

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

In the Matter of:	:
	:
CLARISSA THOMAS-EDWARDS,	:
	:
Respondent.	:
	:
	Bar Docket Nos. 098-08 and 019-05
A Member of the Bar of the District of	:
Columbia Court of Appeals	:
(Bar Membership No. 434607)	:

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

**I. PROCEDURAL HISTORY**

This matter came before an *ad hoc* Hearing Committee on December 17, 2008, for a limited hearing on a petition for negotiated discipline (First Amended Petition for Negotiated Discipline, hereinafter the “Petition”). The members of the Hearing Committee are Mary Lou Soller, Esquire, Ms. La Verne Fletcher, and Stephen W. Grafman, Esquire. The office of Bar Counsel was represented by Assistant Bar Counsel Becky Neal. The Respondent, Clarissa Thomas-Edwards, was represented by Aaron L. Handleman, Esquire.

The Hearing Committee has carefully considered the First Amended Petition for Negotiated Discipline filed by Bar Counsel, the accompanying affidavit filed by Respondent (First Amended Affidavit, hereinafter the “Affidavit”), the oral statements made by the complainant in Bar Docket No. 2008-D098<sup>1</sup>, and the representations made by Respondent and Bar Counsel during the limited hearing. The Hearing Committee also has fully considered the

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<sup>1</sup> The Bar Docket numbers in the caption of this case have been transposed to conform to the Board’s numbering system.

aggravating and mitigating factors listed in the Petition and the Affidavit and the relevant precedents imposed in similar cases. Finally, the Hearing Committee Chair has reviewed Bar Counsel's investigative files and records *in camera*, met with Bar Counsel *ex parte*, and shared the results of her *in camera* review and *ex parte* meeting with the entire Hearing Committee.<sup>2</sup>

Based on its review, the Hearing Committee recommends that the Court accept the petition for negotiated discipline and impose a public censure upon Respondent, with conditions agreed to by Bar Counsel and Respondent.

## **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. at 11-12<sup>3</sup>; Affidavit at ¶ 2.
3. The allegations that were brought to the attention of Bar Counsel involve two matters. They are described in the Petition as follows:

- (a) In Bar Docket No. 2008-D098, Respondent failed to keep a client reasonably informed about the status of a matter, failed to maintain a normal attorney-client relationship with that client, and, in connection with the termination of that representation, failed to take timely steps to refund unearned fees, in violation of D.C. Rules of Professional Conduct 1.4(a) (Communication), 1.14(a) (Client with Diminished Capacity), and 1.16(d) Terminating Representation).

Petition at ¶¶ 1-16.

- (b) In Bar Docket No. 2005-D019, Respondent failed to hold property of clients and third parties in her possession in connection with a representation separate from her own property (commingling) and failed

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<sup>2</sup> See Confidential Appendix to the Report and Recommendation of the *Ad Hoc* Hearing Committee.

<sup>3</sup> "Tr." is used to designate the transcript of the limited hearing held on December 17, 2008.

to keep complete records of such client and third party's funds, in violation of D.C. Rules of Professional Conduct 1.15(a) (Safekeeping Property).

*Id.* at ¶¶ 17-21.

4. Bar Counsel and Respondent agreed to stipulated facts concerning the misconduct and at the limited hearing, Respondent knowingly and voluntarily acknowledged that the material facts and misconduct stipulated in the Petition are true and correct. Petition at ¶¶ 1-21; Affidavit at ¶ 4; Tr. at 12-13, 34-36; *see also* Tr. at 16.

5. Respondent is agreeing to the disposition because she believes she cannot successfully defend against discipline based on the stipulated misconduct. Tr. at 36; Affidavit at ¶ 5; *see also* Tr. at 44.

6. Bar Counsel has not made any promises to Respondent other than what is contained in the Petition for Negotiated Discipline. Petition at ¶ 22; Affidavit at ¶ 7. During the limited hearing, Respondent has confirmed that there have not been any other promises or inducements by anyone, other than those set forth in the Petition. Tr. at 37-43.

7. Respondent has conferred with her counsel. Tr. at 6, 10; Affidavit at ¶ 1.

8. Respondent's decision to enter into the negotiated discipline is freely and voluntarily made. Tr. at 44; Affidavit at ¶ 6.

