THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

ISSUED
Oct 25 2024 1:04pm
Board on Professional Responsibility

In the Matter of:	:	
	:	
CLAUDIA FLOWER,	:	
	:	Board Docket No. 23-ND-006
Respondent.	:	Disciplinary Docket No. 2022-D014
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 489682)	:	

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

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on June 18, 2024, for a limited hearing on an Amended Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Christina Biebesheimer, (Chair), Dr. Christopher W. Speller (Public Member), and John E. McGlothlin, (Attorney Member). The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel, Caroll G. Donayre. Respondent, Claudia Flower, was represented by Daniel Schumack.

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"), and 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. The Hearing Committee also has fully considered the translated, written statement submitted by the complainant, the Chair's *in camera* review of Disciplinary Counsel's files and records, and the Chair's *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, the Hearing Committee finds that the negotiated discipline of a public censure 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 her an investigation into allegations of misconduct. Tr. 17-18;[1] Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent violated D.C. Rules of Professional Conduct ("Rules") 1.1(a) (competence) and 1.16(d) (failure to protect client's interests in connection with termination of representation), or the parallel violations under 8 C.F.R. § 1003.102 (Executive Office for Immigration Review grounds of discipline) ("EOIR" or "EOIR Rules"). Petition at 5.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 9, 18-19, 22; Affidavit ¶¶ 4, 6. Specifically, Respondent acknowledges that

[1] "Tr." refers to the transcript of the limited hearing held on June 18, 2024.

(1) YMP is a citizen of El Salvador. On May 2, 2013, YMP arrived in the U.S. and expressed fear of returning to his country.

(2) On June 5, 2014, Respondent presented YMP with an engagement agreement for representation in his asylum case before the Immigration Court. Respondent set the legal fee at $6,500.

(3) On June 30, 2014, Respondent filed YMP'[s] petition for asylum.

(4) On July 11, 2017, after an asylum hearing, an Immigration Judge denied YMP's asylum claim.

(5) On July 21, 2017, Respondent and YMP met at her office to discuss the possibility of appealing the denial of his asylum application. Respondent told YMP that he would have to pay an additional legal fee for Respondent to represent him on the appeal.

(6) YMP paid the $110 government filing fee to Respondent to file the appeal at the meeting but did not advance any legal fees for the appeal. Respondent did not provide YMP anything at that meeting in writing about the basis or rate of her fee for representing him in the appeal.

(7) On July 24, 2017, Respondent filed a notice of entry of appearance and a notice of appeal on behalf of YMP with the Board of Immigration Appeals [("BIA")].

(8) Between July 24, 2017, and June 2018, Respondent met with YMP on at least four occasions regarding case status and to reach an agreement in writing about the representation.

(9) Respondent and YMP last met in person on June 15, 2018, at which time Respondent recommended that YMP withdraw the appeal in light of a recent Attorney General opinion in the Matter of A-B-, which appeared to render YMP's appeal futile.

(10) Respondent informed YMP that she would withdraw the appeal unless she heard back from YMP with contrary instructions by June 19, 2018. Having heard nothing by that date from YMP, Respondent filed

a motion to withdraw the appeal in which she cited a change in controlling law (Matter of A-B-) as the reason for withdrawal.

(11) The BIA granted the motion and dismissed YMP's appeal in October 2018.

(12) Respondent forwarded that decision to YMP via certified mail and YMP received the mailing.

(13) On April 14, 2021, YMP requested a copy of his file, and a file pickup appointment was set for April 22, 2021. YMP did not show up for the appointment.

(14) On May 24, 2021, successor counsel for YMP emailed Respondent requesting YMP's file. Respondent replied the next day indicating that the file had been ready since April 22, 2021. Successor counsel's assistant picked up the file on May 26, 2021.

(15) On December 21, 2021, successor counsel filed a Motion to Reopen the previously withdrawn appeal on grounds of Respondent's ineffective assistance of counsel and changes in the law. Respondent cooperated with successor counsel's efforts on behalf of YMP, by providing a declaration that successor counsel attached to the Motion to Reopen.

