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:	:	
	:	
VINCENT WILKINS, JR.,	:	
	:	
Respondent.	:	Board Docket No. 19-ND-003
	:	Disciplinary Docket No. 2017-D117
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 439005)	:	

REPORT AND RECOMMENDATION
OF THE AD HOC HEARING COMMITTEE
APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee (the "Hearing Committee") on December 30, 2019, for a limited hearing on a Second Amended Petition for Negotiated Disposition. The members of the Hearing Committee are Benjamin M. Lee, Chair; Joel Kavet, Public Member; and Nicole Porter, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Hendrik DeBoer. Respondent, Vincent Wilkins, Jr., was represented by Justin Flint, Esquire, and Channing L. Shor, Esquire, and was present throughout the limited hearing.[1]

[1] This matter was previously before this Hearing Committee pursuant to an Amended Petition for Negotiated Disposition, which was rejected by this Hearing Committee in an Order issued on October 17, 2019, on the basis that the agreed-upon sanction was not justified taking into consideration the record as a whole, including the nature of the misconduct, any charges that Disciplinary Counsel had agreed not to pursue, and any circumstances in aggravation.

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

The Hearing Committee has carefully considered the Second Amended Petition for Negotiated Discipline signed by Disciplinary Counsel, Respondent, and Respondent's counsel (the "Petition"), the supporting Second Amended Affidavit of Negotiated Disposition submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent, Respondent's counsel, and Disciplinary Counsel. The Hearing Committee has also fully considered the December 26, 2019 written statement submitted by the complainant, Mary Coltrane, and the oral statements of Ms. Coltrane made pursuant to Board Rule 17.4. *See* Hearing Transcript 67-69 (Dec. 30, 2019).

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, a majority of the Hearing Committee approves the Petition, finding the negotiated discipline of a 90-day suspension, with 60 days stayed in favor of a one-year period of unsupervised probation with conditions including refraining from engaging in any misconduct in this or any other jurisdiction during the one-year probationary period, completion of the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond program and an assessment by the D.C. Bar Practice Management Advisory Service, is justified and recommends 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]

2. Respondent is aware that there is currently pending against him an investigation involving allegations of misconduct. Tr. 58[3]; Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are violations of Louisiana Rules of Professional Conduct 1.1(a) (by failing to provide competent representation to Ms. Coltrane), 1.3 (by failing to act with reasonable diligence and promptness in representing Ms. Coltrane), 1.4(a)(3) (by failing to keep Ms. Coltrane reasonably informed about the status of the matter) and 8.4(c) (by engaging in conduct involving dishonesty). Petition at ¶ 26(a)-(d).

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 58-59; Affidavit ¶¶ 4, 6. Specifically, Respondent acknowledges the following:

A. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on September 10, 1993, and assigned Bar number 439005. Respondent is also a member of the Louisiana State Bar Association.[4]

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[2] In the third full paragraph of Section IV of the Petition, the reference to "30-day suspension" is erroneous and should refer to a "60-day suspension," i.e., if Respondent violates the terms of his probation, Disciplinary Counsel may seek to revoke Respondent's probation and request that he be required to serve the *60-day* suspension previously stayed. At the limited hearing, both Respondent and Disciplinary Counsel agreed on the record that the reference to 30 days should be 60 days. *See* Tr. 61.

[3] "Tr." refers to the transcript of the limited hearing held on December 30, 2019.

[4] This Hearing Committee takes judicial notice of the fact that pursuant to a Certificate from the Louisiana State Bar Association dated December 6, 2019 (which was attached as Exhibit A to Complainant's Response to Second Amended Petition for Negotiated Disposition), Respondent is not an active member in good standing of the Louisiana State Bar Association, having become ineligible on September 9, 2011 due to the non-payment of 2011-2012 LADB assessments, non-payment of 2011-2012 LSBA membership dues and non-compliance with the Trust Account Disclosure Form.

