THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER NINE

In the Matter of:	:	
	:	
BRIAN V. LEE,	:	
	:	Board Docket No. 24-ND-007
Respondent.	:	Disciplinary Docket No. 2023-D069
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 978834)	:	

REPORT AND RECOMMENDATION OF HEARING COMMITTEE
NUMBER NINE APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before Hearing Committee Number Nine on April 7, 2025, for a limited hearing on an Amended Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Leonard Evans, Esquire, Chair; Trevor Mitchell, Public Member; and Janea J. Hawkins, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Traci M. Tait, Esquire. Respondent, Brian V. Lee, was represented by Justin M. Flint, Esquire.

The Hearing Committee has carefully considered the Petition signed by Disciplinary Counsel, Respondent, and Respondent's counsel; the supporting affidavit submitted by Respondent (the "Affidavit"); the representations during the limited hearing made by Respondent, Respondent's counsel, and Disciplinary

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* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

Counsel; and the oral statement of the complainant, taken pursuant to Board Rule 17.4(a). The Hearing Committee also has fully considered the written statement submitted by the complainant[1]; the Chair's *in camera* review of Disciplinary Counsel's files and records; and his *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, the Hearing Committee finds that the negotiated discipline of a 90-day suspension, with 60 days stayed in favor of one-year unsupervised probation, with conditions including a fitness requirement if Respondent does not successfully complete his probation, is justified and recommends 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 involving allegations of misconduct. Tr. 28[2]; Affidavit ¶ 4.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent violated the following District of Columbia Rules of Professional Conduct: 1.1(b) (failing to serve client with skill and care), 1.4(a) (failing to keep client reasonably informed), 1.4(b) (failing to explain matter to the

[1] The complainant submitted a late written statement which was made part of the record, upon his request and without any opposition from Disciplinary Counsel. *See* Tr. 12-13; Board Rule 17.4(g).

[2] "Tr." refers to the transcript of the limited hearing held on April 7, 2025.

extent reasonably necessary to permit client to make informed decisions), 8.1(a) (knowingly making false statement of fact in connection with his disciplinary matter), and 8.4(d) (serious interference with the administration of justice). Petition at 5.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 29; Affidavit ¶¶ 3, 5. Specifically, Respondent acknowledges that:

> (1) In May 2017, Respondent agreed to defend Kevin L. Whited in an action seeking to foreclose on his house. When Mr. Whited signed Respondent's retainer agreement, a motion for default had been pending against him for more than two months.
>
> (2) Two days after Mr. Whited signed the engagement letter, the plaintiff bank withdrew the default motion at a scheduling conference where Respondent appeared on Mr. Whited's behalf.
>
> (3) In the ensuing six months, Respondent missed six of at least 14 scheduled appearances in D.C. Superior Court in Mr. Whited's matter. Mr. Whited states that he was not aware of the Superior Court status hearings, that Respondent did not tell Mr. Whited about them, that he did not consult with Mr. Whited about his decision not to appear, and that he did not direct his client to appear on his own behalf. Mr. Whited did not attend the scheduled court dates either.
>
> (4) In January 2018, after Respondent failed to appear for yet another status hearing, the Superior Court entered a default in open court. Mr. Whited lost legal possession of his house. The Superior Court held another status hearing in May 2018, at which neither Respondent nor his client appeared.
>
> (5) Respondent chose not to appear at the hearings because he did not believe Mr. Whited had any path forward to retain his house and believed that he was only "buying time" for Mr. Whited to remain as

long as possible. Mr. Whited did not understand that Respondent believed there was no way to prevail.

(6) After mutual dissatisfaction regarding how the professional relationship had been conducted, Mr. Whited discharged Respondent in November 2022.

(7) Respondent moved to withdraw from the foreclosed case in Superior Court in December 2022 in advance of the scheduled status hearing.

(8) The presiding judge granted Respondent's motion in open court during a hearing five weeks later, in January 2023. Both Respondent and Mr. Whited were present.

(9) Respondent had not explained to Mr. Whited when he was discharged that Respondent was required to file a motion to be released from the case, and that the discharge would not be effective until the presiding judge granted his motion. Respondent also did not explain why he took more than a month to file the motion.

(10) Because Respondent had not explained the withdrawal process to his client, Mr. Whited was surprised that Respondent was present at a hearing in January 2023, two months after he believed Respondent had been discharged. He did not understand Respondent's role at the hearing.

(11) Mr. Whited thereafter filed a disciplinary complaint.

(12) During Disciplinary Counsel's investigation, the office asked Respondent to explain his failures to appear in Superior Court on Mr. Whited's behalf.

(13) Respondent initially claimed that he had not received notice of the Superior Court appearances he missed, with the exception of one, in which he conceded his choice was deliberate. Respondent relied on docket entries indicating that notices of the hearing were returned as undeliverable, without reviewing the client file or his law firm's calendar.