(16) On March 10, 2022, the BIA denied the Motion to Reopen as time-barred.

(17) Successor counsel appealed denial of the Motion to Reopen to [the] BIA. The parties believe that Motion is still pending but agree that its outcome does not impact the rule violations or sanctions to be imposed.

(18) In the above-mentioned declaration, Respondent asserted that she thought she needed to withdraw the appeal in order to withdraw her representation; but as part of that declaration acknowledged, in hindsight, that she did not need to withdraw the appeal in order to move to withdraw her appearance.

> (19) Respondent stated that she withdrew the appeal after her client failed to comply with the deadline for giving her other instructions by the deadline she gave him in their June 15, 2018, meeting. YMP, however, had not consented to Respondent's withdrawing the appeal.

Petition at 2-5.

5. Respondent is agreeing to the disposition because Respondent believes that she cannot successfully defend against discipline based on the stipulated misconduct. Tr. 17; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Affidavit ¶ 7. That promise is to recommend the sanction set forth in the Petition. Petition at 6. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 21-22.

7. Respondent has conferred with her counsel. Tr. 9-10; Affidavit ¶ 1.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 9, 18-22; Affidavit ¶¶ 4, 6.

9. Respondent is not being subjected to coercion or duress. Tr. 9, 22; 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. 10-12.

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 (as explained above, Respondent is represented by counsel);

b) she will waive her right to cross-examine adverse witnesses and to compel witnesses to appear on 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. 13-16; Affidavit ¶¶ 1, 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a public censure and that Respondent take three hours of Continuing Legal Education ("CLE") in the area of client communications. But because Respondent completed the three hours of CLE before the Petition was filed, the parties agree that the sanction should be a public censure without any further conditions. Petition at 6; Tr. 6, 21, 23-24.

13. Respondent and Disciplinary Counsel have agreed that there are no aggravating circumstances. Tr. 23; Petition at 9 (listing only mitigating circumstances).

14. Respondent has provided the following circumstances in mitigation from the Petition and her Affidavit, which the Hearing Committee has taken into consideration: Respondent has no prior discipline, has taken full responsibility for her misconduct, has demonstrated remorse, and has fully cooperated with Disciplinary Counsel. Petition at 9; Affidavit ¶ 15; *see* Tr. 22-23.

15. The complainant presented a translated, written comment, which provides the following information and which the Hearing Committee has taken into consideration pursuant to Board Rule 17.4(a): "I [YMP] agree with the sanction but at the same time I want to make it known that the withdrawal of my appeal affected me a lot because it left me unable to renew my work permit." Complainant's Submission at unnumbered pdf p. 4 (filed June 10, 2024).

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;
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> (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
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> (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 she 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 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. *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 she believes that she could not successfully defend against the misconduct described in the Petition. *See supra* Paragraph 5.

Regarding the second factor, the Petition states that Respondent violated Rule 1.1(a) (competence) and 1.16(d) (failure to protect client's interest in connection

with termination with representation), or the parallel violations under the EOIR Rules. Petition at 5.

Choice of Law. Respondent is subject to only one set of rules for each charged violation. *See* Rule 8.5, cmt. [3]. In assessing which rules to apply, Rule 8.5(b)(1) provides that "[f]or conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise." Citing *Jenkins*, another negotiated case, the parties assert that the Hearing Committee need not determine whether this matter is governed by the D.C. Rules or "parallel violations under 8 C.F.R. § 1003.102 (E[OI]R grounds of discipline)" because "choice of law issues need not be resolved in a Negotiated Petition." Petition at 5, n.1 (citing *In re Jenkins*, 298 A.3d 293 (D.C. 2023) (per curiam)). We agree that we need not conclusively resolve this issue because D.C. Rule 1.1(a) and its EOIR counterpart (8 C.F.R. § 1003.102(o)) are substantively identical. *See In re Jenkins*, Board Docket No. 23-ND-002, at 7-8 (HC Rpt. June 29, 2023), *recommendation adopted*, 298 A.3d 293. Also, because the EOIR Rules do not have a counterpart to D.C. Rule 1.16(d), we apply D.C. Rule 1.16(d). *See In re Osemene*, Board Docket No. 18-BD-105 (BPR May 31, 2022), appended Hearing Committee Report at 35 (the BIA intends that state disciplinary rules apply to violations of state rules that are not covered by the BIA's own disciplinary rules), *recommendation adopted where no exceptions filed*, 277 A.3d 1271 (D.C. 2022) (per curiam); *see also In re Alexei*, Board Docket No. 21-BD-050 (BPR May 8, 2024) (ordering informal admonition issued June 27,