9. Respondent is not being subjected to coercion or duress. *Id.*

10. Respondent is competent. Tr. at 6-7.

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

- (a) Respondent will waive her right to cross-examine adverse witnesses and to compel witnesses to appear on her behalf;

- (b) Respondent will waive her right to have Bar Counsel prove each and every charge by clear and convincing evidence;
- (c) Respondent will waive her right to file exceptions to reports and recommendations filed with the Board and with the Court;
- (d) The negotiated disposition, if approved, may affect Respondent's present and future ability to practice law;
- (e) The negotiated disposition, if approved, may affect Respondent's bar membership in other jurisdictions; and
- (f) Any sworn statement by Respondent in her affidavit may be used to impeach her testimony if there is a subsequent hearing on the merits.

Affidavit at ¶¶ 9, 10, 12; Tr. at 9, 79-81.

12. Respondent and Bar Counsel have agreed that the sanction in this matter should be a public censure by the Court. Petition at ¶ 23; Affidavit at ¶ 13; Tr. at 36, 38.

13. Respondent further understands that there are two conditions of this negotiated disposition. Specifically, these conditions are:

- (a) Respondent will take five (5) hours of pre-approved continuing legal education related to the maintenance of trust accounts, record keeping and/or safekeeping client property, and will certify and provide documentary proof that she has done so, within six months of the date of a final order of the D.C. Court of Appeals accepting the negotiated discipline.
- (b) Within two months of a final order of the D.C. Court of Appeals accepting the negotiated discipline, Respondent will meet with the Manager of the Practice Management Advisory Service of the District of Columbia Bar, so that he can conduct a full assessment of Respondent's business structure and her practice, including but not limited to reviewing her financial records, client files, engagement letters, supervision and training of staff, responsiveness to clients, and Respondent's business structure (including whether the existence of a Board of Directors comprised of non-attorneys is appropriate). In addition, Respondent will comply with any of his recommendations and be in such compliance for a period of twelve consecutive months within the first two years after the date of a final order of the D.C. Court of Appeals accepting the negotiated discipline. Following such period, Respondent will file with the Office of Bar Counsel a signed acknowledgement of her compliance.

Petition at ¶ 24; Affidavit at ¶ 13; Tr. at 39-43.

14. During the limited hearing, Bar Counsel also clarified that Respondent understands and agrees that this negotiated discipline would resolve the matters investigated by Bar Counsel, but it would not prevent Bar Counsel from pursuing any other allegations made by any client in the future about misused or appropriated client funds. Tr. at 37-38.

15. The Petition includes two circumstances in aggravation, which the Hearing Committee has taken into consideration, which are:

- (a) Respondent's misconduct involved two separate matters resulting in multiple rule violations.
- (b) In Bar Docket No. 2008-D098, Respondent delayed refunding her unearned fee for over a year and until after the complainant filed a complaint with the Office of Bar Counsel and a petition for fee arbitration with the Attorney Client Arbitration Board.

Petition at ¶¶ 31-32.

16. Respondent and Bar Counsel have provided the following circumstances in mitigation, which the Hearing Committee has taken into consideration:

- (a) Respondent has not received any prior discipline;
- (b) Respondent has accepted full responsibility for her misconduct and has demonstrated remorse; and
- (c) Respondent has fully cooperated with Bar Counsel, including meeting with Bar Counsel and providing full records.

Petition at ¶¶ 33-35; Affidavit at ¶ 15; *see also* Tr. at 20-21, 24-28.

17. The complainant made oral statements during the limited hearing, which the Hearing Committee has taken into consideration. Tr. at 58-69. Respondent did not agree with all of the complainant's statements, but she did not dispute that she violated the D.C. Rules of Professional Conduct that are the subject of the Petition. *Id.* at 28-33. Her position was that she

did engage in some work and did have some contact with the complainant, but she admits that she did not have any “excuse” for her conduct and that it violated Rules 1.4(a), 1.14(a), and 1.16(d). *Id.* at 20-25, 73.

18. At the limited hearing, Respondent also provided testimony that she did not understand the rules relating to the accounting requirements for client funds, but that she had taken steps to correct her violations while this matter has been under investigation. *Id.* at 25-28.

