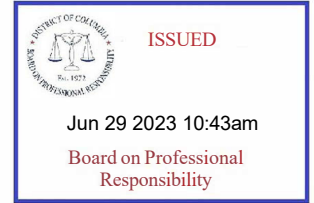


THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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



In the Matter of: :
: :
GEMMA ANTOINE-BELTON, :
: :
Respondent. : Board Docket No. 22-ND-004
: Disciplinary Docket No. 2017-D134
: :
A Member of the Bar of the :
District of Columbia Court of Appeals :
(Bar Registration No. 405604) :

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 April 6, 2023, for a limited hearing on a Petition for Negotiated Discipline (the “Petition”). The members of the Hearing Committee are Michael Zoeller, Chair; Roxanne Littner, Public Member; and Webster R. M. Beary, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Jerri Dunston. Respondent, Gemma Antoine-Belton, was represented by Sarah W. Conkright.

The Hearing Committee has carefully considered the Petition for Negotiated Discipline 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 Counsel. The Hearing Committee also has fully

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

considered its *in camera* review of Disciplinary Counsel’s files and records and *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, we approve the Petition, find the negotiated discipline of a sixty-day suspension with thirty days stayed in favor of a one-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 a proceeding involving allegations of misconduct. Tr. 24;¹ Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are violations of D.C. Rules of Professional Conduct 1.1(a) and (b) (failure to provide competent representation and failure to serve the client with skill and care), 1.7(b)(4) (conflict created by lawyer’s own interests), and 8.4(d) (serious interference with the administration of justice). Petition at 8-9.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 25; Affidavit ¶ 4.

Specifically, Respondent acknowledges that:

- (1) Respondent Antoine-Belton is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on December

¹ “Tr.” Refers to the transcript of the limited hearing held on April 6, 2023.

5, 1986, and assigned Bar number 405604. Respondent also is admitted to practice in Pennsylvania and New York.

- (2) In April or May 2011, Respondent was appointed to the Fiduciary Panel of the D.C. Superior Court. As a member of the fiduciary panel, Respondent was eligible to be appointed by Superior Court judges, *inter alia*, to serve as counsel, guardian *ad litem*, permanent guardian, or conservator in intervention matters pending before the Probate Court.

COUNT I: *In re Keefer*, 2011 INT 437

- (3) On February 17, 2012, Respondent was appointed as Guardian and Conservator for adult incapacitated ward Thomas Keefer. This was Respondent's first appointment as Conservator, although she had been appointed as guardian and guardian *ad litem* on several occasions.
- (4) Respondent hired her sister, Patricia Antoine, who is also an accountant, to perform accounting tasks to assist in the preparation of Respondent's First Accounting as Mr. Keefer's Conservator. On March 27, 2013, Respondent signed a check drawn on Mr. Keefer's conservatorship account made out to Ms. Patricia Antoine for \$400 to pay for her sister's services in preparing Mr. Keefer's First Accounting.
- (5) In April and June 2012, Respondent hired her husband, Gerald Belton, Esq. (who also was appointed to the Fiduciary Panel), to assist her in obtaining and subsequently replacing a refrigerator for Mr. Keefer. The new refrigerator accepted by the ward cost less than \$150. Mr. Belton charged \$864 (at \$90 per hour) for his services, and on July 26, 2013, Respondent paid her husband \$864 by a check drawn on Mr. Keefer's conservatorship account.
- (6) On March 29, 2014, Respondent wrote a check for \$925 on Mr. Keefer's conservatorship account to pay for her sister's additional accounting services.
- (7) At a hearing on November 26, 2014, Judge John Campbell discussed with Respondent the concerns that arise when a fiduciary hires a relative to perform services for a ward. He removed

Respondent as Conservator and ordered her to repay Mr. Keefer's conservatorship estate the \$864 that she paid her husband, which she did on December 3, 2014.

- (8) By Order dated April 10, 2015, Judge Gerald Fisher ordered Respondent to explain in writing why the \$925 accounting fee was justified for a conservatorship estate valued at less than \$25,000. Ultimately, Respondent's sister wrote off \$500 from her bill.

