manner. Petition ¶ 19. The stipulated facts also describe Respondent's failure to timely file negligence and wrongful death claims against the other demolition contractor, WCASL, by failing to timely identify WCASL as a defendant for the wrongful death claim, and failing to properly serve WCASL with an amended complaint for the negligence claim. Petition ¶¶ 26-33. These failures on Respondent's part resulted in the dismissal of claims against these two Defendants. Petition ¶¶ 21, 26.

The Petition also states that Respondent violated Rules 1.3(a) and (c) (failure to represent his clients zealously and diligently and failure to act with reasonable promptness in representing his clients). The evidence supports Respondent's admission that he violated Rules 1.3(a) and (c) in that the stipulated facts describe Respondent's failure to timely file expert witness disclosures in accordance with the court rules and the court's scheduling order. Respondent also failed to file a motion to late-substitute his expert witness as directed by the court. Petition ¶¶ 41, 42, 49. These failures left Respondent's clients without an expert witness to provide evidence supporting the required elements of their claims, Petition ¶ 52, and resulted in the court granting Defendants' summary judgment motion. Petition ¶ 58.

The Petition further states that Respondent violated Rules 1.4(a) and (b) (failure to keep his clients reasonably informed about the status of their matter and failure to explain the matter to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation). The evidence supports Respondent's admission that he violated Rules 1.4(a) and (b) in that the stipulated facts describe that Respondent either did not communicate with Ms. Carter about the court's numerous orders dismissing claims against Celtic, WCASL, and DCHA or did not adequately explain the orders to her. The facts also describe that Respondent did not share copies of the orders with any of the other Plaintiffs. Petition ¶ ¶ 25, 35, 39, 54, 59.

Finally, the Petition states that Respondent violated Rule 1.6(a) (knowingly revealing information gained in the professional relationship, the disclosure of which would be embarrassing, or would likely be detrimental to his clients). The evidence supports Respondent's admission that he violated Rule 1.6(a) in that the stipulated facts describe that Respondent filed improper motions to withdraw as counsel for four of his clients. Petition ¶ 63. In the motions, Respondent stated that the four clients had failed to keep scheduled appointments, participate in discovery, and respond to communications from Respondent. Petition ¶ 64. Those statements, which did not need to be included in the motions, were likely embarrassing or detrimental to his clients.

C. The Agreed-Upon Sanction Is Justified.

The third and most complicated factor the Hearing Committee must consider is whether the sanction agreed upon is justified. *See* D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(iii). In determining whether the agreed-upon sanction is justified, the Hearing Committee is to "tak[e] into consideration the record as a whole, including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, any circumstances in aggravation and mitigation, and relevant precedent." Board Rule 17.5(a)(iii). Based on the record as a whole, including the stipulated circumstances in mitigation, the Hearing Committee Chair's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* discussion with Disciplinary Counsel, and our review of relevant

precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient.

Respondent has committed multiple violations of the Rules of Professional Conduct. These violations, however, stem from three omissions and one act: the failure to timely identify defendants for his clients' claims and properly serve a summons and complaint upon one of the defendants; the failure to timely designate an expert witness; the failure to notify or adequately explain to his clients the court's orders; and the disclosure of potentially detrimental information about four of his clients in his motion to withdraw. With respect to the three omissions, the record is clear that there was an attempt from Respondent to fulfill these responsibilities. Respondent contacted individuals associated with DCHA in an effort to identify all of the contractors. Petition ¶ 11. He attempted to serve WCASL by hand-delivering a copy of the summons and complaint to an office that he believed was associated with the contractor. Petition ¶ 30. He submitted a statement to the parties designating expert witnesses, and attempted, although inartfully, to identify and designate additional expert witnesses after one of his experts informed him that she could not opine that plaintiffs' respiratory problems were caused by demolition particles. Petition ¶¶ 42-51. He set up a "phone tree" whereby he would orally communicate with Ms. Carter about case developments. Ms. Carter was then expected to convey the information with the other plaintiffs. Petition ¶ 24. Additionally, Respondent did send letters to Plaintiffs informing

them that the Court of Appeals had affirmed the court's summary judgment order. Petition ¶ 62.

