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:	:	
	:	
JEAN M. ROBINSON,	:	
	:	Board Docket No. 18-ND-004
Respondent.	:	Disciplinary Docket No. 2015-D192
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 484954)	:	

REPORT AND RECOMMENDATION
APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee comprised of Jeffrey Freund (Chair), Ronald Spritzer (Attorney Member) and Trevor Mitchell (Public Member) on December 12, 2018, for a limited hearing on an Amended Petition for Negotiated Discipline (the "Petition"). The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Joseph Perry. Respondent, Jean Robinson, was represented by Shermineh Jones, Esquire, Leslie A.T. Haley, Esquire, and Hilary Holt LoCicero, Esquire.

The Hearing Committee has carefully considered the Petition signed by Disciplinary Counsel, Respondent and Respondent's counsel, the supporting affidavit signed and 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) for more information about this case.

considered the Chair's *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 that the negotiated discipline of an eighteen-month suspension with a requirement that Respondent prove fitness as a condition of reinstatement 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. 20-21[1]; Affidavit ¶ 2.

3. The charges brought by Disciplinary Counsel are that Respondent violated Virginia Rules of Professional Conduct 1.3(c) (intentionally prejudicing or damaging a client during the course of the professional relationship), 1.6(a) (revealing client confidences or secrets), and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation which reflects adversely on the lawyer's fitness to practice law).[2] Petition at 4.

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[1] "Tr." Refers to the transcript of the limited hearing held on December 12, 2018.

[2] The parties agree that, pursuant to D.C. Rule 8.5(b)(2)(ii), it is appropriate to apply the Virginia Rules of Professional Conduct. Petition at 4, n.2. The Hearing Committee concurs. Although there are differences between the Virginia Rules at issue and their D.C. counterparts, those differences are not material when applied to the facts of this case.

4. Respondent has acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 21; 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 February 6, 2004, and assigned Bar number 484954.

2) In or about October 1999 Respondent began providing legal services as outside General Counsel to SourceAmerica (then known as National Institute for the Severely Handicapped). SourceAmerica is a non-profit agency established by the U.S. Government to support other nonprofit agencies participating in the Ability One Program.

3) The Ability One program provides employment opportunities for people who are blind or have other significant disabilities. SourceAmerica allocated contract opportunities to Ability One participants.

4) SourceAmerica is headquartered in Virginia.

5) In 2007 or 2008, Respondent obtained a Corporate Counsel Certificate from the Virginia State Bar, entitling her to practice as in-house counsel in the Commonwealth of Virginia.

6) Respondent was serving as SourceAmerica's Vice President and General Counsel and Corporate Compliance Officer from 2010 until June 2014 (the time described in ¶¶ 7 through 11, *infra*).

7) In 2010, Bona Fide Conglomerate, Inc. ("BFCI"), an Ability One program participant, filed a Bid Protest with the Court of Federal Claims, alleging that SourceAmerica, *inter alia*, violated procurement laws and regulations in denying BFCI contract opportunities.

8) In July 2012, SourceAmerica entered into a settlement agreement with BFCI. The agreement was signed by E. Robert Chamberlin, the then-CEO of SourceAmerica, and by the CEO of BFCI, Ruben Lopez. The agreement provided that SourceAmerica's Office of General Counsel would reasonably monitor BFCI's participation in the Ability One Program and use best efforts to provide that BFCI was treated objectively, fairly, and

equitably in its dealings with SourceAmerica, with specific attention to contract allocation.

9) Respondent had multiple conversations, by telephone and in person, with Mr. Lopez after the Settlement Agreement was signed. During these conversations, Respondent disclosed information embarrassing and/or detrimental to her client SourceAmerica, and/or information SourceAmerica expected be held inviolate, and/or information protected by the attorney-client privilege. This information included her description of conversations with SourceAmerica executives about terminating an employee, government investigations, legal issues related to the Board of Directors, litigation brought against SourceAmerica and its responses to subpoenas.