COUNT II: *In re Budway*, 2012 INT 448

- (9) Respondent was appointed Guardian and Conservator for incapacitated adult, Kathleen Budway, on April 4, 2013. This was also one of Respondent's early appointments as Conservator, however she had previously been appointed on several occasions as guardian and guardian *ad litem*.
- (10) On May 24, 2013, Respondent paid her husband \$945 by a check drawn from Ms. Budway's conservatorship account for his services in traveling to Florida to secure the ward's condominium and automobile.
- (11) Respondent also hired her sister to perform bookkeeping services and assist her in the preparing the First Accounting in the Budway matter. On July 23, 2013, Respondent paid her sister \$280 by check from Ms. Budway's conservatorship account as the first in a series of payments.
- (12) Respondent made three additional payments to her sister from Ms. Budway's conservatorship account: 1) \$1,500 on May 27, 2014 (as further payment for assistance preparing the First Accounting); 2) \$1,650 on June 4, 2014 (as further payment for assistance preparing the First Accounting); and 3) \$425 on July 18, 2014 (for general bookkeeping). The Court reviewed and approved these fees in this complicated initial accounting.
- (13) On December 3, 2014, days after the hearing before Judge Campbell when she was removed as Conservator in the *Keefer* matter and after being questioned about the payment, Respondent refunded the \$945 she paid her husband to the Budway estate.

- (14) Beginning in February 2016, Maureen Murphy leased a room in the condominium that Respondent purchased on Ms. Budway's behalf. Respondent drafted and co-signed the lease with Ms. Budway. The lease required Ms. Murphy to pay the \$725 monthly rent directly to the ward. Respondent did not collect the funds for the conservatorship estate or disclose the payments as income in her annual accounting.

COUNT III: *In re Kalinichenko*, 2013 INT 257

- (15) On September 24, 2013, Respondent was appointed as Guardian and Conservator for Irina Kalinichenko, an adult incapacitated ward.
- (16) Respondent hired her sister to assist her in preparing the First Accounting. On November 25, 2014, Respondent paid her sister \$100 from Mrs. Kalinichenko's conservatorship account as the first in what was intended to be a series of payments.
- (17) By order dated March 16, 2016, Judge Russell Canan ordered Respondent to explain whether she was related to Patricia Antoine. Respondent told Judge Canan that she had repaid the Kalinichenko estate \$100 on March 21, 2016, and that she would discontinue using her sister's services and make no further payments to her.
- (18) On or around November 5, 2014, Respondent moved Sylvia Becraft, another of Respondent's wards, into Mrs. Kalinichenko's home to rent one of the bedrooms for \$500 per month.
- (19) Respondent paid rent from Ms. Becraft's guardianship account directly to Mrs. Kalinichenko for five months but did not deposit the income into Mrs. Kalinichenko's conservatorship account or disclose it when she submitted her Second Accounting in the Kalinichenko matter.
- (20) When Respondent moved Ms. Becraft into Mrs. Kalinichenko's home, Respondent did not have a lease signed (so both wards were unprotected); the home was still being renovated; and the house was subject to a reverse mortgage.