B. On January 18, 2010, Carlton Coltrane, an inmate at the United States Penitentiary in Pollock, Louisiana, ("USP-Pollock") was stabbed to death by another inmate.

C. On May 7, 2010, Carlton's mother, Mary Coltrane, entered into a contingency fee agreement with Respondent to render legal services on her behalf against anyone liable for Carlton's death.

D. Respondent and Ms. Coltrane agreed to file a Federal Tort Claims Act claim with the Federal Bureau of Prisons ("BOP") and a lawsuit in the United States District Court for the District of Columbia.

E. On June 25, 2010, Respondent sent letters to the Department of Justice and BOP stating that he had been retained by Ms. Coltrane and requesting documents related to Carlton's death.

F. On January 18, 2011, Respondent, pursuant to the Federal Tort Claims Act, submitted a claim to the BOP on Ms. Coltrane's behalf seeking damages of $1,000,000 for "negligent, and malicious acts and omissions committed by employees of the Federal Bureau of Prisons."

G. For the lawsuit to be filed in the D.C. District Court, Respondent told Ms. Coltrane that it would be in her interest to appear to be a *pro se* litigant.[5] Therefore, he agreed to draft all pleadings, but would not sign them. Instead, he would bring them to Ms. Coltrane for her signature, and then file or mail them himself. He told Ms. Coltrane to immediately notify him whenever she received any documents from the court, and she agreed to do so.

H. On January 18, 2011, Respondent filed in the D.C. District Court a complaint against the director of BOP and various employees of USP-Pollock alleging violations of the Fifth and Eighth Amendments to the Constitution seeking declaratory relief and damages. The complaint was not signed by Respondent and instead signed by "Mary L. Coltrane Pro Se", as were all subsequent court filings.

I. On July 29, 2011, the BOP denied Ms. Coltrane's claim.

[5] D.C. Ethics Opinion 330 states that ghostwriting without disclosure to the court is permissible under the D.C. Rules. *See also* ABA Formal Opinion 07-446. There are no rules prohibiting ghostwriting in Louisiana.

J. On December 16, 2011, Respondent filed an amended complaint adding the United States as a defendant and wrongful death claims seeking $1,000,000 in damages.

K. On August 15, 2012, the case was transferred to the United States District Court for the Western District of Louisiana.

L. On July 26, 2013, the defendants filed a motion to dismiss all of Ms. Coltrane's claims arguing lack of personal jurisdiction, failure to state a claim, lack of standing, and absolute and qualified immunity.

M. On August 16, 2013, Respondent filed an opposition to the motion to dismiss. The two-page opposition stated that Ms. Coltrane "reiterates the statements and legal arguments as set forth" in two previous pleadings. Neither of those pleadings addressed the specific arguments made by the defendants for why Ms. Coltrane's various claims should be dismissed.

N. On March 7, 2014, the magistrate judge, treating the defendants' motion to dismiss as a motion for summary judgment, issued a report and recommendation recommending that all claims be dismissed with prejudice. The report imposed a deadline of March 24, 2014 to raise any objections to the report and recommendation. The report made clear that failure to timely object "shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error."

O. On March 29, 2014, Respondent mailed to the court objections to the report and recommendation. On April 1, the court docketed the objections as filed. The same day, the court issued a judgment adopting the magistrate judge's recommendation and dismissing all claims with prejudice.

P. On April 11, 2014, Respondent filed a Motion to Alter the Judgment, arguing that the objections were timely filed and should have been considered.

Q. On July 18, 2014, the court denied the motion to alter the judgment. Although it considered the motion to be "technically" untimely, the court considered Ms. Coltrane's objections "out of an abundance of caution and in recognition of [Ms. Coltrane's] *pro se* status." Nonetheless, the court upheld the judgment dismissing her claims.

