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:	:	
	:	
JEWEL M. HARMON,	:	
	:	Board Docket No. 20-ND-006
Respondent.	:	Disc. Docket Nos. 2015-D289,
	:	2016-D104, & 2017-D224
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 441232)	:	

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 September 10, 2021, for a limited hearing on an Amended Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Kevin Dinan, Esquire, Chair; Ria Fletcher, Public Member; and Dawn Murphy-Johnson, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Joseph C. Perry, Esquire. Respondent, Jewel M. Harmon, Esquire, appeared *pro se*.

The Hearing Committee has carefully considered the Petition, the supporting affidavit submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent and Disciplinary Counsel. The Hearing Committee also has fully considered the Chair's *in camera* review of 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'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, fully stayed in favor of one year 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 an investigation into allegations of misconduct. Tr. 18[1]; Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that, in connection with three probate matters, Respondent violated D.C. Rules of Professional Conduct ("Rules") 1.1(b) (skill and care), 1.3(a) (diligence and zeal), 1.16(d) (termination of representation), and 8.4(d) (serious interference with the administration of justice). Petition at 12.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 18-19, 24; Affidavit ¶¶ 4, 6. Specifically, Respondent acknowledges that:

> 1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on March 7, 1994, and assigned Bar number 441232.

[1] "Tr." refers to the corrected transcript of the limited hearing held on September 10, 2021. Page 13 of the original transcript erroneously showed that Mr. Perry answered two questions that were actually answered by Respondent. A corrected version was filed on October 15, 2021.

2. From 2012 through 2015, Respondent was suffering from serious physical health issues, which included being placed on dialysis for kidney failure.

First Matter (2015-D289)

3. On September 21, 2007, the father of two minor wards petitioned the Probate Division of the Superior Court for the District of Columbia, in separate proceedings, to have Respondent appointed as guardian for his son, I.N. and daughter, D.N. Guardianships were necessary because the children's mother had died with a life insurance policy naming the children as (unequal) beneficiaries and the father could not post bond.

4. I.N. received approximately $110,000 in connection with the policy and D.N. received approximately $37,000 in connection with the policy.

5. On October 2, 2007, the court appointed Respondent guardian in both proceedings, and she filed the required bonds. She opened accounts for both wards.

6. From 2007 through 2013, Respondent completed all required filings (which included six annual accountings which were approved) and otherwise addressed the needs of the wards as appropriate, which included discussing the wards' needs with their father and petitioning the court for permission to pay the wards' school and medical expenses, and for paying the father a monthly allowance (to pay rent and support the wards).

7. On April 1, 2014, the IRS sent Respondent a notice stating that I.N. had overdue taxes from 2007.

8. I.N. was eight years old in 2007. The only funds he received at that time were the insurance proceeds related to his mother's death, which were not taxable. Concerned that the IRS was about to wrongfully seize the ward's funds, Respondent withdrew from I.N.'s accounts a total of $87,000 ($3,000 from the checking account and $84,000 from the ward's savings account) to ensure that it was not seized. She intended to discuss the matter with the IRS. She maintained these funds in the ward's file, in the form of two cashier's checks payable to the ward.

9. Respondent paid the father's monthly stipend in connection with both matters on or around June 3, 2014. However, Respondent failed to timely pay the father's July and August allowance in connection with the I.N. matter.

10. On July 28, 2014, the ward's father filed *pro se* a "Petition for Assistance" stating that it was taking Respondent too long to respond to his requests for assistance.

11. On August 14, 2014, Respondent deposited the $3,000 check back into I.N.'s checking account.

12. On August 15, 2014 the court held a hearing on the father's petition. Respondent attended, and the court ordered an increase in the father's allowance based on a change in circumstances.

13. On or around August 23, 2014, Respondent went to Wells Fargo to split the $84,000 cashier's check into two cashier's checks, one for $44,000 and one for $40,000. Respondent instructed the bank to keep both checks payable to the ward. Respondent deposited the $44,000 check back into the account and retained the $40,000 check.