COUNT IV: *In re Becraft*, 2014 INT 355

- (21) Respondent was appointed as Guardian for adult incapacitated ward, Sylvia Becraft, on October 20, 2014.
- (22) On April 6, 2015, Respondent moved Ms. Becraft from Mrs. Kalinichenko's house into a two-bedroom rental property that Respondent owned.
- (23) Respondent knew the situation created a conflict of interest. She did not present Ms. Becraft with a lease; nor did she charge Ms. Becraft for rent and utilities.
- (24) On July 8, 2015, Respondent petitioned the Court to allow her to resign and permit her to charge rent and utilities to Ms. Becraft. Respondent also asked the Court to appoint a successor guardian. At a September 3, 2015, hearing before Judge Russell Canan on Respondent's petition, Ms. Becraft told the Court through appointed counsel that she wanted to keep Respondent as her Guardian and to continue to stay in Respondent's apartment. After expressing dismay at the situation, Judge Canan ultimately accepted Respondent's resignation and appointed a Successor Guardian for Ms. Becraft.
- (25) Landlord-tenant disputes arose involving Ms. Becraft's tenancy in Respondent's apartment. Successor Guardian had to negotiate for a lease agreement for Ms. Becraft and seek a civil protective order against Ms. Becraft's roommate. Successor Guardian had to file or amend two petitions with the Court to resolve these disputes.
- (26) Respondent violated the following District of Columbia Rules of Professional Conduct:
 - (A) Rule 1.1(a) and (b), because Respondent failed to serve competently as a fiduciary for Mr. Keefer, Ms. Budway, Mrs. Kalinichenko, and Ms. Becraft, and failed to serve with the skill and care generally afforded wards by other fiduciaries;

- (B) Rule 1.7(b)(4), because Respondent's service as fiduciary for Mr. Keefer, Ms. Budway, Mrs. Kalinichenko, and Ms. Becraft reasonably could have been adversely affected by her own personal interests in employing her relatives or having Ms. Becraft become a tenant and later seeking to be paid rent and utilities from Ms. Becraft's estate; and
- (C) Rule 8.4(d), because Respondent seriously interfered with the administration of justice by taking Ms. Becraft as a tenant, which led to further proceedings, and a series of petitions to address the conflicts that arose.

5. Respondent is agreeing to the disposition because Respondent believes that she cannot successfully defend against discipline based on the stipulated misconduct. Tr. 23; 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 promises not to pursue any other charges arising out of the conduct described in Section II² of the Petition, and that Disciplinary Counsel promises not to pursue any sanction other than the one set forth in the Petition. Petition at 9. Respondent confirmed during the limited hearing that there have been no promises or inducements other than those set forth in the Petition. Tr. 33-34.

7. Respondent has conferred with her counsel. Tr. 16; Affidavit ¶ 1.

² The Petition incorrectly numbers the section titled "Stipulation of Facts and Rule Violations," which is unnumbered but contains the relevant conduct. Tr. 33-34; Petition at 2-9.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 16, 35; Affidavit ¶ 6.

9. Respondent is not being subjected to coercion or duress. Tr. 16, 35; 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. 16-17.

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

- a) she will waive her right to cross-examine adverse witnesses and to compel witnesses to appear on her behalf;
- b) she will waive her right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;
- c) she 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 her present and future ability to practice law;
- e) the negotiated disposition, if approved, may affect her bar memberships in other jurisdictions; and
- f) 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. 19-21; Affidavit ¶¶ 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a sixty-day suspension, with thirty days stayed in favor of a

one-year period of probation with conditions, to begin immediately after the period of suspension ends. The period of suspension shall begin thirty days after the Court enters its final order imposing the sanction. If Disciplinary Counsel has probable cause to believe that Respondent has violated 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 remaining thirty days of suspension. Petition at 9-10, 12; Tr. 28-33.

a) Respondent further understands that 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. 38; Affidavit ¶ 14.

b) Respondent understands that conditions of this negotiated disposition are that:

(i) Respondent must take the Basic Training and Beyond two-day course offered by the District of Columbia Bar and must take an additional eight hours of pre-approved continuing legal education, at least five hours of which must be related to probate law and/or elder law, and at least three hours of which must be related to attorney ethics including dealing with conflicts of interest. Within ten days of the Court's final order, Respondent must read the cases on conflicts of interest and the national guardianship standard on conflicts of interest as set forth in the list provided by the Office of Disciplinary Counsel. Respondent must certify and provide documenting proof that she has

met these requirements to the Office of Disciplinary Counsel within six months of the date of the Court's final order; and