R. Under the court rules, the deadline for filing an appeal to the United States Court of Appeals for the Fifth Circuit was September 15, 2014. On September 17, 2014, Respondent mailed a notice of appeal dated September 15, 2014 to the Fifth Circuit. The notice of appeal was docketed on September 22, 2014.

S. On February 20, 2015, the Fifth Circuit, on its own motion, dismissed Ms. Coltrane's appeal as untimely. The court noted that although the notice of appeal was dated September 15, 2014, it was not stamped for delivery until September 17, 2014 and not docketed until September 22, 2014.

T. On March 10, 2015, Respondent filed a motion to vacate the order of dismissal arguing that the appeal was timely filed under Federal Rules of Appellate Procedure Rule 26.

U. On March 26, 2015, the court considered the motion as a motion to reconsider and denied it.

V. The deadline for a petition for rehearing of the court's February 20, 2015 dismissal was April 6, 2015. On April 7, 2015, Respondent mailed a petition for rehearing or rehearing *en banc* to the Fifth Circuit. The petition was docketed the next day.

W. On April 13, 2015, the Fifth Circuit sent a letter to Ms. Coltrane notifying her that the petition was untimely, and no action would be taken by the court, ending the case.

X. Following the Fifth Circuit's disposition of the case, Respondent falsely told Ms. Coltrane that her case was still viable even though it had been dismissed.

Y. On April 16, 2019, Respondent provided Ms. Coltrane with a refund of the $3,500 in advanced expenses she had previously paid.

Z. Respondent's conduct violated the following Louisiana Rules of Professional Conduct:[6]

[6] Because the conduct was in connection with a matter pending before the United States District Court for the Western District of Louisiana, the Louisiana Rules apply. *See* Rule 8.5(b). Complainant asserted in her written statement that the District of Columbia Rules should apply to Respondent's misconduct. *See* Complainant's Response to Second Amended Petition for Negotiated Disposition at 3. The Hearing Committee disagrees with that assertion, but notes that

- Rule 1.1(a), by failing to provide competent representation to Ms. Coltrane;
- Rule 1.3, by failing to act with reasonable diligence and promptness in representing Ms. Coltrane;
- Rule 1.4(a)(3), by failing to keep Ms. Coltrane reasonably informed about the status of the matter; and
- Rule 8.4(c), by engaging in conduct involving dishonesty.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 57; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Tr. 62; Affidavit ¶ 7. Those promises and inducements are that "Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II, [of the Petition], other than those set forth above, or any sanction other than that set forth [in Section IV of the Petition]." Petition at 7. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 62.

7. Respondent has conferred with his counsel. Tr. 52-53; Affidavit ¶ 1.

8. Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 62; Affidavit ¶¶ 4, 6.

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the applicable Louisiana Rules are substantively identical to the District of Columbia equivalents and, accordingly, the choice of which rules apply does not affect the analysis in this matter.

9. Respondent is not being subjected to coercion or duress. Tr. 62; 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. 53-54.

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

a) Respondent will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;

b) Respondent will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;

c) Respondent 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 Respondent's present and future ability to practice law;

e) the negotiated disposition, if approved, may affect Respondent's 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. 65-66; Affidavit ¶¶ 9-12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a 90-day suspension, with 60 days stayed in favor of a one-year period of unsupervised probation with conditions. Petition at 8; Tr. 59-60.

a) Respondent further understands that 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. Affidavit ¶ 13.

b) Respondent understands that conditions of this negotiated disposition are that he must refrain from engaging in any misconduct in this or any other jurisdiction during the one-year probationary period and will be required to complete the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond program and undergo an assessment by the D.C. Bar Practice Management Advisory Service. Tr. 60.

c) Respondent understands that if he fails to satisfy any of the conditions, it may result in revocation of probation and he may be required to serve the remaining 60 days of stayed suspension. Tr. 61.

