

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: :  
: PHILIP B. ZIPIN, :  
: Respondent. : Board Docket No. 19-ND-006  
: Disciplinary Docket No. 2018-D198  
: A Member of the Bar of the :  
District of Columbia Court of Appeals :  
(Bar Registration No. 367362) :

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 July 30, 2019, for a limited hearing on a Petition for Negotiated Discipline (the “Petition”). The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Hendrik DeBoer. Respondent, Philip Zipin, was represented by Justin M. Flint.

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 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 (a) approve the Petition, (b) find the negotiated discipline of a sixty-day

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

suspension -- stayed in favor of one year of unsupervised probation -- is justified, and (c) 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 him an investigation into allegations of misconduct. Tr. 15;<sup>1</sup> Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent violated Rules 1.1(a) (lack of competence), 1.1(b) (skill and care), 1.3(a) (diligence and zeal), 1.3(c) (reasonable promptness), 1.7(b)(4) (conflict of interest), and 8.4(d) (serious interference with the administration of justice). Petition at 8.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 16; 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 December 13, 1982, and assigned Bar number 367362.

(2) In late 2002, Elsie Hamilton was 91 years old, blind, bedridden due to degenerative arthritis, with no family and living alone in a dilapidated house in the District of Columbia. Around that time, she met David Ross, a contractor to whom she had been referred for repairs on her house. Because Ms. Hamilton's previous caregivers had abandoned her, Mr. Ross and his wife, Daphne Arrindell, began to care

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<sup>1</sup> "Tr." refers to the transcript of the limited hearing held on July 30, 2019.

for Ms. Hamilton. In March 2003, Ms. Hamilton signed a power of attorney for Mr. Ross and Ms. Arrindell.

(3) On July 14, 2003, Adult Protective Services filed with the District of Columbia Superior Court Probate Division a petition for appointment of a guardian and conservator for Ms. Hamilton. In the petition, APS noted that Ms. Hamilton was susceptible to financial exploitation, having been defrauded by previous caregivers. APS also called into question the honesty of Mr. Ross and the circumstances of his obtaining power of attorney.

(4) On July 21, 2003, the court scheduled an intervention proceeding to consider the petition and appointed Respondent as counsel for Ms. Hamilton.

(5) On August 1, 2003, Respondent met Ms. Hamilton at her home. Ms. Hamilton asked Respondent to draft a will for her naming Mr. Ross and Ms. Arrindell as beneficiaries of her estate, which mainly consisted of her house.

(6) On August 16, 2003, a court-appointed examiner prepared a report stating that while Ms. Hamilton exhibited no cognitive impairments, she required assistance and supervision with all activities of daily living due to her physical condition.

(7) On August 21, 2003, Respondent and APS filed a joint stipulation with the court, stating, among other things, that Ms. Hamilton had been financially exploited by others in the recent past and remained at risk of further exploitation and recommending that Respondent or an independent member of the bar be appointed conservator and Mr. Ross be appointed guardian. The same day, the court held a hearing and appointed Respondent as Ms. Hamilton's conservator and Mr. Ross as Ms. Hamilton's guardian. Respondent did not inform the court of Ms. Hamilton's expressed desire to execute a will naming Mr. Ross and Ms. Arrindell as beneficiaries.

(8) After being appointed, Respondent failed to file letters of conservatorship with the Recorder of Deeds, as required by D.C. Code § 21-2067.

(9) On August 25, 2003, Ms. Hamilton executed a will drafted by Respondent naming Mr. Ross and Ms. Arrindell as beneficiaries and

Respondent as personal representative. Respondent did not inform Ms. Hamilton of the existence and nature of a possible conflict of interest with respect to his naming himself personal representative or the possible adverse consequences of such representation.

(10) In 2004, Respondent filed suit on Ms. Hamilton's behalf against Wachovia Bank for negotiating checks that had been forged by her previous caregivers. The parties settled for \$12,500 and Respondent petitioned the probate court for a third of the recovery as his fee, which was approved.

(11) In January 2005, Mr. Ross and Ms. Arrindell, having sold their own home to pay for renovations of Ms. Hamilton's house, moved in with Ms. Hamilton.

(12) On September 30, 2005, Mr. Ross used his status as guardian and power of attorney to take out a mortgage on Ms. Hamilton's house for \$127,000. Because Respondent had failed to file letters of conservatorship with the Recorder of Deeds, the bank was not aware that Respondent was conservator and that his authorization of the transaction was required. Respondent was unaware of the transaction and did not report it in his accountings.