(14) However, Respondent's own client file and the hearing transcripts showed that he had received actual notice of every court appearance.

(15) When called upon to explain the discrepancy between his initial response to Disciplinary Counsel and the documentary record, Respondent then conceded that he had always intended not to appear for the hearings he missed.

(16) Respondent acknowledges that his strategy to represent Mr. Whited's interests in regaining possession of his home was highly inappropriate.

The Rule Violations

(17) Respondent agrees that he violated the following District of Columbia Rules of Professional Conduct:

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

B. Rule 1.4(a), because Respondent failed to keep his client reasonably informed about the status of the matter;

C. Rule 1.4(b), because Respondent failed to explain the matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation;

D. Rule 8.1(a), because in connection with a disciplinary matter, Respondent knowingly made a false statement of fact; and,

E. Rule 8.4(d), because Respondent seriously interfered with the administration of justice.

Petition at 2-5.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 28; Affidavit ¶ 6.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Affidavit ¶ 3. Those promises are that Disciplinary Counsel agrees not to pursue any charges arising out of the stipulated conduct other than those set out, or any sanction other than that identified, in the Petition. Petition at 5. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 34.

7. Respondent has conferred with his counsel. Tr. 20-21; Affidavit ¶ 2.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 21; Affidavit ¶¶ 3, 5.

9. Respondent is not being subjected to coercion or duress. Tr. 20; Affidavit ¶ 3.

10. Respondent is competent and was not under the influence of any substance or medication that would affect his ability to make informed decisions at the limited hearing. Tr. 21-22.

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 consult with counsel (and has done so) prior to entering this negotiated disposition;

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. 23-27; Affidavit ¶¶ 2, 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a 90-day suspension, with 60 days stayed in favor of one year of unsupervised probation, with the conditions that

a. he not be the subject of a disciplinary complaint that results in a violation of a disciplinary rule in any jurisdiction in which he is licensed;

b. he notify all of his clients of the suspension and provide written proof to Disciplinary Counsel of having done so within 30 days of the Court's order;

c. when he resumes the practice of law, he will notify all clients of his probation and provide written proof of having done so to Disciplinary Counsel within 30 days of the last day of his suspension and/or upon undertaking a new representation, unless the Court provides otherwise;

d. he take two CLE courses approved by Disciplinary Counsel (on Ethics and Lawyer Trust Accounts and the Mandatory Course on the D.C. Rules of Professional Conduct and D.C. Practice) and will provide proof of attendance at each CLE within 10 days of completion, waiving confidentiality regarding any consultations associated with the training advice and materials;

e. he will notify Disciplinary Counsel promptly of any disciplinary matters against himself and their dispositions;

f. within 30 days of the Court's order suspending him, he will notify Disciplinary Counsel in writing of all jurisdictions in which he has been licensed to practice and all tribunals before which he has appeared as legal counsel; and

g. he will not need to show fitness upon any application for reinstatement, provided that he has successfully completed probation and the agreed-upon conditions.

Petition at 6-8; Tr. 31-34.

13. Respondent further understands that he must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for his suspension to be deemed effective for purposes of reinstatement. Tr. 38-39; Affidavit ¶ 14.

14. Respondent understands that if he does not successfully complete the probation, he will be required to prove his fitness to practice law in accord with D.C. Bar R. XI, § 16 and Board Rule 9 prior to being allowed to resume the practice of law; and that the reinstatement process may delay Respondent's readmission to the Bar. Tr. 39-40; Affidavit ¶ 15.

15. The parties have stipulated to the following circumstance in aggravation, which the Hearing Committee has taken into consideration: his misconduct includes knowing false statements to Disciplinary Counsel. Tr. 37-38; Petition at 10.

16. The parties have stipulated to the following circumstances in mitigation, which the Hearing Committee has taken into consideration: (a) he has taken responsibility for his misconduct in that he acknowledges that he violated the Rules as set forth above, (b) he has corrected false statements made during Disciplinary Counsel's investigation, (c) he was experiencing emotional problems while making health care decisions for his husband on his deathbed while responding to Disciplinary Counsel's investigation of this matter, and (d) he has not been the subject of other discipline, here or elsewhere. Petition at 10-11; Tr. 35-37; *see also* Affidavit ¶ 16.

