THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
CHERYL MOAT TAYLOR,	:	
	:	Board Docket No. 19-ND-010
Respondent.	:	Disc. Docket Nos. 2017-D303;
	:	2017-D304
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 448435)	:	

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

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on June 15, 2020, for a limited hearing on an Amended Petition for Negotiated Discipline ("Petition").[1] The members of the Hearing Committee are Amy Garber, Chair; Ria Fletcher, Public Member; and Webster R.M. Beary, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Hendrik deBoer ("Disciplinary Counsel"). Respondent, Cheryl Moat Taylor ("Respondent"), appeared *pro se*.

The Hearing Committee has carefully considered the Petition signed by Disciplinary Counsel and Respondent, the supporting amended affidavit submitted by Respondent ("Affidavit"), and the representations Respondent and Disciplinary

[1] In light of COVID-19 precautions and restrictions, the parties and Ad Hoc Hearing Committee agreed to conduct the hearing remotely via Zoom video-conference.

* 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 made during the limited hearing.[2] The Hearing Committee also has fully considered its *in camera* review of Disciplinary Counsel's files and records, *ex parte* communications with Disciplinary Counsel, and Confidential Memorandum from Disciplinary Counsel. For the reasons set forth below, we find the negotiated discipline of a 90-day suspension with reinstatement conditioned upon proof of fitness, fully stayed in favor of a two-year period of 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 her an investigation into allegations of misconduct. Tr. 16-17[3]; Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent violated Rules 1.4(a) (failing to keep client reasonably informed about the status of a matter), 1.5(a) (charging an unreasonable fee), 1.15(a) (failing to keep and preserve complete records of entrusted funds for a period of five years after termination of a representation), 1.15(a) (b), and (e) (failing to treat advanced fees as client property by keeping them in a trust account), 1.16(a)(2) (failing to withdraw from representation when the lawyer's physical or mental

[2] The Amended Petition for Negotiated Disposition and Amended Affidavit of Negotiated Disposition were filed on April 8, 2020.

[3] "Tr." refers to the transcript of the limited hearing held on June 15, 2020.

condition materially impaired her ability to represent her client), and 1.16(d) (failing to surrender papers upon termination of representation). Petition ¶¶ 19, 23.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 17; Affidavit ¶ 4. Specifically, Respondent acknowledges that:

(1) Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on November 3, 1995, and assigned Bar number 448435.

COUNT I (2017-D303)

(2) In 2015, Complainant Teresa Lewis filed a complaint with the Equal Employment Opportunity Commission ("EEOC") alleging discrimination by her employer, the Department of Health and Human Services ("HHS").

(3) On February 8, 2016, Ms. Lewis hired Respondent to represent her in the EEOC proceedings. Ms. Lewis and Respondent signed a written retainer agreement in which Ms. Lewis agreed to pay Respondent $150 per hour, and agreed that Respondent would receive 25% of any award received by Ms. Lewis as a result of the EEOC proceeding. In the retainer agreement, Respondent agreed to provide biweekly invoices by email and represented that client funds would be held in a trust account until earned. Pursuant to the retainer agreement, Ms. Lewis paid Respondent, in cash, a $200 consultation fee and a $2,000 initial retainer and agreed to pay an additional $1,000 per month during the representation

(4) Contrary to the retainer agreement, Respondent did not place the $2,000 initial retainer into a trust account. Disciplinary Counsel acknowledges that it cannot prove that Respondent misappropriated or commingled the $2,000 retainer which was an advanced fee. Disciplinary Counsel also acknowledges that by the time Respondent received additional payments from Ms. Lewis totaling $21,000, she had already provided the corresponding legal services. Therefore, those fees had already been earned when Respondent received them..

(5) From February 2016 through August 2017, Respondent represented Ms. Lewis before the EEOC. During the representation, Respondent, among other things, filed a second EEOC complaint alleging retaliation, propounded discovery and conducted depositions, and successfully opposed HHS' motion for summary judgment.

(6) Ms. Lewis paid Respondent a total of $23,000 for work Respondent performed from February 2016 through August 2017, pursuant to the retainer agreement. Although the retainer agreement required Respondent to provide biweekly invoices, Respondent sent only two invoices during this period, on March 1, 2016 and May 1, 2016.