10) Respondent also insulted and/or disparaged SourceAmerica representatives in her conversations with Mr. Lopez

11) During her representation of SourceAmerica, Respondent became aware that Mr. Lopez was working with agents from the Office of Inspector General of the General Services Administration, who were investigating allegations against SourceAmerica. Upon learning that fact, Respondent provided Mr. Lopez with information designed to assist the government agents in their investigation, including questions they should ask SourceAmerica representatives. Respondent continued to serve as counsel to SourceAmerica in connection with the same investigation and concealed her assistance to the agents (through Mr. Lopez) from SourceAmerica.

12) In or around June 2014, SourceAmerica terminated Respondent's employment.

13) Unbeknownst to Respondent, Mr. Lopez had taped some or all of the conversations discussed in ¶¶ 9-11 above. In total, Mr. Lopez recorded more than 20 hours of his communications with Respondent.

14) Following Respondent's termination, some of the information she disclosed to Mr. Lopez in those conversations was later disclosed publicly in news reports and in litigation involving SourceAmerica filed in California, Virginia, and the Court of Federal Claims.

15) In or around November 2015, some of the audio recordings and transcriptions of Respondent's conversations with Mr. Lopez were made

publicly available when they were posted by an unknown source on the Wikileaks website (www.wikileaks.org).

Petition at 1-4.

5. Respondent has agreed to the disposition because Respondent believes that she cannot successfully defend against disciplinary proceedings based on the stipulated misconduct. Tr. 20; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises to Respondent other than those contained in the Petition. Affidavit ¶ 7. Those promises and inducements are only that Disciplinary Counsel will not pursue any charges or seek any sanctions arising out of the conduct described in the Petition, other than as set forth therein. Petition at 4. Respondent confirmed during the limited hearing that there have been no other promises or inducements beyond those set forth in the Petition. Tr. 24.

7. Respondent has conferred with her counsel and is satisfied with her counsel's representation of her. Tr. 36; Affidavit ¶ 1.

8. Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and has agreed to the sanction set forth therein. Tr. 24; Affidavit ¶ 6.

9. Respondent 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 affected her participation at the limited hearing. Tr. 15-16.

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 she is unable to afford counsel;

b) by agreeing to the disposition, she will waive her right to:

(i) insist that Disciplinary Counsel prove each and every charge by clear and convincing evidence;

(ii) cross-examine adverse witnesses and to compel witnesses to appear on her behalf;

(iii) file exceptions to reports and recommendations filed with the Board and with the Court;

e) the negotiated disposition, if approved, will affect her present ability to practice law and may affect her 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 the negotiated discipline is not approved and there is a subsequent hearing on the merits.

Tr. 16-19; Affidavit ¶ 9.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be an eighteen-month suspension with a requirement that she demonstrate fitness to resume the practice of law should she seek reinstatement following the completion of the suspension. Petition at 5; Tr. 23.

a) Respondent further understands that she must file an affidavit with the Court pursuant to D.C. Bar R. XI, § 14(g) in order for her

suspension to commence for purposes of measuring the eighteen-month period before she may seek reinstatement. Tr. 33.

b) Respondent understands that she will be required to prove her fitness to practice law in accord with D.C. Bar R. XI, § 16 and Board Rule 9.8 prior to being allowed to resume the practice of law. Tr. 33-34.

c) Respondent understands that the reinstatement process may delay her readmission to the Bar beyond the eighteen-month period of her suspension. Tr. 34-35.

13. The Petition includes a statement demonstrating the following circumstance in aggravation: In 1987 Respondent was the subject of prior discipline for violating Wisconsin Rules SCR 20.04(4) and SCR 22.07(2), the equivalents of D.C. Rules 8.4(c) and 8.4(d), respectively. Petition at 7. The Petition also references a dispute over Respondent's obligation to pay costs associated with SourceAmerica's document production, which took place during the contested proceedings. Disciplinary Counsel considers her failure to make such payment to be an aggravating factor. Respondent denies any such obligation and denies that any such failure constitutes a factor in aggravation. *See* Petition at 7-9.[3]

14. The Petition provides the following circumstances in mitigation: Respondent (1) is remorseful; (2) has accepted responsibility for her misconduct