14. On November 17, 2014, Respondent filed her seventh accounting in both matters. The accounting in the I.N. matter reflected her withdrawals and stated that they were made for the purpose of closing out the accounts to enable transfers to a "new account based on banking issues." It also reflected that Respondent re-deposited the $3,000 check on August 14, 2014, deposited the $44,000 check on August 23, and retained the $40,000 check "for further negotiations."

15. After reviewing Respondent's seventh account in the D.N. matter, a probate auditor sent Respondent a requirements letter asking her to explain what appeared to be an overpayment of the wards' father's monthly allowance. Ultimately, a summary hearing was scheduled for March 31, 2015 for Respondent's failure to adequately respond to the requirements letter. Respondent did not appear at this hearing and it was continued until May 12, 2015.

16. Meanwhile, after reviewing Respondent's seventh accounting in the I.N. matter, a different probate auditor recommended that it be referred to the Auditor Master due to Respondent apparently 1) making approximately $4,000 in expenditures that had not been approved

(which were used to assist the wards' father in paying back rent and purchase clothes and Christmas gifts for both the wards); and 2) making the $84,000 and $3,000 withdrawals.

17. On April 15, 2015, the court referred the I.N. matter to the Auditor Master.

18. The Auditor Master held a hearing on May 11 and May 15, 2015. Respondent, the ward's father, and a Wells Fargo Branch Manager gave sworn testimony.

19. Respondent testified that there was a tax problem that caused her to make the withdrawals of $84,000 and $3,000 from the I.N. accounts. She further testified that she would provide the Auditor Master with documentation supporting her assertion.

20. The Wells Fargo Branch Manager testified that the $84,000 cashier's check was used to purchase the $44,000 and $40,000 checks which remained in the ward's name. In other words, Respondent did not use or convert the ward's funds for her own use.

21. At the May 15, 2015 hearing, the Auditor Master ordered that Respondent, within two weeks, provide all documentation regarding the tax issue.

22. Meanwhile, on May 12, 2015, the D.N. court held the hearing on Respondent's failure to respond to the requirements letter. Respondent attended and stated that she had just found out about the hearing at the prior day's Auditor Master hearing in the I.N. matter. Respondent stated that she would fulfill the requirements. The court scheduled another hearing for June 16, 2015.

23. Respondent did not fulfill the requirements and did not appear at the June 16, 2015 hearing. The court removed her as guardian for D.N., and appointed Ray Johnson, Esq. as successor guardian.

24. Respondent did not timely provide Mr. Johnson with D.N.'s file, despite repeated phone calls and correspondence from Mr. Johnson.

25. On July 15, 2015, Mr. Johnson filed a petition to refer the D.N. matter to the Auditor Master so that a final accounting of Respondent's guardianship could be prepared.

26. On August 17, 2015, the court referred the D.N. matter to the Auditor Master.

27. On October 2, 2015, the Auditor Master transmitted a written report in the I.N. matter to the probate court for approval.

28. As to the unauthorized expenditures in the I.N. matter, the Auditor Master recommended the court approve all of them because the father was going through financial hardship and the funds were to assist in supporting the children.

29. As to the $84,000 and $3,000 withdrawals, the Auditor Master noted that Respondent was unable to provide adequate documentation that the ward was having issues with the IRS and was unable to provide documentation regarding the location of the funds. Accordingly, he did not credit Respondent's explanation for why she withdrew the funds and recommended Respondent be held liable for interest at the judgment rate for the time the checks were not in the ward's account. This totaled $3,043.23. This amount was paid by Respondent's bonding company. Respondent then repaid the company.

30. On November 2, 2015, the Auditor Master prepared a supplemental report in the I.N. matter, recommending that Respondent be removed as I.N.'s guardian, since the collection of a judgment would create a conflict of interest.

31. On November 24, 2015, the court held a hearing on the Auditor Master's report in I.N. The court approved the account, and appointed Mr. Johnson as I.N.'s guardian (in addition to his current role as D.N.'s guardian). At the hearing, the court instructed Respondent to turn over her accounting information so Mr. Johnson could prepare an account.

32. Although Respondent provided Mr. Johnson with a certified check for the funds in I.N.'s account, she did not timely provide Mr. Johnson with the supporting accounting information he needed to prepare an account, despite his attempts to obtain that documentation from her.