(7) In July 2017, Respondent began to experience medical issues. *See* Confidential Appendix, *infra*.

(8) On August 26, 2017, Respondent called Ms. Lewis. They had previously discussed filing a Prohibited Personnel Practices complaint with the EEOC Office of Special Counsel. Although Respondent and Ms. Lewis had already agreed to this

course of action, Respondent cautioned Ms. Lewis not to file the Prohibited Personnel Practices complaint because doing so would endanger the lives of Ms. Lewis and her daughter. Respondent's comments scared and confused Ms. Lewis. On or about August 27, 2017, Ms. Lewis left Respondent a telephone message asking Respondent to meet with her.[4]

(9) Respondent did not return Ms. Lewis's telephone call for a week and a half. On September 7, 2017, Respondent and Ms. Lewis spoke on the telephone and Ms. Lewis and stated that something did not feel right about the representation, that people were lying to her, and that she needed to start eliminating people "4, 3, 2, l." Respondent told Ms. Lewis that she would complete her representation of Ms. Lewis with respect to the first EEOC complaint, but that she could no longer represent Ms. Lewis on the second EEOC complaint, and confirmed that she would not file the Prohibited Personnel Practices complaint with the Office of Special Counsel. Ms. Lewis again requested to meet, but Respondent refused. Ms. Lewis also requested that Respondent send her documents related to her second EEOC complaint. Respondent failed to provide those documents.

(10) On September 12, 2017, Respondent sent Ms. Lewis an invoice via email, for $217,000, based on an hourly rate of $400, rather than the $150 rate Ms. Lewis and Respondent had agreed upon in the retainer agreement. Ms. Lewis, via email,

[4] The Petition does not include the date of Ms. Lewis's telephone message asking for a meeting with the Respondent. The stipulated facts provide that Respondent "did not return Ms. Lewis's phone call for a week and a half" but Respondent and Ms. Lewis later spoke on the telephone on September 7, 2017. Petition ¶¶ 8-9. Thus, we have approximated the date of Ms. Lewis's message as "on or about August 27, 2017." The exact date of this message is not material to our determination.

stated that the invoice did not reflect the funds that Ms. Lewis had already paid. Respondent then sent an updated invoice via email, which reflected the $23,000 that Ms. Lewis had already paid. Nevertheless, the invoice still stated that the total amount due was $217,000.

(11) In a letter dated October 1, 2017, Ms. Lewis formally terminated Respondent's representation and requested that Respondent return her files via certified mail.

(12) Respondent failed to return the files to Ms. Lewis.

(13) On October 6, 2017, Ms. Lewis filed a complaint with the Office of Disciplinary Counsel.[5]

(14) On November 7, 2017, Respondent went to Ms. Lewis's house and demanded that Ms. Lewis pay $30,000 in legal fees. On November 17, 2017, Respondent again went to Ms. Lewis's house and demanded payment.

(15) On December 31, 2017, Respondent was hospitalized for five days due to the aforementioned medical issues.

(16) On April 16, 2018, Respondent submitted a response to Ms. Lewis's complaint to Disciplinary Counsel. In her response, Respondent acknowledged that she had applied an incorrect hourly rate in the September 12, 2017 invoice and agreed not to pursue additional payment from Ms. Lewis. Respondent admitted that she had not returned Ms. Lewis's files. Respondent also stated that she had not

[5] We note that the Petition erroneously states that "*Respondent* filed a complaint with the Office of Disciplinary Counsel." *See* Petition ¶ 13 (emphasis added).

notified the EEOC that she no longer represented Ms. Lewis, and therefore had not withdrawn from the proceeding.

(17) Disciplinary Counsel propounded a subpoena on Respondent seeking financial records demonstrating how Respondent treated Ms. Lewis's $2,000 advance payment. Respondent did not provide any such records.

(18) Ms. Lewis retained a new attorney in the EEOC proceeding, and on November 1, 2018, Ms. Lewis and HHS entered a settlement of the two EEOC complaints. The settlement agreement provided for attorney's fees, which fully reimbursed Ms. Lewis for previous payments to Respondent and her successor counsel.