(13) Shortly after taking out the mortgage, Mr. Ross lost \$100,000 of the funds in an investment scam.

(14) In April 2007, Mr. Ross and Ms. Arrindell filed a petition to remove Respondent as conservator, purportedly to save money for the estate. After a hearing where Respondent agreed to be removed, the court granted the petition and named Mr. Ross as successor conservator. Mr. Ross failed to qualify for bond and Ms. Arrindell was named conservator instead.

(15) During the four-year period that Respondent acted as Ms. Hamilton's conservator, he failed to file tax returns on Ms. Hamilton's behalf.

(16) After being removed as conservator, Respondent failed to file a final accounting.

(17) On June 30, 2008, Respondent filed a motion seeking to late file a petition for compensation for his services as conservator. In response,

the court noted that Respondent had not filed his final accounting and denied the motion without prejudice to re-filing after he had done so. Respondent still did not file a final accounting at that time.

(18) On September 9, 2008, Ms. Hamilton executed a new will that was identical to the 2003 will except that it named Mr. Ross and Ms. Arrindell as co-personal representatives instead of Respondent.

(19) On September 30, 2008, Mr. Ross and Ms. Arrindell filed a petition for permission to sell Ms. Hamilton's house. The court scheduled a hearing to consider the petition and appointed Brett Cohen as counsel for Ms. Hamilton.

(20) On October 27, 2008, Ms. Hamilton died.

(21) On October 29, 2008, the court, unaware of Ms. Hamilton's death, granted the petition allowing for the sale of the house.

(22) On November 3, 2008, Mr. Cohen, also unaware of Ms. Hamilton's death, filed a petition informing the court that he had recently discovered that Mr. Ross had taken out a mortgage on Ms. Hamilton's house and that the proceeds had not been delivered to Respondent as conservator. In response, the court scheduled a hearing and ordered that Respondent, Mr. Ross and Ms. Arrindell be prepared to account for the funds.

(23) On November 7, 2008, Mr. Ross and Ms. Arrindell filed a petition for unsupervised probate of Ms. Hamilton's estate using the 2008 will.

(24) On November 17, 2008, the court appointed Mr. Ross and Ms. Arrindell as co-personal representatives of Ms. Hamilton's unsupervised estate.

(25) On December 2, 2008, the court held a hearing on Mr. Cohen's petition. The court asked Mr. Ross whether he had receipts documenting his expenditure of the mortgage funds. Mr. Ross told the court that he did and the court directed him to provide those receipts to Respondent so that Respondent could account for the funds in his final accounting, which he had still not filed.

(26) On March 5, 2009, Respondent filed his final accounting. Contrary to the court's direction, he did not account for the mortgage funds in his accounting. Nonetheless, on October 29, 2009, the court approved the accounting. The court did not learn that Mr. Ross had lost the funds in an investment scam, and not spent them to renovate the house as he had claimed, until proceedings before the Auditor Master in late 2010.

(27) On August 17, 2009, the Estate of Dorothy King, the beneficiary of a will that Ms. Hamilton had executed prior to the 2003 will, filed a complaint contesting the 2003 and 2008 wills. Dorothy King was a previous caretaker for Ms. Hamilton.

(28) On July 19, 2010, the court removed Mr. Ross and Ms. Arrindell as co-personal representatives of Ms. Hamilton's estate. On September 17, 2010, the court referred the case to the Auditor Master to state a final accounting for the removed co-personal representatives.

(29) On April 29, 2011, the Auditor Master issued a report recommending a judgment against Mr. Ross and Ms. Arrindell for the full amount of the outstanding mortgage, with all penalties, interests and costs in the event that the Estate of Dorothy King's will contest was successful.

(30) On October 9, 2014, the court ordered the 2003 and 2008 wills deemed void as being products of undue influence. The same day, the court entered an order approving the Auditor Master's report and issuing a judgment against Mr. Ross and Ms. Arrindell for the full amount of the outstanding mortgage, with all penalties, interests and costs. On September 22, 2016, the District of Columbia Court of Appeals affirmed those orders.

(31) On March 22, 2017, successor personal representative filed a notice stating that Mr. Ross and Ms. Arrindell had repaid the estate in full.

(32) In 2017, the IRS sent demands to Ms. Hamilton's estate for \$5,265.73 due to tax obligations from 2005 that Respondent failed to address as conservator.