13. The Hearing Committee has taken into consideration the following aggravating circumstances: Respondent has prior discipline. In 1984, Respondent served a three-year suspension for mishandling of entrusted funds in Louisiana. In addition, Ms. Coltrane was prejudiced by Respondent's misconduct, in that she lost the opportunity to have her claim competently and zealously brought against the government. *See* Petition at 10.

14. The Hearing Committee has taken into consideration the following mitigating circumstances: Respondent has acknowledged his misconduct, refunded Ms. Coltrane the funds she paid for the case, cooperated with Disciplinary Counsel, and agreed to take steps to prevent future misconduct. *See* Petition at 9-10.

15. The complainant, Ms. Coltrane, presented a written comment and made statements during the limited hearing pursuant to Board Rule 17.4(a). The Hearing Committee has taken into consideration Ms. Coltrane's assertions that the scope of Disciplinary Counsel's investigation was too limited, that it was inappropriate and unethical for Respondent to advise Ms. Coltrane to appear to be a *pro se* litigant, that the District of Columbia Rules of Professional Conduct should apply to Respondent's misconduct instead of the Louisiana Rules of Professional Conduct, and that the agreed-upon sanction is not justified and is a "slap on the hand." Tr. 69; *see* Response to Second Amended Petition for Negotiated Disposition at 1-3.

16. In addition, Ms. Coltrane asked during the limited hearing that Respondent be instructed "to turn over to [her] any remaining documents, letters, et cetera, in his possession or control regarding the civil or administrative tort case, specifically letters, documents regarding his communications with the Justice Department and the Bureau of Prisons Officials." Tr. 69. Because the failure to return a client's file may violate D.C. Rule of Professional Conduct 1.16(d) and could be relevant to whether the sanction in this matter was "justified" and not "unduly lenient," the Hearing Committee Chair ordered the parties to appear at a post-hearing conference on January 22, 2020 to address Ms. Coltrane's allegations. On January 17, 2020, Respondent and Disciplinary Counsel filed a joint motion to cancel the post-hearing conference on the grounds that Ms. Coltrane did not allege in her complaint that she had not been provided a copy of her client papers, that Disciplinary Counsel provided Ms. Coltrane with a copy of the file containing over

1,000 pages by mail on September 25, 2018, one day after she requested the copy, and that Disciplinary Counsel sent a second copy of the file after the limited hearing, on January 6, 2020. The Hearing Committee Chair granted the parties' joint motion in an Order issued on January 21, 2020.

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 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. A majority of the Hearing Committee concludes that they support the admission 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 Louisiana Rules of Professional Conduct 1.1(a) (by failing to provide competent representation to Ms. Coltrane), 1.3 (by failing to act with reasonable diligence and promptness in representing Ms. Coltrane), 1.4(a)(3) (by failing to keep Ms. Coltrane reasonably informed about the status of the matter) and 8.4(c) (by engaging in conduct involving dishonesty). Petition at ¶ 26(a)-(d). The evidence supports Respondent's admission that he violated Rule 1.1(a) by failing to appropriately pursue Ms. Coltrane's case, including the failure to adequately respond to the specific arguments made in the defendants' motion to dismiss Ms. Coltrane's case, Rules 1.1(a) and 1.3 by failing to meet the filing deadlines in Ms. Coltrane's case on at least three separate occasions, and Rules 1.4(a)(3) and 8.4(c) by failing to keep

Ms. Coltrane adequately informed of the status of her case and falsely telling Ms. Coltrane that her case was still viable even though it has been dismissed.

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, a majority of the Hearing Committee concludes that the agreed-upon sanction is justified and not unduly lenient.