(19) Respondent's conduct violated the following District of Columbia Rules of Professional Conduct:

a. Rule 1.4(a) in that Respondent failed to keep Ms. Lewis reasonably informed about the status of a matter by providing regular invoices;

b. Rule 1.5(a) in that Respondent charged an unreasonable fee;

c. Rule 1.15(a) in that Respondent failed to keep and preserve complete records of entrusted funds for a period of five years after termination of a representation;

d. Rule 1.15(a), (b), and (e) in that Respondent failed to treat advanced fees as client property by keeping them in a trust account;

e. Rule 1.16(a)(2) in that Respondent failed to withdraw from a representation when her physical or mental condition materially impaired her ability to represent Ms. Lewis; and

f. Rule 1.16(d) in that, in connection with the termination of a representation, Respondent failed to surrender papers to which Ms. Lewis was entitled.

COUNT II (2017-D304)

(20) On May 4, 2017, Complainant Mark Oliver hired Respondent to represent him in a case against the United States Department of the Interior before the EEOC.

(21) On September 6, 2017, Respondent informed Mr. Oliver that she was no longer able to represent him and offered to continue to represent him for 60 days so as to not prejudice his case before the EEOC. The next day, Mr. Oliver terminated the attorney-client relationship, and requested that Respondent return his client file via mail. Respondent agreed to do so.

(22) Respondent failed to return the files to Mr. Oliver.

(23) Respondent's conduct violated the following District of Columbia Rule of Professional Conduct:

a. Rule 1.16(d) in that, in connection with the termination of a representation, Respondent failed to surrender papers to which Mr. Oliver was entitled.

5. Respondent is agreeing to the disposition because Respondent believes that she cannot successfully defend against discipline based on the stipulated misconduct. Tr. 16; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition for Negotiated Discipline. Affidavit ¶ 7. Those promises and inducements are that Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in the stipulated facts, or any sanction other than the agreed-upon sanction described in the Petition. Petition at 7. Respondent confirmed during the limited hearing that Disciplinary Counsel has made no other promises or inducements other than those set forth in the Petition. Tr. 23.

7. Respondent is aware of her right to confer with counsel and is proceeding *pro se*. Tr. 11; Affidavit ¶ 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. 23-24; Affidavit ¶¶ 3-4, 6.

9. Respondent affirmed that she is not being subjected to coercion or duress. Tr. 24; Affidavit ¶ 6.

10. Respondent is competent and was not under the influence of any substance or medication that would affect her ability to make informed decisions at the limited hearing. Tr. 12.

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

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

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

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

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

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

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

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

Tr. 11, 26-33; Affidavit ¶¶ 9-12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a 90-day suspension with reinstatement conditioned upon proof of fitness, fully stayed in favor of a two-year period of probation. Petition at 8; Tr. 21, 23.

a) Respondent further understands that, if she is suspended, she must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for her suspension to be deemed effective for purposes of reinstatement. Tr. 29.

b) Respondent understands that the conditions of her probation are that she will be required to:

(i) not engage in any misconduct in this or any other jurisdiction;

(ii) engage with the D.C. Bar Lawyer Assistance Program for monitoring and treatment related to Respondent's medical issues; and

(iii) attend the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond courses and the Ethics and Trust Accounts CLE within 90 days. Tr. 30.

c) Respondent understands that if she does not comply with the terms of her probation, she may be suspended from the practice of law for 90 days, and she may be required to prove her fitness to practice law in accordance with D.C. Bar R. XI, § 16 and Board Rule 9.8 prior to being allowed to resume the practice of law, Tr. 31; and

d) Respondent understands that, if she is suspended with a fitness requirement, the reinstatement process may delay Respondent's readmission to the Bar. Tr. 32.

13. The parties agreed to the following circumstance in aggravation, which the Hearing Committee has taken into consideration: that Respondent has prior discipline in the form of an Informal Admonition in 2002 by the Office of Disciplinary Counsel for "failing to provide a written fee agreement, failing to represent a client zealously and diligently, and failing to withdraw after being discharged." Petition at 11.