(33) On October 18, 2017, successor personal representative of Ms. Hamilton's estate filed a motion under Rule 60 of the D.C. Superior

Court Rules of Civil Procedure seeking to vacate an August 17, 2009 Order awarding Respondent \$8,669.31 in fees as compensation for his services as conservator, arguing that Respondent should not be awarded fees given that 1) he engaged in a conflict of interest by drafting the 2003 will that named himself personal representative of Ms. Hamilton's estate; 2) failed to file the letters of conservatorship that could have prevented the improper mortgage; and 3) failed to file tax returns.

(34) On May 8, 2018, the court denied the motion, stating that while each of its stated grounds could have formed the basis of a legal malpractice claim against Respondent, Rule 60 could not be used in lieu of a legal malpractice claim or to circumvent the statute of limitations on such a claim, which had expired.

(35) On April 19, 2019, Respondent filed a motion to vacate the August 17, 2009 Order awarding him \$8,669.31 in fees as compensation for his services as conservator. Respondent stated that he "relinquishes any rights given to him" by the Order and "considers any outstanding fees awarded to him in the . . . matter satisfied in full." He also stated that in the event the court was not inclined to vacate its Order, he "will not pursue Ms. Hamilton's estate for the payment" of the fees.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 14-15; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises or inducements to Respondent other than what is contained in the Petition for Negotiated Discipline. Affidavit ¶ 7. Those promises and inducements are that Disciplinary Counsel will not bring any other charges or recommend any other sanction beyond what is contained in the Petition. Petition at 8. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 19-21.

7. Respondent has conferred with his counsel. Tr. 10-11; Affidavit ¶ 1.
8. Respondent has knowingly and voluntarily agreed to the sanction set forth in the Petition for Negotiated Discipline. Tr. 18-19; Affidavit ¶¶ 4, 6.
9. Respondent is not being subjected to coercion or duress. Tr. 21; Affidavit ¶ 6.
10. Respondent is competent and was not under the influence of any substance or medication that would affect his ability to make informed decisions at the limited hearing. Tr. 11-12.
11. Respondent is fully aware of the implications of the disposition being entered into, including, but not limited to, the following:
  - a) he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;
  - b) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;
  - c) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;
  - d) the negotiated disposition, if approved, may affect his present and future ability to practice law;
  - e) the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and
  - f) any sworn statement by Respondent in his affidavit or any statements made by Respondent during the proceeding may be used to impeach his testimony if there is a subsequent hearing on the merits.Tr. 14, 24-28; 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



unsupervised probation, on the condition that Respondent shall not engage in any ethical misconduct in this or any other jurisdiction. Petition at 8-9; Tr. 18-19. If Respondent's probation is revoked, he may be required to serve the sixty-day suspension. Respondent further understands that if his probation is revoked and he is suspended, he must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for his suspension to be deemed effective for purposes of reinstatement. Tr. 27.

13. In aggravation of sanction, the parties agree that Respondent's misconduct harmed a vulnerable client. Petition at 10; Tr. 23-24.

14. In mitigation, the parties agree that Respondent: (1) acknowledges his misconduct; (2) has cooperated with Disciplinary Counsel; (3) has expressed remorse; (4) has agreed not to pursue outstanding fees awarded by the court for his services as conservator and filed a motion to that effect<sup>2</sup> and; (5) has no prior discipline in thirty-seven years. Petition at 10; Tr. 22. Pursuant to Board Rule 17.4(a), the Hearing Committee also considers Respondent's statement that he does not currently practice in the area of conservatorship law and that the misconduct is unlikely to recur as a result. Tr. 23.

15. The complainant, Ms. Blackwell, was notified of the limited hearing and was in attendance, but declined to give a statement. Tr. 8, 28.

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<sup>2</sup> Respondent represented at the limited hearing that his motion was ultimately granted. Tr. 23.

### III. DISCUSSION

The Hearing Committee shall approve 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;
- 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 he is under duress or has been coerced into entering into this disposition. *See* Paragraphs 8-9, *supra*. Respondent understands the implications and consequences of entering into this negotiated discipline. *See* Paragraph 11, *supra*.

Respondent has acknowledged that any and all promises or inducements that have been made to him 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 him. *See* Paragraph 6, *supra*.

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 he believes that he could not successfully defend against the misconduct described in the Petition. *See Paragraph 5, supra.*

With regard to the second factor, the Petition states that Respondent violated Rules of Professional Conduct 1.1(a) and (b) (lack of competence, skill, and care). The evidence supports Respondent's admission that he violated Rules 1.1(a) and (b) in that the stipulated facts describe that Respondent engaged in probate work for which he failed to demonstrate the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation," leading to his failure to fulfill the basic obligations of a competent attorney in his position. As an example, Respondent failed to file letters of conservatorship with the Recorder of Deeds, as required by D.C. Code § 21-2067, which ultimately permitted Mr. Ross to take out a mortgage without Respondent's knowledge or consent. The obligation to file tax returns also would have been obvious to a competent conservator.