Although Respondent's overall efforts were flawed and his failure to competently and correctly perform his duties ultimately resulted in harm to his clients, we could find no evidence of dishonesty on the part of Respondent, but only issues of competence and neglect. Many of these issues should be addressed by the parties' stipulation that, as a condition of Respondent's probation, he must meet with and obtain an assessment from PMAS to help address problems or deficiencies in the management of his law practice. Petition at 11-12. Furthermore, with respect to all of these acts and omissions, Respondent has cooperated with Disciplinary Counsel throughout the course of these proceedings and has shown remorse for his conduct. Petition at 15; Tr. 38-39. Respondent has also provided the plaintiffs with his malpractice insurance information. Petition at 15; Tr. 38. Finally, Respondent has no prior disciplinary history. Petition at 13.

It is true that Respondent's actions harmed not just one client, but sixteen clients. However, there were only four acts or omissions by Respondent. Given that the harm to his clients was based on four overall acts or omissions and not on separate acts or omissions taken against each of the sixteen clients, we cannot say that the sanction in this case is inconsistent with the range of sanctions imposed in cases involving comparable conduct. Indeed, comparable cases involving incompetence, neglect, and prejudice have resulted in non-suspensory sanctions or equivalent stayed suspensions with probationary terms. *See, e.g., In re Mance*, 869

A.2d 339, 341-42 (D.C. 2005) (30-day stayed suspension, with probationary terms, for incompetence, neglect, intentional failure to pursue client's matter, failure to communicate, and conduct prejudicial in a criminal representation); *In re Gonzalez*, 773 A.2d 1026, 1032 (D.C. 2001) (ordering issuance of an informal admonition for revealing client secrets in a motion to withdraw); *In re Dunietz*, 687 A.2d 206, 212-13 (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); *In re Kaufman*, Bar Docket No. 338-05 (BPR Nov. 12, 2010) (public censure for failing to pursue a case or appear at a status conference, resulting in dismissal, and failing to advise the client of the outcome or return her file), *recommendation adopted*, 14 A.3d 1136 (D.C. 2011) (per curiam); *In re Baron*, Bar Docket No. 2013-D032 (ODC Sept. 5, 2013) (informal admonition for failing to consult an expert or present expert testimony, resulting in a conviction that was later vacated due to ineffective assistance of counsel, and revealing client secrets in a motion to withdraw); *In re Burchell*, Bar Docket No. 2010-D298 (ODC Jan. 4, 2011) (informal admonition for failing to notify a client of an adverse arbitration decision for two months, resulting in the client's inability to seek review of the decision).

Although cases exist with similar facts in which the Court imposed served suspensions, the respondents' dishonesty was a significant factor in those cases. *See, e.g.*, *In re Chapman*, 962 A.2d 922, 927 (D.C. 2009) (per curiam) (sixty-day

suspension, with thirty days stayed in favor of probation, where the respondent neglected to conduct discovery, resulting in the dismissal of the client's case, and the respondent made dishonest statements to disciplinary counsel and testified in a non-credible manner); *In re Cole*, 967 A.2d 1264, 1269 (D.C. 2009) (thirty-day suspension for failing to provide competent and diligent representation, failing to communicate with client, lying to client, and causing the parties and tribunal to engage in unnecessary work in an immigration case). As discussed above, the conditions of probation to which Respondent has agreed appear to address the shortcomings leading to the misconduct, thus making a served suspension unnecessary. Therefore, in light of the nature of Respondent's misconduct, the mitigating circumstances, the lack of a disciplinary history, and relevant precedent, we find that the agreed-upon sanction is justified and not unduly lenient.

IV. Conclusion and Recommendation

It is the conclusion of the Hearing Committee that the discipline negotiated in this matter is appropriate.

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court impose a thirty-day suspension, stayed in favor of one year of supervised probation subject to the conditions that, at least 30 days before the probation term expires, Respondent will: (1) not be the subject of a disciplinary complaint that results in a finding that he violated the disciplinary rules of any jurisdiction in which he is licensed to practice during the probationary period; (2), contact PMAS to schedule an assessment within

30 days after the Court approves the negotiated discipline and attend any and all follow-up sessions recommended by PMAS and comply with and implement any of PMAS's recommendations; (3) provide PMAS a signed release waiving confidentiality to permit PMAS to communicate with Disciplinary Counsel about the assessment and any follow-up sessions and/or reporting, and the steps Respondent has taken to address problems or deficiencies in the management of his law practice; and (4) attend 10 hours of Continuing Legal Education classes offered by the D.C. Bar, pre-approved by Disciplinary Counsel, with proof of attendance provided to Bar Counsel within thirty days of attendance.

AD HOC HEARING COMMITTEE

/RLW/
Robert L. Walker
Chair

/CI/
Carol Ido
Public Member

/NP/
Nicole Porter
Attorney Member

Dated: April 28, 2017