33. On December 23, 2015, Mr. Johnson filed a petition for referral to the Auditor Master in the I.N. matter as he was unable to produce a final accounting without supporting documentation.

34. On January 4, 2016, the Auditor Master transmitted to the court its report in the D.N. matter. The report contained a final accounting of Respondent as guardian for D.N. and found all of her expenditures appropriate because the father was going through financial hardship and the funds were to assist in supporting the children.

35. On February 5, 2016, the court approved the report of the Auditor Master in the D.N. matter.

36. Ultimately, Respondent provided the Auditor Master with the information required to complete the I.N. account. On May 2, 2016, the Auditor Master transmitted its final accounting of Respondent as guardian for I.N. and found no issue with Respondent's conduct.

37. On May 24, 2016 the court approved the report of the Auditor Master in the I.N. matter.

38. During the course of its investigation, Disciplinary Counsel subpoenaed all documentation from Wells Fargo concerning the cashier's checks. The documentation corroborated the Branch Manager's testimony and further demonstrated that Respondent did not spend the $87,000 that she withdrew from I.N.'s accounts. Disciplinary Counsel also subpoenaed documentation from Respondent's files about the IRS issue, and she provided documentation that demonstrated she did have reason to be concerned that the IRS would wrongfully seize I.N.'s funds at the time she made the withdrawals.

Second Matter (2016-D104)

39. On August 13, 2014, Respondent was appointed by the probate court as general conservator and co-guardian for an incapacitated ward, E.H.

40. Unbeknownst to Respondent, the ward had not paid the mortgage for her property at 3217 17th Street since February 2013. She owed over $260,000 in payments and penalties. At the time of Respondent's appointment, the ward was already in an assisted living facility.

41. On August 15, 2014, the probate court issued Letters of Conservatorship advising of Respondent's appointment. Respondent

failed to file these letters of conservatorship with the Recorder of Deeds, as required by D.C. Code § 21–2067.

42. On October 29, 2014, Respondent filed a guardianship plan.

43. On November 17, 2014, Respondent filed a conservatorship plan and inventory, which listed the property at 3217 17th Street, NE as the ward's primary asset.

44. On December 12, 2014, in separate proceedings, Nationstar Mortgage filed in D.C. Superior Court a complaint for foreclosure on the 3217 property. The complaint was not addressed to Respondent because she did not file her letters of conservatorship. An affidavit claimed personal service on the ward at her property, although this was impossible because the ward was living in an assisted living facility.

45. On February 18, 2015, the probate court sent Respondent a delinquency notice for her failure to timely file a guardianship report.

46. On March 20, 2015, the probate court scheduled a summary hearing, for April 13, 2015, for Respondent's (and the co-guardian's) failure to file a guardianship report.

47. On April 8, 2015, Nationstar Mortgage filed for default judgment against E.H. in the foreclosure proceedings.

48. Respondent failed to appear at the April 13, 2015 summary hearing. The probate court was unable to reach her by telephone. The probate court continued the hearing until April 27 and advised Respondent that her attendance at the hearing was not required if the reports were filed by April 20.

49. Respondent did not file the guardianship report before April 20. She did not attend the April 27 hearing. The court removed her as co-guardian for E.H., but Respondent remained conservator. Ronald Dixon, Esquire, was appointed as successor co-guardian.

50. On June 16, 2015, the court granted Nationstar's motion for default judgment in the foreclosure proceedings.

51. On September 17, 2015, the probate court issued a delinquency notice for Respondent's failure to file an annual account. The Court scheduled a hearing for November 17, 2015.

52. Respondent did not file an account and did not appear at the November 17 hearing. However, she called the court prior to the hearing to advise that she would not attend. The court ordered Respondent removed as conservator and referred the matter to the Auditor Master for a final accounting. The court appointed Mr. Dixon as successor conservator.

53. Respondent did not petition for or collect any fees for the time she served as guardian and conservator.

54. Sometime after his appointment, Mr. Dixon learned of the foreclosure proceedings on the home. He entered his appearance in the foreclosure proceedings on February 17, 2016. He obtained a stay of proceedings and made multiple attempts to sell the home; however, he was unsuccessful. On April 2, 2018, the court granted a motion for judgment on the pleadings to a successor foreclosing entity.