The Petition further states that Respondent violated Rules 1.3(a) and (c) (lack of diligence, zeal, and reasonable promptness). The same evidence that supports a violation of Rules 1.1(a) and (b) also supports Respondent's admission that he violated Rule 1.3(a). Specifically, the stipulated facts describe that Respondent did

not act timely with respect to notifying the court of the conservatorship, which reflected a failure to provide diligent and zealous representation. Furthermore, Respondent's failure to file a final accounting for more than a year after he was required to do so evinced a failure to act with reasonable promptness, in violation of Rule 1.3(c).

The Petition further states that Respondent violated Rule 1.7(b)(4) (conflict of interest). The evidence supports Respondent's admission that he violated Rule 1.7(b)(4) in that the stipulated facts describe that Respondent drafted a will for a client in which he was named as the administrator without disclosing to the client the potential conflict of interest.

The Petition further states that Respondent violated Rule 8.4(d) (serious interference with the administration of justice). The evidence supports Respondent's admission that he violated Rule 8.4(d) in that the stipulated facts describe that Respondent's failure to file a final accounting for over a year after he was required to do so and several months after the court instructed him to do so, and his failure to inform the court of Mr. Ross's loss of funds, led to delay and the appointment of an auditor master to recover money owed to the estate.

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 is justified and not unduly lenient, for the following reasons:

Respondent engaged in misconduct. As described above, this misconduct included failing to notify the client of a potential conflict of interest with respect to his appointment as the administrator under the will and failing to file necessary documents that would have prevented the wrongdoing of his replacements as conservator, among other things. Respondent in this case was practicing in a specialized area of law in which he did not demonstrate the required experience or knowledge. That said, this does not appear to constitute a pattern for Respondent but rather was a unique situation that was not part of a broader practice for him. Respondent did not engage in any wrongdoing other than that described in this Petition with respect to these facts, meaning that Respondent did not engage in intentional efforts to harm his client or to defraud his client in any way. In addition, Respondent recognized the gravity of the charges against him and appeared contrite with respect to this wrongdoing. Finally, Respondent agreed to not collect money from the estate with regard to his work as a conservator, making his own motion to vacate any fees owed to him and to relinquish any right he had to those fees.

The Committee also finds that the stipulated sanction is not unduly lenient in relation to sanctions the Court has imposed for comparable misconduct in contested

cases. *See, e.g., In re Long*, 902 A.2d 1168, 1169, 1171-72 (D.C. 2006) (per curiam) (thirty-day suspension stayed in favor of one year of probation for preparing a will for a client despite a conflict of interest, in violation of Rule 1.7(b)(2) and (c), in addition to violations of Rules 1.1(a) and (b) and 1.5(b), mitigated by factors including lack of prior discipline and the fact that the misconduct took place outside the respondent's regular area of practice); *In re Evans*, 902 A.2d 56, 58-59, 75-76 (D.C. 2006) (per curiam) (appended Board Report) (six-month suspension, with final ninety days stayed for one year of probation with condition of oversight by a practice monitor, and with CLE, for using a probate proceeding to facilitate the closing of a real estate transaction in which the respondent had an interest, in violation of Rule 1.7(b)(4), in addition to violations of Rules 1.1(a) and (b) and 8.4(d), aggravated by prior discipline, prejudice, and lack of remorse); *In re Boykins*, 748 A.2d 413, 413-14 (D.C. 2000) (per curiam) (thirty-day suspension stayed in favor of one year of probation for representation of a co-conservator of an estate as well as heirs of the estate, in violation of Rule 1.7(b), in addition to violations of Rules 1.1(a) and (b), 1.3(a) and (c), Rule 1.5(b), and Rule 8.4(d), mitigated by inexperience at the time of the misconduct and lack of dishonesty.).

Taking these facts together, the Hearing Committee believes that the agreed-upon sanction is justified.

#### 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, stayed in favor of one year of unsupervised probation, with the condition that Respondent not engage in any ethical misconduct in this or any jurisdiction.

AD HOC HEARING COMMITTEE



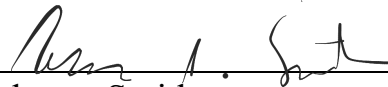
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Edward Baldwin  
Chair



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Judy Deason  
Public Member



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Rebecca Smith  
Attorney Member