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

In the Matter of:	)	
JAMES Q. BUTLER,	)	Bar Docket Nos. 2007-311, *et al*.
RESPONDENT.	)	
Member of the Bar of the District of Columbia Court of Appeals. Bar Number: 490014 Admission: 11/12/04	)	

ORDER OF HEARING COMMITTEE NO. FOUR
REJECTING PETITION FOR NEGOTIATED DISCIPLINE

This matter came before Hearing Committee Number Four on March 17, 2009, for a limited hearing on a Petition for Negotiated Discipline. The members of the Hearing Committee were Eric L. Yaffe, Esq., Mr. Richard R. Romero, and Burnette Williams, II, Esquire. The Office of Bar Counsel was represented by Deputy Bar Counsel Elizabeth A Herman, Esq. Respondent James Q. Butler was represented by George R. Clark, Esq. and was present throughout the limited hearing.

A Hearing Committee must make the following findings to approve a petition for negotiated discipline:

(1) The attorney has knowingly and voluntarily acknowledged the truth of the stipulated material facts and misconduct reflected in the petition and agreed to the sanctions set forth therein;

(2) The stipulated 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 agreed upon sanction is justified.

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

The Hearing Committee has carefully considered the Petition for Negotiated Discipline filed by Bar Counsel (the "Petition"), the accompanying affidavit filed by Respondent (the "Affidavit"), and the representations made during the limited hearing by Respondent and Bar Counsel. The Hearing Committee has also fully considered the written statements submitted by the complainants and others, as well as oral statements made by the complainants and others at the limited hearing. In addition, prior to the hearing, the Chair of this Hearing Committee undertook an *ex parte* review of the files of the Office of Bar Counsel concerning this matter.

The Hearing Committee, after full and careful consideration, has concluded that the Petition should be rejected. The basis for its decision is as follows:

The agreed upon sanction is not justified taking into consideration the record as a whole, including the nature of the misconduct, the charges or investigations that Bar Counsel has agreed not to pursue, and relevant precedent. *See* D.C. Bar. R. XI, § 12.1(c); Board Rule 17.5(a)(iii).

DISCUSSION

Beginning in 2007, Bar Counsel began to receive complaints from Respondent's clients, relatives of clients, and friends of clients all of whom had tried unsuccessfully to obtain information from Respondent about the status of client matters. (Petition at 1.) The majority of the complaints involved incarcerated clients who paid Respondent to assist them in their efforts to appeal their criminal convictions. (*Id.*) The complainants alleged a lack of communication, neglect, intentional failure to pursue their lawful interests, failure to return unearned fees, failure to return files, dishonest advertising,

dishonest statements, and failure to supervise attorneys working for Respondent. (*Id*.) A few of the complainants were clients who had retained Respondent to represent them in civil cases. They alleged that Respondent did not communicate with them, neglected their matters, and failed to return funds paid as advances for unincurred expenses. (*Id*. at 2.)

In a typical case, Respondent would take many of the following actions: obtain a retainer from a client and then fail to speak with them about their case when they called; hand the matter over to an associate and provide the associate with little or no guidance on how to run the case; file improper documents on behalf of clients; fail to file documents on behalf of clients; fail to take promised steps in matters and otherwise fail to protect the clients' interests; fail to return client files after the client had terminated his services; make dishonest statements to clients about his activities; and fail to return unearned money to the client after the client had terminated him from the matter. (*Id*. at Paragraphs 1-174.)

In response to the complaints, and after an investigation, Bar Counsel filed a Specification of Charges, including ten separate counts against Respondent, each count relating to a distinct complainant, and alleging violations of the following District of Columbia Rules of Professional Conduct: 1.1 (lack of competence); 1.3(a), (b), and (b)(1) (lack of zeal, intentional failure to seek lawful objectives); 1.4(a) and (b) (lack of communication); 1.5(b) and (c) (failure to provide a writing setting forth the rate or basis of fee); 1.15(a) and (d) (misappropriation of advances of unearned fees and unincurred costs and commingling); 1.16(a)(1) and (d) (failure to withdraw from representation and failure upon termination of representation to surrender papers and to refund unearned

fees); 5.1(a), (b) and (c) (failure to ensure law firm conformed to the Rules of Professional Conduct); 5.3(a), (c)(1) and (c)(2) (failure to supervise staff and attorneys); 8.1(b) (failure to respond to lawful demands for information from a disciplinary authority); 8.4(c) and (d) (dishonesty, fraud, deceit and/or misrepresentation). (Joint Stipulation of Facts ("Joint Stipulation") ¶¶ 2-174.) In addition, Bar Counsel began to investigate forty-two other complaints against Respondent for similar violations of the District of Columbia Rules of Professional Conduct. (March 17, 2009 Transcript ("Tr.") at 74:5-18, 75:22-77:1.)