Our task in evaluating a petition for negotiated discipline is not to determine whether the agreed sanction is the one that we would impose if we were deciding the matter in the first instance as part of a contested disciplinary proceeding. Instead, as described above, we must decide whether the sanction is "justified" and not "unduly lenient." However, in deciding whether a sanction is "justified" and not "unduly lenient," a consideration of what sanction might be imposed in a contested disciplinary proceeding is instructive. *See In re Beane*, Bar Docket Nos. 340-07, *et al.* (HC Rpt. July 16, 2010) (applying the following standard to a negotiated discipline: "Based on all of the facts and circumstances in this record, does it appear likely that Respondent is getting a result substantially more 'lenient' than he would

expect if the negotiated discipline were disapproved and [Disciplinary] Counsel proceeded to adjudicate the case?"), *negotiated discipline approved*, 6 A.3d 261 (D.C. 2010) (per curiam).

Generally, absent aggravating factors, a first instance of neglect of a single client matter warrants a reprimand or public censure. *See, e.g.*, *In re Schlemmer*, 870 A.2d 76 (D.C. 2005) (Board reprimand); *In re Bland*, 714 A.2d 787 (D.C. 1998) (per curiam) (public censure). The Court has imposed more serious sanctions in neglect cases where there were significant aggravating factors, such as deliberate dishonesty, a pattern of neglect, or an extensive disciplinary history. *See, e.g.*, *In re Cole*, 967 A.2d 1264 (D.C. 2009) (30-day suspension for failure to file an asylum application for client and lying to client about the status of the application); *In re Ontell*, 593 A.2d 1038 (D.C. 1991) (30-day suspension for neglect of two cases and misrepresentations to clients about the status of their cases); *In re Outlaw*, 917 A.2d 684 (D.C. 2007) (60-day suspension where attorney lied to client about claim after allowing the statute of limitations to lapse and did not accept responsibility); *In re Steinberg*, 878 A.2d 496 (D.C. 2005) (per curiam) (60-day suspension for neglect where attorney had three prior 30-day suspensions).

Based on the relevant precedent, including the cases cited above, and considering the totality of the information before it, the Hearing Committee concludes that the proposed sanction is "justified" and not "unduly lenient." "[T]he choice of a sanction is not an exact science," *see In re Edwards*, 870 A.2d 90, 94 (D.C. 2005) (quotations omitted), but the Hearing Committee agrees that

Respondent's dishonesty to his client and the other aggravating factors in this case (prejudice to the client's case and prior disciplinary history) warrant a period of actual suspension as opposed to a public censure or a fully-stayed period of suspension.

We disagree, however, with the public member's recommendation that a six-month suspension may be warranted given Respondent's misconduct. In support of that position, the public member asserts that this case is more like *In re Chisholm*, 679 A.2d 495 (D.C. 1996), where a six-month suspension was imposed. In that case, however, Mr. Chisholm persistently neglected his client's case over a five-year period, which resulted in the needless incarceration of the client. *See* 679 A.2d at 501 (quoting Board Report). He never filed any pleadings or briefs in the case, he intentionally and repeatedly lied to his client, and he showed no remorse for his neglect, misrepresentations, and intentional failure to pursue the appeal for which he was retained. *See id.* at 501-05. Therefore, the facts in *Chisholm* are distinguishable here. With that said, the majority wants to make it clear that the recommended approval of this negotiated disposition is not intended to minimize the seriousness of Respondent's misconduct. Ms. Coltrane has endured a tragic set of circumstances, and Respondent potentially prevented Ms. Coltrane from finding out how and why her son died in prison. We listened carefully to Ms. Coltrane's statements during the limited hearings, we felt her pain and anguish, and we respect the dissent's impassioned plea for justice for Ms. Coltrane and her son. Unfortunately, an attorney disciplinary proceeding cannot provide Ms. Coltrane with

the answers that she seeks or correct the underlying wrongs that were perpetrated on her, but it can hopefully ensure that Respondent does not commit the same wrongs against another client, as more particularly described below.