Third Matter (2017-D224)

55. On November 1, 2006, Respondent was appointed as successor trustee in a contentious estate matter. The decedent had designated two trust beneficiaries under his will, with a directive that the income of the trust be used for the benefit of the beneficiaries (his niece and nephew), until they reach the age of 25.

56. The court ordered Respondent to file an inventory and annual accountings.

57. Respondent attempted to file an inventory for the trust on November 28, 2006. It was rejected by the auditing division of the probate court, whose representative advised Respondent that an inventory was not required. Respondent did not attempt to address her inability to file the inventory before the probate court. After her inventory was rejected, she did not attempt to file any accountings.

58. Over the next six years, Respondent administered the trust to the benefit of its beneficiaries and in accordance with the will, which included purchasing a condominium for them to reside in together.

59. By July 2012, the trust assets were exhausted. Sometime after that, the beneficiaries defaulted on their mortgage payment.

60. Throughout her service as trustee, Respondent repeatedly encouraged the beneficiaries to pay their bills and seek more gainful employment. At one point, Respondent spent $3,000 of her own funds to bring the mortgage current. However, the condo was foreclosed in early 2016.

61. Prior to this, on June 18, 2015, the court scheduled a hearing for July 16, 2015, because Respondent had failed to file annual accountings and an inventory in compliance with the court's November 1, 2006 order.

62. Respondent attended the July 16, 2015 hearing. The court ordered that she file all the delinquent accounts by July 24, 2015. The court continued proceedings to an August 17, 2015 status hearing.

63. Respondent did not timely file all delinquent accounts.

64. On August 18, 2015, the court scheduled a hearing for September 24, 2015 (later rescheduled for September 30), for Respondent to show cause why she should not be held in contempt for failing to comply with the original November 2006 order and the July 16, 2015 order.

65. On September 29, 2015, Respondent filed the required accountings and inventory.

66. On October 5, 2015, although Respondent had made the required filings, the court referred the matter to the Auditor Master to investigate Respondent's administration of the estate.

67. Respondent failed to attend the second scheduled date of evidentiary hearing before the Auditor Master.

68. On June 13, 2017, the Office of the Auditor Master filed its Report. The Auditor Master found that all assets were accounted for.

> Further, the Auditor Master found that although Respondent had failed to account to the court as ordered, she did account to the beneficiaries.

Petition at 2-12.

5. Respondent is agreeing to the disposition because she 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. The only promise set forth in the Petition is that Disciplinary Counsel agrees not to pursue any additional charges or sanctions arising out of the conduct described in the Petition. Petition at 12. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 23.

7. Respondent is aware of her right to confer with counsel and is proceeding *pro se*. Tr. 13; 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. 18-19, 21, 24; Affidavit ¶¶ 4, 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 would affect her ability to make informed decisions at the limited hearing. Tr. 13-14.

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 Respondent is unable to afford 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;
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> 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, 26-29; Affidavit ¶¶ 9-12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a sixty-day suspension, fully stayed in favor of one year of probation with the following conditions:

> Within the first 30 days of the one-year probationary period, Respondent shall consult with the D.C. Practice Management Advisory Service (PMAS) about her case management system and provide Disciplinary Counsel with written confirmation of such consultation from PMAS. This consultation shall include discussion of how to ensure all filing deadlines and other obligations are timely met in the event Respondent's health issues resurface. Within the first 90 days of the one-year probationary period, Respondent shall provide written confirmation that she has complied with any and all recommendations

> made by PMAS. Within the first six months of the one-year probationary period, Respondent shall attend six hours of ethics continuing legal education courses, approved by Disciplinary Counsel, and provide written confirmation of her attendance. Further, during the entire one-year period, Respondent shall not be found to have engaged in any misconduct in this or any other jurisdiction. 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 suspension previously stayed herein, consecutively to any other discipline or suspension that may be imposed, and that her reinstatement to the practice of law will be conditioned upon a showing of fitness.