19. The Petition included a statement of relevant precedent to support the parties’ position that the agreed-upon sanction is justified. The statement of precedent submitted by the parties is as follows:

- (a) In Bar Docket No. 2008-D098, the Rules violated include 1.4(a), 1.14(a), and 1.16(d)<sup>4</sup>.
  - (1) The range of sanctions for violations of these Rules in a single client matter range from an informal admonition to 30-day stayed suspension.
  - (2) A public censure is within the range of relevant precedent and has been imposed in other similar cases. *See In re Bland*, 714 A.2d 787 (D.C. 1998) (*per curiam*).
- (b) In Bar Docket No. 2005-D019, the Rule violated was Rule 1.15(a).
  - (1) The range of sanctions for violations of this Rule result in very different sanctions, depending on the misconduct involved.
  - (2) In this matter, the conduct included commingling and failure to maintain complete records. It did not include any misappropriation of client funds.
  - (3) The range of sanctions for violations of this Rule, based primarily on failure to maintain records, include informal reprimands.

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<sup>4</sup> It is clear that the parties have stipulated that the conduct pertaining to Bar Docket No. 2008-D098 which is the subject of the Petition is conduct that violated Rules 1.4(a), 1.14(a), and 1.16(d). Petition at ¶ 16; Tr. at 13-14. However, the section of the Petition entitled “Relevant Precedent” lists the relevant Rules as “1.3, 1.4, and 1.16(d).” The Hearing Committee recognizes that this listing is in error.

- (4) The range of sanctions for violations of this Rule based on similar conduct (commingling and failure to maintain complete records) runs from public censure to a 30-day suspension.

Petition at ¶¶ 25-29.

### **III. DISCUSSION**

The Hearing Committee shall approve the petition for 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) the agreed sanction is justified.

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

With regard to the first factor, this Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and has agreed to the sanction therein. After being placed under oath, Respondent 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. at 12-13, 34-36, 44. Respondent understands the implications and consequences of entering into this negotiated discipline and believes that it is in her best interests to do so. Affidavit at ¶¶ 1-14; Tr. at 44.

Respondent has acknowledged that any and all promises that have been made to her by Bar 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. at 37-44.

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 she could not successfully defend against the misconduct described in the Petition. Tr. at 36; Affidavit at ¶ 5.

With regard to the second factor, the Petition states that Respondent violated Rules of Professional Conduct 1.4(a), 1.14(a), 1.16(d) in Bar Docket No. 2008-D098 and Rule 1.15(a) in Bar Docket No. 2005-D019. The evidence supports Respondent's admission that she violated these Rules.

Specifically, relating to Bar Docket No. 2008-D098, the stipulated facts describe that W.C. helped her sister, S.C., with her affairs because S.C. suffered from bipolar disorder. Petition at ¶¶ 1-2. W.C. hired Respondent in October 13, 2006, to represent S.C. in an employment matter. *Id.* at ¶ 1. W.C., S.C., and their mother went to Respondent's office to retain her, but Respondent was not in the office. *Id.* at ¶ 2. They met with Respondent's non-attorney assistant and provided her with a notebook of information and documents relating to the representation of S.C.. *Id.* at ¶ 3. At that time, W.C. signed a retainer agreement and paid a fee of \$3,000, which was to serve as a retainer. *Id.* at ¶ 4. Thereafter, Respondent failed to adequately communicate with W.C. and never communicated with S.C. *Id.* at ¶ 5. As a result, W.C. terminated Respondent's services on February 6, 2007. *Id.* at ¶ 6. During the period from February through May 2007, W.C. sought an itemized bill and a return of her retainer. *Id.* at ¶¶ 6-14. Each time, W.C. spoke either with Respondent or her assistant and was told that a refund would be forthcoming in the near future. *Id.* After W.C. filed a bar complaint, Respondent first took the position that she was not obligated to return the fee, but later agreed to return the full retainer because she could not locate any invoice or time records to substantiate



time she said she spent on the matter. *Id.* at ¶ 15. The \$3,000 fee was returned to W.C. on August 8, 2008. *Id.*