Were this a contested disciplinary hearing, it is possible that a moderately more severe sanction would be recommended. However, since this is a negotiated disposition, a strict comparability analysis does not apply, and it is not this Hearing Committee's role to modify a proposed sanction that is otherwise "justified" and not "unduly lenient." In analyzing the appropriateness of the proposed sanction, the Hearing Committee also recognizes that the purpose of disciplinary proceedings and imposing sanctions is "not to punish the attorney; rather, it is to offer the desired protection by assuring the continued or restored fitness of an attorney to practice law." *In re Steele*, 630 A.2d 196, 200 (D.C. 1993). Here, Respondent will serve a period of actual suspension and will be required to notify any existing clients of his suspension. Respondent's prior discipline was imposed more than thirty years ago, so Respondent's misconduct appears to be atypical for him. *See In re Mance*, 869 A.2d 339 (D.C. 2005) (imposing a stayed 30-day suspension for the nearly complete abdication of the respondent's obligations to his client where the misconduct was an aberration). If Respondent over the next year engages in any misconduct in this or any other jurisdiction, fails to complete the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond program, or fails to undergo a Practice Management Assessment conducted by the D.C. Bar Practice Management Advisory Service, Disciplinary Counsel can seek to revoke Respondent's probation

and request that the Court require Respondent to serve the 60-day stayed portion of his suspension.

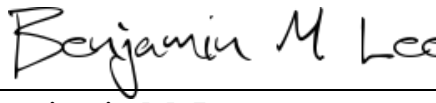
For the foregoing reasons, a majority of the Hearing Committee concludes that the agreed-upon sanction adequately protects the public, is "justified" and is not "unduly lenient."

IV. CONCLUSION AND RECOMMENDATION

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

For the reasons stated above, it is the recommendation of the Hearing Committee majority that the negotiated discipline be approved and that the Court impose a 90-day suspension, with 60 days stayed in favor of a one-year period of unsupervised probation with conditions including refraining from engaging in any misconduct in this or any other jurisdiction during the one-year probationary period, completion of the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond program, and an assessment by the D.C. Bar Practice Management Advisory Service.

AD HOC HEARING COMMITTEE



Benjamin M. Lee
Chair

Nicole Porter
Attorney Member

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Respondent.	:	Board Docket No. 19-ND-003
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A Member of the Bar of the	:	
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(Bar Registration No. 439005)	:	

DISSENT BY MR. KAVET, PUBLIC MEMBER

I dissent from the Hearing Committee Report Approving Petition for Negotiated Discipline. My dissent from the Hearing Committee's Majority Report reflects my concern that the negotiated sanction, specifically the duration of the suspension and the portion of it actually to be served, is too lenient. As discussed below, I conclude that the sanction to be too lenient in light of:

- The nature and circumstances of the matter for which Ms. Coltrane sought Respondent's advice and assistance; and
- Respondent's documented misconduct, repeated mismanagement, and misleading statements to his client in the course of his representation of Ms. Coltrane.

In January 2010, Ms. Coltrane's son, Carlton, then an inmate in a Federal prison in Louisiana, was stabbed to death by another inmate. Petition ¶ 2. Understandably grief-stricken and distressed, Ms. Coltrane sought Respondent's

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legal advice and representation in her quest for justice and closure on an undeniably tragic chapter in any parent's life. Petition ¶ 3.

Events and milestones in the case between January 2010 and April 2015 are accurately detailed in the Hearing Committee's Majority Report. H.C. Report at 4-6. Time and again, during those five years, however, Respondent repeatedly missed deadlines for filing case-related documents with the courts, each instance yet another setback to Ms. Coltrane's quest for information, justice, and closure. Petition ¶¶ 18-19, 22-23. In the end, on April 13, 2015, the Fifth Circuit, notified Ms. Coltrane that the latest petition Respondent had filed on her behalf "was untimely and no action would be taken by the court, ending the case." Petition ¶ 23.

Subsequent to that action by the Fifth Circuit, Respondent, "falsely told Ms. Coltrane that her case was still viable even though it had been dismissed." Petition ¶ 24. In fairness to Respondent, he did refund the money he had received from his client, Ms. Coltrane, but not until sometime in 2019, the same year in which the Petition was filed. *See* Petition ¶ 25; Petition at 1; H.C. Report at 1 n.1.