[3] Because the Hearing Committee has no authority to make factual findings beyond those to which the parties have stipulated (*see In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (quoting D.C. Bar R. XI, § 12.1(c)), the document production costs issue did not factor into our consideration whether the agreed-upon sanction is justified. However, the parties agree that the stipulated sanction would be justified without regard to that contested aggravating factor. *Id.* at 9.

and admitted that it violated the Virginia Rules; (3) cooperated with Disciplinary Counsel beyond what was required of her, including by voluntarily participating in a lengthy interview with Disciplinary Counsel; (4) was not motivated by any personal or pecuniary interest, but rather made her disclosures that appear largely to have been grounded in a sincere belief that she was correcting what she perceived to be inappropriate conduct by SourceAmerica representatives; and (5) has not had any subsequent contact with any disciplinary proceeding since her prior discipline over thirty years ago, until now. Petition at 6-7.

15. Complainant SourceAmerica was notified of the limited hearing. Two of its representatives were in attendance, but they did not submit an oral or written statement. Tr. 37.

III. DISCUSSION

Under the applicable Rules, a Hearing Committee shall recommend approval of 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;
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> 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
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> c) that the agreed sanction is justified.

D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(i)-(iii). As set out below, the Hearing Committee has concluded that this negotiated discipline satisfies these criteria and should be approved.

A. Respondent Has Knowingly and Voluntarily Acknowledged the Facts and Misconduct and Agreed to the Stipulated Sanction.

Respondent, after being placed under oath, admitted the stipulated facts and charges set forth in the Petition. Tr. 21-22. Respondent understands the implications and consequences of entering into this negotiated discipline. Tr. 28-32. Finally, Respondent has denied that she is under duress or has been coerced into entering into this disposition or that she is impaired medically or otherwise from freely and voluntarily agreeing to the negotiated discipline. Tr. 23-24.

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. 24; Affidavit ¶ 7.

After reviewing the Petition and Affidavit, hearing Respondent's answers to the Committee's questions and observing her demeanor, the Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein.

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. 20; Affidavit ¶ 5.

With regard to the second factor, the Petition states that Respondent violated Virginia Rule of Professional Conduct 1.3(c), which prohibits intentionally prejudicing or damaging a client during the course of the professional relationship; that Respondent violated Virginia Rule of Professional Conduct 1.6(a), which prohibits the revealing of information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client; and that Respondent violated Virginia Rule of Professional Conduct 8.4(c), which prohibits engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

With respect to each charge individually and all three collectively, the stipulated facts are to the effect that Respondent, a member of the Bar of the District of Columbia, while serving as general counsel to SourceAmerica, a Virginia-based entity, obtained information about SourceAmerica in her capacity as its General Counsel and disclosed that information to Rueben Lopez, the CEO of Bona Fide Conglomerate, Inc., an entity that contracted with SourceAmerica and that had previously sued SourceAmerica over its contracting practices. The information Respondent disclosed was information (a) covered by the attorney-client privilege as between SourceAmerica and Respondent and/or, (b) that

SourceAmerica had intended to be held in confidence. It included descriptions and recitations of conversations between Respondent and SourceAmerica officers and employees concerning the termination of an employee, litigation against SourceAmerica and responses to subpoenas, and legal issues concerning the SourceAmerica Board of Directors. She also disclosed to Mr. Lopez information concerning government investigations of SourceAmerica—investigations in which she was representing SourceAmerica—including providing Mr. Lopez with a series of questions he should give the government investigators that would guide their investigation of her client. In the course of those conversations, Respondent disparaged and insulted representatives of her client SourceAmerica.[4]

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). If the Committee were recommending discipline following a hearing on a contested Petition, the Committee would look to sanctions imposed by the Court in comparable cases. D.C. Bar R. XI, § 9(h)(1). In a negotiated discipline case, however, the applicable standard for judging the adequacy of the agreed discipline is somewhat different. A Committee—and

[4] The stipulated facts also reflect that Mr. Lopez recorded his conversations and that subsequently transcripts of those conversations became public in news reports and in litigation regarding SourceAmerica. There is nothing in the Petition suggesting that Respondent was responsible for these public disclosures. The Committee notes these facts, but concludes that they are not material to its decision, since the disclosures to Mr. Lopez on their own are sufficient to support the Rule violations without regard to the broader public disclosure of the information.