Respondent has acknowledged that he violated the above-referenced Rules of Professional Conduct. (Affidavit of Negotiated Discipline ¶ 4.) As a result, Bar Counsel and Respondent entered into the Petition, agreeing that the sanction to be imposed for these ethical violations would be a one-year suspension from the practice of law and a fitness requirement prior to reinstatement. (Petition at 39-40.) As a part of this Petition, Bar Counsel agreed to dismiss the forty-two other complaints against Respondent, without prejudice and without waiving the right to use those matters to support a response to a petition for reinstatement filed by Respondent in the event he seeks reinstatement to the D.C. Bar. (*Id*. at 37-38.)

As noted, the Petition was heard by the Hearing Committee at a March 17, 2009 hearing in which numerous family members and friends of incarcerated complainants spoke about Respondent's actions. The family members and friends of the complainants expressed displeasure with the agreed-upon sanction. Comments such as "he should be disbarred" (Tr. at 51:11), "I feel very, very upset with the decision the Bar Counsel made in negotiating with him, for him to get one year of suspension" (Tr. at 69:18-21), and "I

was requesting him be disbarred" (Tr. at 107:17) were a recurring theme throughout the hearing. The Hearing Committee considered all comments made by representatives of the complainants at the hearing recognizing, however, that there is a natural tendency for those close to complainants (and for the complainants themselves) to want respondents in disciplinary matters to receive severe punishment for their wrongdoing.

The Hearing Committee believes that due deference is appropriate when parties are in agreement regarding the sanction to be imposed. Such an agreement saves Bar Counsel time and resources and ensures certainty in the outcome of the case. Moreover, agreed-upon discipline saves complainants and witnesses from having to re-live what can be difficult and painful experiences. A case of this nature, with many of the complainants incarcerated, also involves difficulties not typical in most disciplinary cases. Nevertheless, given the nature and extent of the conduct, we believe that a one-year suspension is not justified and that a more severe sanction is warranted. *See, e.g., In re Steele*, 868 A.2d 146 (D.C. 2005) (three-year suspension and fitness for an attorney who intentionally neglected clients and engaged in dishonesty); *In re Anya*, 871 A.2d 1181 (D.C. 2005) (disbarment with restitution to two clients for an attorney who was the subject of eleven separate ethical complaints involving multiple rule violations, including dishonest conduct, making false statements to the government, and falsifying records); *In re Ayeni*, 822 A.2d 420 (D.C. 2003) (disbarment for an attorney who failed to seek client's lawful objectives, commingled and misappropriated funds, made misrepresentations to a third party and committed general dishonesty); *In re Foster*, 699 A.2d 1110 (D.C. 1997) (per curium) (disbarment for an attorney who committed twenty-

three violations of multiple Rules of Professional Conduct, including the rule against dishonesty).

Here, the sanction of a one-year suspension with a fitness requirement does not adequately reflect the magnitude of the violations and the number of complainants involved. Respondent was charged with multiple violations of twenty-one Rules of Professional Conduct. Further, the charges involve ten cases. Forty-two other investigations are pending, each of which would likely lead to multiple additional charges if Bar Counsel completed the investigations. Considering the number and seriousness of the charges against Respondent, and relevant precedent, a sanction more substantial than a one-year suspension with a fitness requirement is necessary.[1] Once again, the Hearing Committee recognizes that, in a case of negotiated discipline, a sanction less than that which might be imposed upon a full hearing on the merits is appropriate, and the Hearing Committee does not opine on what that sanction should be. Nevertheless, a one-year suspension is inappropriate in light of the circumstances in this case. Because the agreed upon sanction is not "justified" as that term is used in D.C. Bar R. XI, § 12.1(c) and Board Rule 17.5(a)(i)-(iii), we must reject the petition for negotiated discipline.

Finally, the Hearing Committee is mindful that the acceptance of a negotiated discipline does not have the same precedential value as a determination by the Court of Appeals or the Board; nevertheless, Bar Counsel and respondents alike will likely consider past negotiated discipline cases when they negotiate sanctions in future matters. This is another important reason why the Hearing Committee must carefully consider whether the facts and circumstances of a given case justify the agreed upon sanction. As

[1] Restitution (including the applicable legal rate of interest) should also be required as a condition of reinstatement in an amount that will fully compensate the complainants for their losses.

the District of Columbia has recognized, "the purpose of bar discipline [is] to protect the public, the courts, and the legal profession from the misconduct of individual attorneys." *In re Smith*, 403 A.2d 296, 300 (D.C. 1979). This critical principle must be foremost in the minds of the Hearing Committee members in all cases, regardless of whether the discipline is negotiated or follows from a hearing on the merits.

For all of the foregoing reasons, the Hearing Committee rejects the Petition. Bar Counsel and Respondent shall have the opportunity to revise the Petition and resubmit it for the Hearing Committee's consideration, should they deem it appropriate to do so. D.C. Bar R. XI, § 12.1(c); Board Rule 17.7.

It is so ORDERED.

HEARING COMMITTEE
NUMBER FOUR

/ELY/
Eric L. Yaffe, Chair

/RRR/
Mr. Richard R. Romero

/BW/
Burnette Williams, II

Dated: May 1, 2009