17. The complainant, Mr. Whited, presented a written statement (addressed to Assistant Disciplinary Counsel Tait) during the limited hearing and additionally made oral statements pursuant to Board Rule 17.4(a). Mr. Whited provided the following information, which the Hearing Committee has taken into consideration: he complained that the Office of Disciplinary Counsel did not conduct a proper investigation, that Wells Fargo Bank engaged in unlawful and fraudulent actions, and that the judge who handled his matter was biased. Tr. 40-41; April 7, 2025 letter to Ms. Tait from Mr. Whited (filed Apr. 7, 2025) at 1-2. Mr. Whited argued that a suspension longer than 30 days was warranted given the "significant and irreparable

damage to [his] right to a fair hearing" resulting from "the egregious nature of [Respondent's] conduct." April 7 letter, at 1 (emphasis omitted).

III. DISCUSSION

The Hearing Committee shall recommend approval of a petition for negotiated discipline if it finds:

> (1) The attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition and agreed to the sanction set forth therein;
>
> (2) The facts set forth in the petition or as shown at the hearing support the admission of misconduct and the agreed upon sanction; and
>
> (3) The sanction agreed upon is justified. . . .

D.C. Bar R. XI, § 12.1(c)(1)-(3); *see also* 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. *See supra* Paragraphs 8-9. Respondent understands the implications and consequences of entering into this negotiated discipline. *See supra* Paragraph 11.

Respondent has acknowledged that any and all promises that have been made to him by Disciplinary Counsel as part of this negotiated discipline are set forth in

writing in the Petition and that there are no other promises or inducements that have been made to him. *See supra* Paragraph 6.

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

The Hearing Committee has carefully reviewed the facts set forth in the Petition and established during the hearing and concludes that they support the admission 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. *See supra* Paragraph 5.

With regard to the second factor, the Petition states that Respondent violated the District of Columbia Rules of Professional Conduct (the "D.C. Rules" or "Rules") 1.1(b) (failing to serve client with skill and care), 1.4(a) (failing to keep client reasonably informed), 1.4(b) (failing to explain matter to the extent reasonably necessary to permit client to make informed decisions), 8.1(a) (knowingly making false statement of fact in connection with his disciplinary matter), and 8.4(d) (serious interference with the administration of justice). Petition at 5.

The evidence supports Respondent's admission that he violated Rules 1.1(b) and 1.4(a) in that the stipulated facts support a finding that he failed to serve Mr. Whited with skill and care and failed to keep him reasonably informed, when he missed six out of 14 appearances in D.C. Superior Court without advising Mr. Whited about his decision not to appear and without notifying Mr. Whited about the status hearing dates. *See* Stipulated Facts (3)-(5). Respondent additionally did not

keep Mr. Whited reasonably informed about the motion to withdraw, which was a necessary precedent before Respondent could be released from the case. *See* Stipulated Facts (9)-(10). The evidence also supports Respondent's admission that he violated Rule 1.4(b) by failing to explain a matter to an extent reasonably necessary for Mr. Whited to make an informed decision when he failed to advise Mr. Whited that he believed he did not have "any path forward to retain his house"– information that was necessary for Mr. Whited to make an informed decision about the continued representation. *See* Stipulated Facts (3), (5). As a result, Mr. Whited did not understand that Respondent was merely trying to extend his time in the house.

Finally, the evidence supports Respondent's admission that he violated D.C. Rules 8.1(a) and 8.4(d) in that the stipulated facts support a finding that Respondent, knowingly, falsely claimed to Disciplinary Counsel that he had not received notice of the Superior Court appearances that he had missed. *See* Stipulated Facts (12)-(15). The same misconduct supports a finding that Respondent violated Rule 8.4(d), and Respondent's repeated failures to appear at status hearings also violated that Rule. *See* Stipulated Facts (3)-(5), (16).

C. The Agreed-Upon Sanction Is Justified.

The third 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) (explaining that hearing committees should consider "the record as a whole, including the nature of the misconduct, any charges or investigations that

Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel's evidence, any circumstances in aggravation and mitigation (including respondent's cooperation with Disciplinary Counsel and acceptance of responsibility), and relevant precedent"); *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam) (providing that a negotiated sanction may not be "unduly lenient"). 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 the Committee's review of relevant precedent, the Hearing Committee concludes that the agreed-upon sanction is justified and not unduly lenient, for the following reasons:

First, as discussed in the Confidential Appendix, the Hearing Committee concludes that Disciplinary Counsel has fully investigated this matter and that Disciplinary Counsel reasonably determined that it could not prove, by clear and convincing evidence, additional Rule violations beyond which the parties have already stipulated. *See In re Teitelbaum*, 303 A.3d 52, 56 (D.C. 2023) ("Negotiated discipline may generally omit to charge a violation if, after reasonable factual investigation, there is a substantial risk that [Disciplinary Counsel] would not be able to establish the violation by clear and convincing evidence.").