(ii) Respondent must meet with Dan Mills, Esquire, the Manager of the Practice Management Advisory Service of the District of Columbia Bar (or his successor or designee) in person or virtually within two months of the date of the Court's final order. At that time, Respondent must execute a waiver allowing Mr. Mills and/or his designee (an assigned practice monitor) to communicate directly with the Office of Disciplinary Counsel regarding her compliance. When Respondent meets with Mr. Mills or his designee virtually or in person, she will make any and all records relating to her practice available for his review. Respondent shall ask Mr. Mills or his designee to conduct a full assessment of Respondent's business structure and her practice, including but not limited to all law firm processes and procedures, financial records, client files, engagement letters, supervision and training of staff, and responsiveness to clients. Respondent shall also ask Mr. Mills or his designee to advise her about how to maintain complete records relating to maintenance of client funds and monitor her compliance with all of Mr. Mills' and/or his designee's recommendations. Respondent shall adopt all recommendations and implement them in the law firm when she resumes practice following her suspension. At the end of her suspension, Respondent shall begin

her one-year probation. During her probation, Respondent shall consult regularly with Mr. Mills or his designee on the schedule he or she establishes. Respondent must be in full compliance with Mr. Mills' and/or his designee's requirements for a period of twelve consecutive months, and it is Respondent's sole responsibility to demonstrate compliance. Respondent must sign an acknowledgement under penalty of perjury affirming that she is in compliance with Mr. Mills' and/or his designee's requirements and file the signed acknowledgement with the Office of Disciplinary Counsel. This must be accomplished no later than seven business days after the end of Respondent's period of probation.

Petition at 10-12; Tr. 28-33.

13. Disciplinary Counsel has provided a statement demonstrating the following circumstances in aggravation, which the Hearing Committee has taken into consideration: that Respondent violated multiple Rules in probate matters involving incapacitated adult wards; and that, in at least one instance, Respondent acted in such a way that ultimately led to her resignation as Guardian and her receipt of rent from the funds of her former ward. Petition at 13-14; Tr. 36-37.

14. Respondent has provided the following circumstances in mitigation, which the Hearing Committee has taken into consideration: that Respondent has no prior disciplinary history; that Respondent was a relatively inexperienced probate practitioner at the time of the violations; that Respondent did not seek any

compensation in the *Becraft* matter and routinely did not seek compensation for otherwise compensable services in the three other probate matters involved here; that Respondent has cooperated with Disciplinary Counsel; and that Respondent has expressed remorse. Petition at 13; Tr. 35-36.

15. The complainant was notified of the limited hearing but did not appear and did not provide any written comment. Tr. 12, 38-39.

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 she is under duress or has been coerced into entering into this disposition. *See supra* ¶¶ 8-9. Respondent

understands the implications and consequences of entering into this negotiated discipline. *See supra* ¶ 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* ¶ 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 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. *See supra* ¶ 5.

With regard to the second factor, the Petition states that Respondent violated Rules 1.1(a) and (b) (failure to provide competent representation and failure to serve the client with skill and care). The evidence supports Respondent's admission that she violated Rules 1.1(a) and (b) in that the stipulated facts describe that Respondent hired her sister and/or her husband to assist her in carrying out her duties as a fiduciary for Mr. Keefer, Ms. Budway, and Mrs. Kalinichenko, an arrangement that the Probate Court did not approve. Furthermore, Respondent failed to file a complete accounting that reflected certain rental income paid to Ms. Budway and Mrs. Kalinichenko and failed to provide Ms. Becraft with a lease agreement when she moved her into Mrs. Kalinichenko's home. As such, Respondent failed to serve

competently as a fiduciary for Mr. Keefer, Ms. Budway, Mrs. Kalinichenko, and Ms. Becraft in violation of Rule 1.1(a). Furthermore, these same facts demonstrate that Respondent failed to serve with the skill and care generally afforded wards by other fiduciaries in violation of Rule 1.1(b).