ultimately the Court of Appeals—must decide only whether the agreed-upon discipline is "justified," *see In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) and not "unduly lenient," *see In re Bianco*, 150 A.3d 1211, 1212 (D.C. 2016).[5]

Based on the record as a whole, including the stipulated circumstances in aggravation and mitigation,[6] the Hearing Committee Chair's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* discussion with Disciplinary Counsel, and our review of relevant precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient, for the following reasons:

As the Petition recites, the basis for the charges against Respondent—all of which she has admitted to—was her disclosure to a person who was not her client of confidential (and in some instances embarrassing to SourceAmerica) facts she

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[5] While there are some cases in which some hearing committee members have expressed concern that a particular agreed-upon sanction was "unduly harsh," (*see, e.g., In re Bianco,* Board Docket No. 16-ND-005, at 13 (H.C. Oct. 24, 2016)) neither the Rule XI, § 12.1, nor the case law suggest that a Hearing Committee or the Court should decline to approve a negotiated petition on that ground. *See In re Djordjevich,* 116 A.3d 1261, 1262 n.1 (D.C. 2015) (per curiam) (noting that the respondent's consent to a longer sanction than previously imposed for similar misconduct "afford[s] the court discretion to impose" the agreed sanction). Presumably, the rationale for that approach is that Respondent and her counsel are fully capable of making the cost/benefit analysis regarding that end of the sanction continuum and it falls to the Hearing Committees and the Court only to protect the broader public interest that could be eroded if sanction negotiations produce sanctions that are not adequate to maintain the integrity of the profession, to protect the public and the courts, and to deter the respondent and others from engaging in unprofessional conduct.

[6] The facts regarding aggravation and mitigation when taken together do not, in the Hearing Committee's view, "move the needle" one way or the other. Respondent's prior discipline (a fact in aggravation) is "offset" by the extended passage of time without discipline since then (a fact in mitigation). Her remorsefulness, acceptance of responsibility and cooperation with Disciplinary Counsel beyond what was required of her seem to us to go more to the fitness showing she will have to make when she applies for readmission than they do to mitigation. And the fact that her conduct was not motivated by pecuniary interests means only that the rationale for her conduct was not an *aggravating* factor. Finally, as noted previously, the Committee has not considered any facts regarding, or the dispute about, Respondent's asserted failure to reimburse SourceAmerica for the cost of its document production.

learned from SourceAmerica that were conveyed to her during her representation of her client under the umbrella of the attorney/client privilege. Those disclosures appear to have occurred over an extended period of time and were substantial; Mr. Lopez recorded 20 hours of his conversations with Respondent. Worse yet, Respondent intended (or at the least had reason to expect) that some of what she conveyed to Mr. Lopez would be repeated to federal investigators who were investigating SourceAmerica in a matter in which she represented SourceAmerica's interests. And while there is no evidence suggesting that Respondent was responsible for the subsequent public disclosure of her recorded conversations with Mr. Lopez, the fact remains that they were publicly disclosed but never would have been had Respondent not engaged in those prohibited conversations in the first instance. In sum, it is difficult to imagine a more egregious breach of the obligations of confidentiality Respondent owed to her client.

On the other hand, the Petition recites that Respondent did not engage in the prohibited conduct out of any pecuniary or other personal interest. Rather, she believed that SourceAmerica was engaged in various improper practices and that by disclosing the information in the circumstances in which she disclosed it, SourceAmerica would correct its conduct and act in what she believed would be a more responsible manner.[7]

[7] Respondent's motive is a fact stipulated to by Respondent and Disciplinary Counsel. Accordingly, because the Committee is bound by the facts set out in the Petition, because the *ex-parte* review of Disciplinary Counsel's file did not reveal any evidence to the contrary and