14. The parties agree to the following circumstances in mitigation, which the Hearing Committee has taken into consideration: Respondent "(1) acknowledges her misconduct; (2) has cooperated with Disciplinary Counsel; (3) has expressed remorse; and (4) was experiencing severe medical issues at the time of the misconduct." Petition at 10-11.

15. The Complainants were notified of the limited hearing but did not appear and did not provide written comments. Tr. 9.

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 she is under duress or has

been coerced into entering into this disposition. Tr. 17, 23-24. Respondent understands the implications and consequences of entering into this negotiated discipline. Tr. 21-22, 26-33.

Respondent has acknowledged that any and all promises that have been made to her 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 her. Tr. 23; Affidavit ¶ 7.

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 we conclude that they support the admissions of misconduct and the agreed-upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because she believes that she could not successfully defend against the misconduct described in the Petition. Tr. 16; Affidavit ¶ 5.

With regard to the second factor supporting negotiated discipline pursuant to D.C. Bar R. XI, § 12.1(c) and Board Rule 17.5(a)(i)-(iii), the Petition states that Respondent violated certain Rules stemming from two separate Counts. The evidence supports Respondent's admissions to all violations. As to Count I of the Petition, the evidence supports Respondent's admissions that she violated Rules of Professional Conduct 1.4(a) (failing to keep client reasonably informed about the status of a matter); 1.5(a) (charging an unreasonable fee); 1.15(a) (failing to keep and preserve complete records of entrusted funds for a period of five years after

termination of a representation); 1.15(a), (b), and (e) (failing to treat advanced fees as client property by keeping them in a trust account); 1.16(a)(2) (failing to withdraw from representation when her physical or mental condition materially impaired her ability to represent her client); and 1.16(d) (failing to surrender papers upon termination of representation).

Rule 1.4(a)

Count I of the Petition states that Respondent violated Rule 1.4(a), which provides that a "lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." The evidence supports Respondent's admission that she violated Rule 1.4(a). First, the stipulated facts state that despite the retainer agreement providing for biweekly invoices, Respondent sent only two invoices to Ms. Lewis from February 2016 through August 2017. Petition ¶¶ 5-6. During that time, Respondent was actively representing Ms. Lewis in the EEOC proceeding. Petition ¶ 6. Moreover, the Hearing Committee notes that on at least one occasion, Respondent declined to promptly return Ms. Lewis's telephone call and, on at least two occasions, did not agree to her requests to meet. Petition ¶¶ 8-9.

Rule 1.5(a)

Count I of the Petition states that Respondent violated Rule 1.5(a), which states, in relevant part: "[a] lawyer's fee shall be reasonable." The evidence supports Respondent's admission that she violated Rule 1.5(a). The stipulated facts state that in an invoice dated September 12, 2017, Respondent charged Ms. Lewis $217,000

based on an hourly rate of $400. Petition ¶ 10. The retainer agreement provided for an hourly rate of $150. Petition ¶ 3. Moreover, Respondent did not revise the September 12, 2017 invoice for $217,000 downward after Ms. Lewis noted that the invoice did not capture amounts she had already paid to Respondent. Petition ¶ 10. In fact, Respondent continued to demand payment of $30,000 after Ms. Lewis terminated the representation. Petition ¶ 14.

Rule 1.15(a), (b), (e)

Count I of the Petition states that Respondent violated Rule 1.15(a) by failing to keep and preserve complete records of entrusted funds for a period of five years after termination of a representation. Rule 1.15(a) states, in relevant part:

> Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). . . . **Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.**

(emphasis added).

The evidence supports Respondent's admission to violating Rule 1.15(a)'s recordkeeping requirements. The stipulated facts state that when the representation commenced, Ms. Lewis paid Respondent $2,000 in advanced fees. When Disciplinary Counsel subpoenaed Respondent's financial records concerning the $2,000 payment, Respondent was unable to produce the financial records related to these funds. Petition ¶ 17.