2024), appended Hearing Committee Report at 17-18; Petition at 1 (noting Respondent's membership to the D.C. Bar).

The Merits. The evidence supports Respondent's admission that she violated Rule 1.1(a) (failure to provide competent representation to her client) or 8 C.F.R. § 1003.102(o) (same),[2] and Rule 1.16(d) (failure to protect her client's interests in connection with the termination of representation). The stipulated facts demonstrate that, rather than simply withdrawing her appearance as counsel, Respondent dismissed YMB's case without his consent. This prevented YMB's asylum appeal from being heard, and demonstrated a lack of competence and a failure to protect his interests in connection with termination of her representation.

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

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[2] Section 1003.102(o) makes it a violation to

> Fail[] to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.

This is substantively similar to Rule 1.1(a).

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, the complainant's translated statement, and the Committee's review of relevant precedent, the Hearing Committee concludes that the agreed-upon sanction of a public censure is justified and not unduly lenient.

A public censure is the most serious of the non-suspensory sanctions. An informal admonition is the least serious sanction, followed by a Board reprimand, and a public censure from the Court of Appeals. *See In re Schlemmer*, 870 A.2d 76, 80 (D.C. 2005).

Informal Admonitions. Informal admonitions have been issued to respondents who violated both Rules 1.1 and 1.16. *See, e.g.*, *In re Payne*, Bar Docket No. 2005-D174 (Letter of Informal Admonition Sept. 1, 2005) (informal admonition for violating Rules 1.1(a), 1.1(b), 1.3(a), 1.4(a), and 1.16(a)(1)); *In re Oswald*, Bar Docket No. 2008-D272 (Letter of Informal Admonition July 8, 2009) (informal admonition for violating Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.4(b), and 1.16(a)). The parties also cite cases involving informal admonitions for failing to timely file a client's claim. *See, e.g.*, *In re Katz*, Bar Docket No. 2008-D484

(Letter of Informal Admonition, July 8, 2009) (informal admonition for violating Rules 1.1(a), 1.1(b), 1.3(a), and 1.3(c)), *cited in* Petition at 7 (noting the informal admonishment was for "failing to file malpractice claim before the statute of limitations expired"); *In re Price*, Disc. Docket No. 2023-D022 (Letter of Informal Admonition, June 3, 2023) (informal admonition for violating Rules 1.1(a), 1.3(a), and 1.3(c) based on "overlooking the correct statute of limitation and missing the deadline").

Respondent's misconduct and circumstances are different and less serious than those of the respondents who neglected their cases and let the statutes of limitations run. Unlike those respondents, Respondent acknowledged an issue with her client's appeal, informed her client of it, and withdrew the appeal after hearing no response—sincerely believing this was her only option. Though withdrawing her client's appeal was a serious mistake, Respondent has accepted responsibility and has already fulfilled the CLE portion of her sanction. These traits, coupled with no violations of diligence and zeal (as in *Payne* and *Oswald* discussed above), cut in favor of a public censure not being unduly lenient.