Petition at 13-14; Tr. 22-23.

a) Respondent further understands that, if her probation is revoked and she must serve the stayed suspension, 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. 29.

b) Respondent understands that, if her probation is revoked, she will be required to prove her fitness to practice law prior to reinstatement. Tr. 29-30.

c) Respondent understands that the reinstatement process, if applicable, may delay Respondent's readmission to the Bar. Tr. 30.

13. The parties are not aware of any aggravating factors in this case. Petition at 16; Tr. 26.

14. The Petition lists the following circumstances in mitigation, which the Hearing Committee has taken into consideration:

> Respondent: 1) has acknowledged her misconduct and the harm it has caused; 2) did not collect fees for the last accounting period in the 2015 matter; 3) did not collect any fees in the 2016 and 2017 matters, 4) spent her own funds to attempt to prevent foreclosure of the beneficiaries' home in the 2017 matter; 5) provided years of service for the wards and beneficiaries (respectively) in the 2015 and 2017 matters; 6) was suffering from serious health issues in 2014 and 2015, which resulted in her being frequently bedridden; and, 7) has no prior discipline in this or any other jurisdiction.

Petition at 16; Tr. 24-25.

15. Because Disciplinary Counsel docketed its investigation in this matter based on Auditor Master reports, rather than a disciplinary complaint, Disciplinary Counsel was not required to notify any "complainants" under Board Rule 17.4(g). *See* Tr. 10-11.

III. DISCUSSION

The Hearing Committee shall recommend approval of a 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) that the agreed sanction is justified.

D.C. Bar R. XI, § 12.1(c); 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 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* Paragraph 5.

With regard to the second factor, the Petition states that Respondent violated Rule 1.1(b), which requires a lawyer to "serve a client with skill and care

commensurate with that generally afforded to clients by other lawyers in similar matters."[2] The evidence supports Respondent's admission that she violated Rule 1.1(b) in that the stipulated facts describe her failure to respond to a requirements letter and to attend hearings in Matter 2015-D289; her failure to file letters of conservatorship, a guardianship report, and an annual account, and to attend hearings in Matter 2016-D104; and her failure to file annual accountings and an inventory, and to attend an evidentiary hearing in Matter 2017-D224.

The Petition further states that Respondent violated Rule 1.3(a), which states that an attorney "shall represent a client zealously and diligently within the bounds of the law."[3] The evidence supports Respondent's admission that she violated Rule 1.3(a) in that the stipulated facts describe her failure to respond to a requirements letter and to attend hearings in Matter 2015-D289; her failure to file letters of conservatorship, a guardianship report, and an annual account, and to attend hearings in Matter 2016-D104; and her failure to file annual accountings and an inventory, and to attend an evidentiary hearing in Matter 2017-D224.

The Petition further states that Respondent violated Rule 1.16(d), which requires that a lawyer, upon termination of a representation, take timely steps to the

[2] Rule 1.1(b) applies where "a lawyer capable to handle a representation walks away from it for reasons unrelated to [her] competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report).

[3] Neglect under Rule 1.3(a) has been defined as "indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1255 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc) ("*Reback II*")).

extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred." The evidence supports Respondent's admission that she violated Rule 1.16(d) in that the stipulated facts describe her failure to timely provide successor counsel the client file or supporting accounting information he needed to prepare an account in Matter 2015-D289.

The Petition further states that Respondent violated Rule 8.4(d), which provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice."[4] The evidence supports Respondent's admission that she violated Rule 8.4(d) in that the stipulated facts describe her failure to respond to a requirements letter and to attend hearings in Matter 2015-D289; her failure to file letters of conservatorship, a guardianship report, and an annual account, and to attend hearings in Matter 2016-D104; and her failure to file annual accountings and an inventory, and to attend an evidentiary hearing in Matter 2017-D224.

[4] To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996).