Count I of the Petition also states that Respondent violated Rule 1.15(a), (b), and (e) by failing to treat advanced fees as client property by keeping them in a trust account. Those sections of the Rule provide, in relevant part:

> (a) Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). . . .
>
> (b) All trust funds shall be deposited with an "approved depository" as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia's Interest on Lawyers Trust Account (DC IOLTA) program. The title on each DC IOLTA account shall include the name of the lawyer or law firm that controls the account, as well as "DC IOLTA Account" or "IOLTA Account." The title on all other trust accounts shall include the name of the lawyer or law firm that controls the account, as well as "Trust Account" or "Escrow Account." The requirements of this paragraph (b) shall not apply when a lawyer is otherwise compliant with the contrary mandates of a tribunal; or when the lawyer is participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the lawyer is licensed and principally practices.
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> * * *
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> (e) Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives informed consent to a different arrangement. Regardless of whether such consent is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer's services in accordance with Rule 1.16(d).

The evidence supports Respondent's admission that she violated Rule 1.15(a), (b), and (e). In the retainer agreement, Respondent agreed to hold all client funds in

a trust account until earned. Petition ¶ 3. Pursuant to the retainer agreement, Ms. Lewis paid Respondent, among other payments, a $2,000 initial retainer. Petition ¶ 3. Respondent did not deposit the $2,000 retainer into a trust account. Petition ¶ 4.[6] Accordingly, Respondent violated Rule 1.15(a) in that she failed to keep these unearned fees in a trust account until earned during the representation. Respondent's failure to deposit the $2,000 into a trust account likewise violated Rule 1.15(b) and (e).

Rule 1.16(a)(2)

Count I of the Petition states that Respondent violated Rule 1.16(a)(2), which provides, in relevant part: "[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if . . . [t]he lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client." The evidence supports Respondent's admission that she violated Rule 1.16(a)(2). While Respondent experienced medical issues, she continued to advise Ms. Lewis, reneged on her agreement to file a Prohibited Personnel Practice Complaint with the Office of Special Counsel, and made confusing statements that alarmed Ms. Lewis. Petition ¶¶ 8-9. She also refused to pursue the second EEOC complaint on Ms. Lewis's behalf. Petition ¶ 9.

[6] Respondent admits that she did not place the $2,000 into a trust account as the retainer agreement required. Tr. 17 (admitting the stipulated facts as true and accurate). Nevertheless, Disciplinary Counsel acknowledged that he cannot prove that Respondent misappropriated or commingled those funds. Petition ¶ 4.

Rule 1.16(d)

Count I of the Petition states that Respondent violated Rule 1.16(d), which provides, in relevant part: "In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled." The evidence supports Respondent's admission that she violated Rule 1.16(d). Ms. Lewis terminated Respondent's representation in a letter dated October 1, 2017, and requested that Respondent return her files by certified mail. Petition ¶ 11. Respondent failed to return the files to Ms. Lewis. Petition ¶ 12.

Count II of the Petition likewise states that Respondent violated Rule 1.16(d) with respect to Mr. Oliver. The evidence supports Respondent's admission that she violated Rule of Professional Conduct 1.16(d). In September 2017, Mr. Oliver terminated Respondent's representation and requested that Respondent return his file. Petition ¶ 21. Despite agreeing to do so, Respondent failed to provide the file to Mr. Oliver. Petition ¶¶ 21-22.

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 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 agreed-upon circumstances in aggravation and mitigation, the Hearing Committee Chair's *in camera* review of Disciplinary

Counsel's investigative file and *ex parte* discussion with Disciplinary Counsel, our review of relevant precedent, and the circumstances described in the Confidential Appendix, *infra*, we conclude that the agreed-upon sanction is justified and not unduly lenient, for the following reasons:

Respondent's stipulated violations are straightforward. With respect to Ms. Lewis (Count I of the Petition), Respondent failed to keep records of the advanced fees and failed to provide biweekly invoices pursuant to the retainer agreement, instead sending only two invoices in the spring of 2016, during the span of her over one-year representation of Ms. Lewis from February 2016 through August 2017. Despite her seemingly active representation of Ms. Lewis through August 2017, in late August and September 2017, Respondent made concerning comments to Ms. Lewis relating to her unwillingness to file a Prohibited Personnel Practices complaint with the Office of Special Counsel and declined to meet with Ms. Lewis despite Ms. Lewis's requests. Thereafter, Respondent sent Ms. Lewis an inflated invoice, and even after Respondent revised it to account for Ms. Lewis's previous payments, the invoice remained extremely high and charged an hourly rate of $250 higher than the amount Ms. Lewis agreed to pay in the retainer agreement. After Ms. Lewis terminated the representation, Respondent continued to demand payment and failed to return Ms. Lewis's files despite Ms. Lewis's request. Regarding Mr. Oliver (Count II of the Petition), Respondent likewise failed to return Mr. Oliver's file despite his request.