Second, the Hearing Committee has considered the nature of Respondent's misconduct and the range of sanctions imposed in comparable cases. The Committee agrees with the parties that a 90-day suspension is not unduly lenient

given the nature of Respondent's misconduct in a single representation and his subsequently corrected false statement to Disciplinary Counsel. *See In re Mensah*, 262 A.3d 1100, 1104 (D.C. 2021) (per curiam) (explaining that "the negotiated-discipline process necessarily contemplates some additional flexibility in determining the appropriate sanction," though they may not "become completely unmoored from the sanctions that would be [imposed] in contested-discipline cases"). Sanctions ranging from a 30 to 90-day suspension have been imposed for similar misconduct. *See, e.g.*, *In re Evans*, 187 A.3d 554 (D.C. 2018) (per curiam) (30-day suspension stayed in favor of one-year probation with conditions for lack of competence, lack of skill and care, lack of diligence and zeal, failing to keep client reasonably informed and failing to explain matter, and serious interference with the administration of justice); *In re Phillips*, 705 A.2d 690, 691 (D.C. 1998) (per curiam) (60-day suspension for filing false petition); *In re Alexander*, 466 A.2d 447 (D.C. 1983) (90-day suspension for neglect and conduct that was prejudicial to the administration of justice). While in *In re Blackwell*, 299 A.3d 561 (D.C. 2023), a six-month suspension with all but 60 days stayed in favor of three years of probation was imposed for repeatedly failing to comply with child support orders and knowingly making false statements in response to Disciplinary Counsel's investigation, unlike the circumstances here, the respondent in *Blackwell* continued "to argue that he had not obfuscated the truth despite the clear indications to the contrary." 299 A.3d at 573.

Third, the agreed-upon sanction is justified in light of the aggravating and mitigating circumstances. The parties agree that an aggravating factor is that Respondent's misconduct involved a knowing false statement to Disciplinary Counsel and the mitigating factors are that Respondent has taken responsibility for his misconduct, corrected his false statement made to Disciplinary Counsel, was experiencing "emotional problems while making health care decisions for his husband on his deathbed while responding to Disciplinary Counsel's investigation," and has no discipline history in this jurisdiction or elsewhere. Petition at 10-11; *see supra* Paragraphs 15-16. As noted by Disciplinary Counsel, the false statement during the investigation occurred at the same time Respondent was tending to his dying spouse, and he has accepted responsibility for the statement by subsequently correcting the statement and admitting to a violation of Rule 8.1(a).

Finally, while Mr. Whited has informed the Committee that he believes a 30-day suspension is too lenient, the agreed-upon sanction is a 90-day suspension, with 60 days stated in lieu of a one-year probation period which requires Respondent to not only take CLE courses approved by Disciplinary Counsel, but he must also advise his clients both of his suspension and probation, not engage in any other misconduct in any jurisdiction, and commit to additional notification and reporting obligations to Disciplinary Counsel for the one-year period. If he does not comply with all conditions and successfully complete the one-year probation, Respondent agrees that the Court should impose the previously stayed 60 days of suspension and impose a fitness requirement upon any application for reinstatement. Accordingly,

the agreed-upon sanction is justified and much more significant than a 30-day straight suspension described by Mr. Whited.

IV. CONCLUSION AND RECOMMENDATION

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court suspend Respondent for 90 days, with 60 days stayed in favor of one year of unsupervised probation, with the conditions set forth in Paragraph 12 and summarized below:

a. Respondent shall not be the subject of a disciplinary complaint that results in a violation of a disciplinary rule in any jurisdiction in which he is licensed;

b. Respondent will notify all of his clients of the suspension and provide written proof to Disciplinary Counsel of having done so within 30 days of the Court's order;

c. After he resumes the practice of law, Respondent will notify all clients of his probation and provide written proof of having done so to Disciplinary Counsel within 30 days of the last day of his suspension and/or upon undertaking a new representation, unless the Court provides otherwise;

d. Respondent will take two CLE courses approved by Disciplinary Counsel (on Ethics and Lawyer Trust Accounts and the Mandatory Course on the D.C. Rules of Professional Conduct and D.C. Practice) and will provide proof of attendance at each CLE course within 10 days of completion, waiving confidentiality regarding any consultations associated with the training advice and materials;

e. Respondent will notify Disciplinary Counsel promptly of any disciplinary matters against himself and their dispositions;

f. Within 30 days of the Court's order suspending him, Respondent will notify Disciplinary Counsel in writing of all jurisdictions in which he has been licensed to practice and all tribunals before which he has appeared as legal counsel; and

g. Respondent will not need to show fitness upon any application for reinstatement, provided that he has successfully completed probation and the agreed-upon conditions.

The Hearing Committee further recommends that Respondent's attention be directed to the requirements of D.C. Bar Rule XI § 14 and their effect on his eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

HEARING COMMITTEE NUMBER NINE

Leonard Evans
Chair

Trevor Mitchell
Public Member

Janea Hawkins
Janea J. Hawkins
Attorney Member