There is a dearth of guidance in the decided cases the Hearing Committee can look to in order to assess whether the agreed discipline is justified and not unduly lenient. In most of the cases involving the unauthorized disclosure of confidential client information, the discipline imposed has been relatively modest, ranging from an informal admonition to a six-month suspension. *See, e.g. In re Koeck*, 178 A.3d 463 (D.C. 2018) (per curiam) (60-day suspension for disclosure of confidences and secrets of the respondent's former employer to a newspaper reporter and government agencies, in violation of Rule 1.6(a)); *In re Wemhoff*, 142 A.3d 573 (D.C. 2016) (30-day suspension stayed in favor of probation for revealing client secrets in two motions, in violation of Rules 1.6(a), 3.4(c), and 8.4(d)); *In re Ponds*, 876 A.2d 636 (D.C. 2005) (public censure for disclosure of confidential information in a motion to withdraw, in violation of Maryland Rule 1.6, where there was prior discipline but no personal gain, harm to the client, or dishonesty); *In re Gonzalez*, 773 A.2d 1026 (D.C. 2001) (ordering an informal admonition for revealing client secrets, including an allegation of dishonesty, in a motion to withdraw, in violation of the previous version of Virginia Rule 1.6(a)); *In re Rosen*, 470 A.2d 292 (D.C. 1983) (six-month suspension for intentional failure to seek two clients' lawful objectives, neglect, and disclosure of client secrets to a prosecutor, in violation of the previous versions of Rules 1.3(a) and (b)(1) and 1.6(a), aggravated by prior discipline). On the other end of the continuum, and a relevant precedent, is *In re Baber,* 106 A.3d 1072 (D.C. 2015)

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because nothing that occurred at the limited hearing on the Petition cast any doubt on that stipulated fact, we accept that characterization as true for purposes of this proceeding.

(*per curiam*). That case plainly involved misconduct more substantial than here, including findings of incompetence (Rules 1.1(a) & (b)), neglect (Rules 1.3(a) & (c)), failure to communicate with Respondent's client (Rules 1.4(a) & (b)), dishonesty (Rule 8.4(c)) and charging an unreasonable fee (Rule 1.5); all aggravated by Respondent's failure to accept responsibility for his conduct. As a consequence, the Court rejected the Board's recommendation for a three-year suspension and instead ordered disbarment. While the Court's decision does not expressly link the entirety of its sanction to Baber's violation of Rule 1.3 (c), that violation is referenced along with the others as a basis for the Court's decision.

The negotiated discipline here has elements of discipline across the spectrum of these cases. On the one hand, the suspension itself—eighteen months—is longer than the suspensions in *Koeck*, *Wemhoff* and *Rosen*. On the other, it is shorter than the five years a disbarred attorney (*i.e.* Baber) must wait to apply for reinstatement. *See* D.C. Bar R. XI, § 16(a). But significantly, the negotiated discipline here contains the requirement that Respondent prove fitness prior to her reinstatement after the passage of the period of suspension. A fitness requirement is not always a part of a suspensory sanction (and was not included in *Koeck*, *Wemhoff* and *Rosen*) but always an element of reinstatement following disbarment (and, therefore, an integral part of the *Barber* discipline).

With these prior decisions as brackets around the range of discipline for cases involving unauthorized disclosures of client information, we conclude that

the negotiated discipline in this case is not unduly lenient. It consists of a suspension that is longer than those imposed in most "comparable" cases. And, while shorter than the sanction in *Baber*, it contains the assurance that Respondent will have to satisfy the Court of Appeals of her fitness to return to practice following her suspension and in that respect is in line with the sanction in *Baber* (which, as noted, involved conduct considerably more egregious than here). All things considered, while we can imagine that a hearing committee hearing this case might have recommended discipline different than the discipline agreed to by Respondent and Disciplinary Counsel, we cannot say that it is unduly lenient.

IV. CONCLUSION AND RECOMMENDATION

It is the conclusion of the Hearing Committee that the discipline negotiated in this matter is appropriate.

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court impose an eighteen-month suspension with a requirement to prove fitness before resuming the practice of law.

AD HOC HEARING COMMITTEE

Jeffrey Freund
Chair

Trevor Mitchell
Public Member

Ronald M. Spritzer

Ronald Spritzer
Attorney Member