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); *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, and our review of relevant precedent, we conclude that the agreed-upon sanction, including the stay in favor of one year of probation, is justified and not unduly lenient, for the following reasons:

The stipulated facts, as described above, support Respondent's admissions that she violated Rule 1.1(b) (skill and care); Rule 1.3(a) (diligence and zeal); Rule 1.16(d) (termination of representation); and Rule 8.4(d) (serious interference with the administration of justice). Although the Petition indicates that Respondent withdrew client funds in Matter 2015-D289, it notes that she maintained these funds in the ward's file, in the form of two cashier's checks payable to the ward. Those facts, which were supported by the Chair's *in camera* review of Disciplinary Counsel's files and records and *ex parte* communications with Disciplinary Counsel, are sufficient to negate a finding of misappropriation. *See In re Ingram*, 584 A.2d 602, 603 (D.C. 1991) (per curium) ("[T]estimony that respondent kept the money owed to the client intact in the client's file [was] sufficient to negate a finding of misrepresentation.").

The Petition also notes several mitigating factors. Respondent: 1) has acknowledged her misconduct and the harm it has caused; 2) did not collect fees for the last accounting period in the 2015 matter; 3) did not collect any fees in the 2016 and 2017 matters, 4) spent her own funds to attempt to prevent foreclosure of the beneficiaries' home in the 2017 matter; 5) provided years of service for the wards and beneficiaries (respectively) in the 2015 and 2017 matters; 6) was suffering from serious health issues in 2014 and 2015, which resulted in her being frequently bedridden; and, 7) has no prior discipline in this or any other jurisdiction. Moreover, that parties are not aware of any aggravating circumstances.

The agreed upon sanction, including the stay, appears to be within the range of sanctions that have been imposed for similar misconduct in contested cases. *See, e.g.*, *In re Hargrove*, 155 A.3d 375 (D.C. 2017) (per curiam) (sixty-day suspension with reinstatement conditioned upon proof of fitness for the respondent's neglect and lack of competence as personal representative of an estate, refusal to turn over the estate's file for over a year after her removal, and failure to pay a judgment and award of attorney's fees to the estate, in violation of Rules 1.1(a) and (b), 1.3(c), 1.16(d), and 8.4(d), aggravated by the respondent's failure to meaningfully participate in the disciplinary proceedings, which resulted in a default judgment); *In re Ontell*, Board Docket No. 228-96 (BPR June 11, 1998), *recommendation adopted*, 724 A.2d 1204 (D.C. 1999) (per curiam) (ninety-day suspension with sixty days stayed in favor of probation for "persistent neglect" of a court-appointed criminal appeal, in which the respondent ignored court orders and failed to file a brief, in

violation of Rules 1.1(a) and (b), 1.3(a), (b), and (c), 1.4(a), 1.16(a) and (d), and 8.4(d), mitigated by a medical condition that contributed to the misconduct); *In re Pullings*, 724 A.2d 600 (D.C. 1999) (per curiam) (and appended Board Report) (sixty-day suspension stayed in favor of one year of probation for misconduct in three separate matters, including failure to return a client's file, failure to carry out the representation after she was hired to appeal a criminal conviction, failure to provide a written fee agreement, and failure to cooperate with Disciplinary Counsel, in violation of Rules 1.3(a) and (b)(1), 1.4(a), 1.5(b), 1.16(d), and 8.4(d)); *In re Drew*, 693 A.2d 1127 (D.C. 1997) (per curiam) (and appended Board Report) (sixty-day suspension for failure to note an appeal in two criminal cases and failure to file a motion to modify his client's sentence in one of them, which necessitated additional court proceedings in both cases, in violation of Rules 1.1(a) and (b), 1.3(a) and (b)(1), 1.5(b), 1.16(d), and 8.4(d)); and *In re Lyles*, 680 A.2d 408 (D.C. 1996) (per curiam) (and appended Board Report) (six-month suspension with reinstatement conditioned upon proof of fitness for serious neglect of four bankruptcy matters over the course of a year, including failure to file timely bankruptcy plans and appear at hearings, in violation of Rules 1.1(b), 1.3(a), and 8.4(d)). Accordingly, the stipulated sanction does not appear to be 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 a sixty-day suspension, fully stayed in favor of one year of probation with the conditions set forth in Paragraph 12, *supra*.

AD HOC HEARING COMMITTEE

Kevin M. Dinan, Esquire
Chair

Ria Fletcher
Public Member

Dawn E. Murphy-Johnson, Esquire
Attorney Member