Despite these clear violations, there are circumstances justifying a stay of the ninety (90) day suspension in favor of a two (2) year period of probation. Respondent's misconduct occurred during an isolated period and coincided with her experiencing medical issues. Despite her previous Informal Admonition – which was eighteen (18) years ago for different violations – there is no evidence that Respondent engaged in a pattern of misconduct. *See* Tr. 34-35 ("I had mentioned before, I was very, very sick when this time happened and this is why nothing like this had happened before in my almost 20 years of practice. So certainly, if I had been better medically, I would not have charged the client, you know, that high bill."). The Hearing Committee believes that the fitness requirement for reinstatement in the event of a probation violation is a sufficient safeguard against repeated misconduct, although the Committee believes that the misconduct is highly unlikely to recur. Respondent credibly testified at the limited hearing that she understood the consequences of her actions.

Moreover, there is no evidence on the record that Respondent's representation of Ms. Lewis from February 2016 through August 2017 was ineffective or inadequate. With respect to Respondent's Rule 1.15(a), (b), and (e) violations relating to her trust account, Disciplinary Counsel acknowledged that it could not prove more serious violations such as misappropriation and commingling.

Finally, the sanction appears to be in the range of cases involving comparable misconduct. *See, e.g.*, *In re Kaufman*, 14 A.3d 1136 (D.C. 2011) (per curiam) (public censure in part for violating Rules 1.4(a), 1.16(d) with mitigating

circumstances); *In re Thai*, 987 A.2d 428 (D.C. 2009) (per curiam) (60-day suspension, with 30 days stayed in favor of one year of probation, CLE and restitution, for violations including 1.4(a), 1.16(a)(2) and 1.16(d)); *In re Toppelberg*, 906 A.2d 881 (D.C. 2006) (per curiam) (60-day suspension, with 30 days held in abeyance, for violating Rules 1.15(a) (failure to maintain complete records); 1.15(b); 5.3; 8.1(b); 8.4(d); and D.C. Bar R. XI, § 2(b)(3)); *In re Shannon*, Board Docket No. 09-BD-094 (BPR Nov. 27, 2012) (90-day suspension for violating Rules 1.1(a); 1.1(b); 1.8(a); 1.8(b); 1.5(b); and 1.15(a) (failure to maintain complete records); as well as D.C. Bar R. XI, § 19(f) (maintain records)), *recommendation adopted where no exceptions were filed*, 70 A.3d 1212 (D.C. 2013) (per curiam). The Hearing Committee also notes that given there was no misappropriation, a 90-day suspension stayed is well-within the range of sanctions for trust account and recordkeeping violations. *See, e.g.*, *In re Salgado*, 207 A.3d 168 (D.C. 2019) (30-day suspension with fitness); *In re Mott*, 886 A.2d 535 (D.C. 2005) (public censure); *In re Clower*, 831 A.2d 1030 (D.C. 2003) (per curiam) (public censure).

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 impose a sanction of a 90-day suspension with reinstatement conditioned upon proof of fitness, fully stayed in favor of a two-year period of probation with the conditions that she (i) not engage in any misconduct in this or any other jurisdiction; (ii) engage with the D.C. Bar Lawyer Assistance Program for monitoring and treatment related

to Respondent's medical issues; and (iii) attend the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond course and the Ethics and Trust Accounts CLE within 90 days. In the event that Respondent fails to comply with the terms of her probation, Disciplinary Counsel may seek to revoke Respondent's probation pursuant to D.C. Bar R. XI, § 3 and Board Rule 18.3, and request that Respondent be required to serve the 90-day suspension with reinstatement conditioned upon proof of fitness to practice law.

AD HOC HEARING COMMITTEE

Amy Garber
Chair

Ria Fletcher
Public Member

Webster R.M. Beary
Attorney Member