The Petition states that Respondent violated Rule 1.7(b)(4) (conflict created by lawyer's own interests). The evidence supports Respondent's admission that she violated Rule 1.7(b)(4) in that the stipulated facts show that Respondent hired her sister to perform accounting services for Mr. Keefer, Ms. Budway, and Mrs. Kalinichenko that were to be paid out of each ward's assets controlled by Respondent. She also hired her husband to provide miscellaneous services for Mr. Keefer and Ms. Budway that were initially paid (before being reimbursed) from the ward's assets controlled by Respondent. And Respondent placed one ward, Ms. Becraft, into the home of another of her wards, Mrs. Kalinichenko, creating a situation where she served as a fiduciary for both landlord and tenant. In each of these circumstances – in employing her relatives and in having Ms. Becraft become a tenant and later seeking to be paid rent and utilities from Ms. Becraft's assets – Respondent reasonably could have been adversely affected by her own personal interests, thereby violating Rule 1.7(b)(4).

Finally, the Petition states that Respondent violated Rule 8.4(d) (serious interference with the administration of justice). The evidence supports Respondent's admission that she violated Rule 8.4(d) in that the stipulated facts demonstrate that by having Ms. Becraft become a tenant of Mrs. Kalinichenko, the Probate Court was

compelled to accept Respondent's resignation to cure the conflict and to appoint a successor guardian who was later required to negotiate a lease agreement for Ms. Becraft and seek a civil protective order against her roommate. Respondent's conduct in placing one ward in the home of another and then in her own property ultimately interfered with the administration of justice in violation of Rule 8.4(d).

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) (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 aggravation and mitigation, the Hearing Committee's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* communications with Disciplinary Counsel, and our review of relevant precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient.

When evaluating the appropriateness of a sanction for misconduct involving conflicts of interest, lack of competence, and serious interference with the

administration of justice, this Committee looks to whether the driving force of the misconduct is the attorney's lack of competence or whether there is another motivation to enter into the conflict. *See In re Evans*, 902 A.2d 56, 74-75 (D.C. 2006) (per curiam) (appended Board Report) (finding the conflict "was at the core of [the] misconduct" and "served the respondent's self-interest," which warranted a lengthier suspension of six months with ninety days stayed in favor of one year of probation). In general, "deceitful and self-serving conduct results in harsher penalties." *In re Rachal*, 251 A.3d 1038, 1044 (D.C. 2021) (per curiam); *see also In re Elgin*, 918 A.2d 362, 379-380 (D.C. 2007) (noting that self-dealing "casts a shadow on the entire legal profession when combined with dishonesty and a failure to disclose a conflict of interest"). Respondent's conduct here appears to be driven by her lack of experience and competence in dealing with wards as a fiduciary and not out of self-interest.

Sanctions for conduct involving conflicts, lack of competence, and serious interference with the administration of justice typically range from public censure to a suspension for ninety days or more. *Evans*, 902 A.2d at 74; *see, e.g., Rachal*, 251 A.3d 1038 (thirty-day suspension stayed in favor of a one-year probation and six-hour CLE requirement for attorney who engaged in conflicts and conduct that prejudiced the client); *In re Wilson*, 241 A.3d 309 (D.C. 2020) (per curiam) (thirty-day suspension for attorney who failed to competently represent his client, failed to seek his client's objectives, had a conflict, and failed to communicate with his client); *In re Robbins*, 192 A.3d 558 (D.C. 2018) (sixty-day suspension and four-

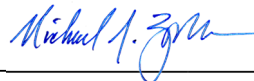
hour CLE requirement for attorney who engaged in conflicts and failure to communicate).

Here, a sixty-day suspension is appropriate. Although Respondent has no prior history of discipline, her misconduct involved four incapacitated adult wards, and on at least one occasion she stood to potentially benefit financially from placing a ward in one of her properties.

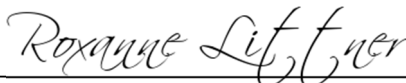
IV. CONCLUSION AND RECOMMENDATION

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 sixty days with thirty days stayed in favor of a one-year period of probation subject to the conditions discussed in paragraph 12(b) above.

AD HOC HEARING COMMITTEE



Michael Zoeller
Chair



Roxanne Littner
Public Member



Webster R. M. Beary
Attorney Member