For the last decade, throughout the period of his flawed representation of Ms. Coltrane, and the years since that representation came to naught, Mr. Wilkins has continued in active practice, seemingly without any material interruption. After all this time, Mr. Wilkins is facing a suspension of modest duration – a 90-day suspension, with 60 days stayed in favor of a year of unsupervised probation, and requirements to avail himself of resources meant to improve the management and conduct of his practice.

By contrast, since her son's death, that same decade for Ms. Coltrane has been one of protracted anguish punctuated and exacerbated by repeated disappointments and setbacks dealt her by the courts, the consequences of her lawyer's apparent incompetence and numerous procedural missteps. At the limited hearing, Ms. Coltrane explained that "I trusted Mr. Wilkins, relied on his advice and instruction to help me learn what happened -- about what happened to my son." Tr. 68. Clients seeking money damages who are harmed by their lawyer's misconduct may seek recompence from the lawyer and/or the lawyer's malpractice insurance carrier. However, clients like Ms. Coltrane, who turned to a lawyer to obtain information, may never be made whole. As a result of Respondent's misconduct, it appears that Ms. Coltrane has lost the opportunity to use legal process to learn how her son died. She is no closer today to having a proper accounting of the circumstances surrounding the violent death of her son while he was in the custody of the federal government than she was when she first engaged the services of Respondent in 2010. Money damages cannot make her whole.

Ms. Coltrane turned to Respondent in her quest for a measure of justice and a sense of closure on events that wrought what must be considered a most tragic chapter in any parent's life. As the record shows, Ms. Coltrane has received neither, due, in no small measure, to the incompetent and indifferent representation provided by Mr. Wilkins. After failing in the representation, Mr. Wilkins falsely assured Ms. Coltrane that her case was still viable, even though it had been dismissed. As things stand, in all likelihood, Ms. Coltrane will go to her grave without ever receiving any

relief, closure or a proper accounting of the forces and factors that sent her son to his death. Mr. Wilkins's misconduct in this matter caused significant harm to Ms. Coltrane's case.

The Majority of the Hearing Committee acknowledges that "Ms. Coltrane has endured a tragic set of circumstances, and Respondent potentially prevented Ms. Coltrane from finding out how and why her son died in prison" but still approves of the agreed-upon sanction as not "unduly lenient." H.C. Report at 16-17. As the Public Member, I disagree with the sanction of a 90-day suspension, with 60 days stayed in favor of a one-year period of unsupervised probation. The agreed-upon sanction results in an actually served suspension of 30 days. This sanction is unduly lenient in light of the extraordinary damage Mr. Wilkins caused to Ms. Coltrane.

Mr. Wilkins's neglect and dishonesty presents significantly different aggravating factors than those in the comparable cases that the Majority of the Hearing Committee relies upon in finding that the agreed sanction is justified. *See In re Cole*, 967 A.2d 1264 (D.C. 2009) (30-day suspension for failure to file an asylum application for client and lying to client about the status of the application); *In re Ontell*, 593 A.2d 1038 (D.C. 1991) (30-day suspension for neglect of two cases and misrepresentations to clients about the status of their cases); *In re Outlaw*, 917 A.2d 684 (D.C. 2007) (per curiam) (60-day suspension where attorney lied to client about claim after allowing the statute of limitations to lapse and did not accept responsibility).

In *In re Cole*, the Court imposed the recommended sanction of a 30-day suspension. 967 A.2d at 1270. Mr. Cole's client "permanently lost the opportunity to obtain permanent residence in the United States based on the facts alleged in the political asylum" application as a result of his neglect and dishonesty. 967 A.2d at 1266. However, Mr. Cole took active steps in an attempt to rectify his client's situation. Mr. Cole admitted his ineffective assistance of counsel and expeditiously helped the client's new counsel in appealing the denial of the asylum application. 967 A.2d at 1266 n.6. While the efforts to reopen the client's asylum application were unsuccessful, the client was granted the opportunity to file an application for adjustment of immigration status based on marriage. 967 A.2d at 1265 n.2. While Mr. Cole's client suffered significant prejudice, he was not left without options in pursuing the result he sought from the representation.