Public Censures. Public censures have been imposed for more serious misconduct than here, sometimes coupled with mitigating circumstances. *See In re Kaufman*, 14 A.3d 1136 (D.C. 2011) (per curiam) (public censure for intentional neglect of a client's personal injury lawsuit, along with aggravating and mitigating factors (including non-*Kersey* mitigation), in violation of Rules 1.1(a), 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.4(a), and 1.16(d)); *In re Avery*, 926 A.2d 719 (D.C. 2007) (per

curiam) (public censure, with CLE requirement, for violating Rules 1.1(a), 1.3(a), 1.3(c), 1.4(a), 1.4(b), 1.5(c), 1.5(e), and 1.16(d)); *In re Bland*, 714 A.2d 787 (D.C. 1998) (per curiam) (public censure for violations of Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.4(b), 1.16(b), 1.16(d), 3.4(c), 3.4(d)).[3] To reiterate, Respondent did not neglect her matter, much less intentionally do so like the respondent in *Kaufman*. Nor did Respondent fail to advocate diligently or zealously, or knowingly disobey a tribunal's order as the respondent did in *Bland*.

Suspensions. Cases imposing suspensions also contain more serious conduct. *Outlaw* and *Cole*, for example, involve Rule 1.1(a) violations and other Rule violations including Rule 8.4(c) (dishonesty). And cases involving dishonesty have "typically indicated that such conduct is viewed as more severe than cases of inadvertent neglect." *In re Outlaw*, 917 A.2d 684 (D.C. 2007) (sixty-day suspension for violating Rules 1.1(a), 1.1(b), 1.3(a), 1.4(a), 1.4(b), and 8.4(c)); *In re Cole*, 967 A.2d 1264 (D.C. 2009) (thirty-day suspension for violating Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b), 1.3(c), 1.4(a). 1.4(b), 8.4(c), and 8.4(d)). The absence of dishonesty here is a significant distinguishing factor.

Finally, *Thai* and *Sumner* are helpful. In recommending suspending the respondent for sixty days, with thirty days stayed in favor of one year probation with reinstatement conditioned upon restitution, the Board in *Thai* concluded that the

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[3] We also consider *In re Bingham* for our analysis. 881 A.2d 619 (D.C. 2005) (per curiam) (public censure, with probation and with condition of restitution before reinstatement for violating Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), and 1.16(a)(2), where the Court also noted the respondent's health problems and lack of prior discipline in mitigation, but also the duration of the neglect in aggravation).

respondent's "negligence, and the severity of the consequence suffered by [the client] as a result of it, calls for a period of actual suspension." Bar Docket No. 154-03, at 19 (BPR July 31, 2008), *recommended sanction adopted*, 987 A.2d 428 (D.C. 2009) (finding violations of Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), and 1.16(d)). And it further deemed that a "lesser sanction fails to recognize the seriousness of [r]espondent's misconduct and therefore would not adequately protect the public, the courts and the legal profession." *Id.* We are sympathetic to YMP that the withdrawal of his appeal "affected [him] a lot because it left [him] unable to renew [his] work permit." *See supra* Paragraph 15. But Respondent's fewer instances of misconduct—including no violation of neglect—combined with her mitigating circumstances suggest a lower sanction than the respondent in *Thai* received.

In *Sumner*, the respondent received a thirty-day suspension for violating Rules 1.1(a), 1.1(b), 1.4(a), 1.5(b), 1.16(d), and 4.1(a), in part because of the respondent's "abandonment of [his] client." 665 A.2d 986, 987 (D.C. 1995) (appended Board Report). In concluding that a thirty-day suspension was "at the outer range of an appropriate sanction here," the Board weighed the respondent's "episode of depression" against the "prejudice to the client and aggravation of delays in the criminal justice system caused by this type of conduct." *Id.* at 990-91 (appended Board Report). Respondent did not have an episode of depression or the like, but Respondent also did not commit the "accompanying violations of other disciplinary rules" found in *Sumner*—all distinguishing factors we have considered. *Id.* at 991.

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 sanction Respondent with a public censure.

AD HOC HEARING COMMITTEE

Christina Biebesheimer

Christina Biebesheimer
Chair

Christopher Wendell Speller

Dr. Christopher W. Speller
Public Member

John E. McGlothlin

John E. McGlothlin
Attorney Member