Relating to Bar Docket No. 2005-D019, the stipulated facts are that Respondent maintained an IOLTA account (“the Escrow Account”) and an operating account at SunTrust Bank from January 2003 through May 2008. Petition at ¶¶ 17-18. During this period, she commingled client funds with personal funds in her Escrow Account by depositing earned fees, funds from her operating account, and unidentifiable cash deposits into this account. *Id.* at ¶ 17. She commingled client funds with personal funds in her operating account by depositing client funds into this account. *Id.* at ¶ 18. In addition, during this period, Respondent failed to maintain complete records of her deposits and disbursements. *Id.* at ¶ 19. Despite these Rule violations, based on Bar Counsel’s extensive investigation, it does not appear that any clients were actually harmed or prejudiced by Respondent’s conduct. *Id.* at ¶ 20; Tr. at 75-76. Because Respondent maintained a large sum of personal funds in her escrow account, there were always funds in that account sufficient to satisfy her obligations to her clients. Tr. at 76-77.

The third and most complicated factor the Hearing Committee must consider is whether the sanction agreed upon is justified.

Upon consideration of the entire record in this matter, including the circumstances in aggravation and mitigation and the relevant precedent, we conclude that the agreed upon negotiated discipline is justified.

As described in the relevant precedent section in the petition, the range of sanctions for a violation of Rules 1.4 and 1.16(d) is from an informal admonition to suspension.<sup>5</sup> *See, e.g., In re*

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<sup>5</sup> Although violations of Rule 1.14(a) are part of the stipulations and are included in the negotiated discipline, the Hearing Committee is not aware of any cases in which discipline has been imposed for  
(footnote continued on next page)

*Steinberg*, 878 A.2d 496 (D.C. 2005) (*per curiam*)(60-day suspension); *In re Mudd*, Bar Docket No. 458-02 (BPR Nov. 10, 2004) (informal admonition). The range of sanctions for a violation of Rule 1.15(a) varies widely, depending on the conduct involved. In prior cases involving commingling and failure to maintain proper records, the range of sanctions has been from public censure to suspension. See *In re Mott*, 886 A.2d 535 (D.C. 2005) (*per curiam*)(public censure for commingling and failure to keep and maintain financial records); *In re Iglehart*, 759 A.2d 203 (D.C. 2000) (*per curiam*)(30-day suspension for commingling and failure to maintain financial records). It is important to note that there is no allegation that any client funds were misappropriated or that any client was actually prejudiced or harmed, because such circumstances usually result in more severe sanctions.

In this instance, the Hearing Committee finds it significant that although W.C. was harmed because of the amount of time she had to spend to retrieve her money, no harm to the client or her legal interests was caused by Respondent's neglect of this matter and failure to communicate with the client. In addition, no harm to any client resulted from Respondent's violation of Rule 1.15(a).

The Hearing Committee also finds it significant that Bar Counsel and Respondent have concluded that Respondent's conduct appears to have resulted from Respondent's failure to manage her office and to represent her clients professionally because of practice management issues. Bar Counsel and Respondent also have concluded that Respondent failed to properly manage client and personal funds because of her lack of understanding of her professional obligations. A public censure will serve to ensure that Respondent understands that her

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violations of this Rule. Thus, the Hearing Committee's discussion of the appropriate sanctions for violations of Rules 1.4 and 1.16(d) shall also include the violations of Rule 1.14(a).

violations are serious, and that the public is entitled to know about her failures. The requirements required by Bar Counsel – and agreed to by Respondent – as conditions of the public censure seem appropriate to improve Respondent’s service to her clients and to prevent Respondent from repeating past mistakes.

**IV. CONCLUSION AND RECOMMENDATION**

It is the conclusion of the Hearing Committee that the discipline negotiated in this matter is appropriate. The Hearing Committee thus recommends that the Court accept the petition for negotiated discipline and impose a public censure on Respondent.

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved.

HEARING COMMITTEE

\_\_\_\_\_/MLS/\_\_\_\_\_  
Mary Lou Soller  
Chair

\_\_\_\_\_/LF/\_\_\_\_\_  
La Verne Fletcher  
Public Member

\_\_\_\_\_/SWG/\_\_\_\_\_  
Stephen W. Grafman  
Attorney Member

Dated: February 10, 2009