Similarly, in *In re Ontell*, the two clients harmed by the respondent's neglect and dishonesty received a remedy for their lost claims. Mr. Ontell deceived his first client by failing to tell her that her personal injury matter was dismissed and the statute of limitations had run, after she had rejected a settlement offer. But Mr. Ontell made this client whole by settling the claim with her and paying it in full. 593 A.2d at 1039. Mr. Ontell deceived his second client about the dismissal of his collection action after he failed to obtain service of process. 593 A.2d at 1039-40. The second client eventually retained other counsel and was able to obtain a judgment, so "delay was the only prejudice that respondent caused [the client]." 593

A.2d at 1040. The Court imposed the recommended sanction of a 30-day suspension. 593 A.2d at 1043.

Here, Mr. Wilkins's misconduct has caused irremediable damage to Ms. Coltrane's ability to learn the truth of her son's death. Mr. Wilkins took no action to remedy his failures in the representation. Mr. Wilkins's prolonged delay in delivering the file to Ms. Coltrane impeded her ability to move forward in her quest for an answer. When comparing the prejudice suffered by the clients, Mr. Wilkins's misconduct appears to have caused significantly more harm to his client than the mere delay suffered by the clients in *Cole* and *Ontell*. Viewed on this factor, an agreed-upon sanction of an actually served suspension of 30 days is unduly lenient.

In *In re Outlaw*, the respondent's miscalculations and prolonged neglect resulted in the client losing the ability to settle her personal injury claim because the statute of limitations had run. Ms. Outlaw attempted to cover up her neglect by dishonestly telling the client that she was closing the file because the insurer was not negotiating in good faith. 917 A.2d at 685-86. The Court imposed the recommended sanction of a 60-day suspension but noted that neglect "[c]ases addressing dishonesty have typically indicated that such conduct is viewed as more severe than cases of inadvertent neglect." 917 A.2d at 689. For example, "in *In re Chisholm*, 679 A.2d 495, 505 (D.C. 1996), the attorney's extensive neglect of the case, coupled with his deceit and avoidance of his client resulted in the client spending additional time in jail; thus [the Court] found that a suspension of six months was indicated." *Id.* The harm suffered as a result of Mr. Wilkins's conduct seems more similar to

that in *Chisholm*. Where the respondent's prolonged neglect and dishonesty leaves the client with no available remedy to be made whole, the sanction range should be a significant suspension of either 90 days or six months.

The Majority Report rejects the inclusion of *In re Chisholm* in this dissent, which seeks a stronger sanction for Mr. Wilkins. H.C. Report at 15-16. The Majority contends that the allegations related to attorney misconduct in *Chisholm* (and hence the sanction imposed) render it distinguishable from the allegations of misconduct in this matter. *Id.* While not identical, a review of the facts in each would suggest that the differences between the two respondents' misconduct may not be as "distinguishable" as the Majority asserts.

Here, as in *Chisholm*, the misconduct occurred over a protracted period – about five years in each case. *See* 679 A.2d at 503. Moreover, it was less than a month shy of nine years from the start of the representation before Mr. Wilkins finally refunded the $3,500 he received as an advance for expenses at the time he agreed to represent Ms. Coltrane. *See* Petition ¶¶ 3, 25.

The Majority notes that during his representation Mr. Chisholm "never filed any pleadings or briefs in the case." H.C. Report at 15. By comparison, in this matter Mr. Wilkins made numerous court filings on behalf of his client and encouraged Ms. Coltrane to file pleadings *pro se. See, e.g.*, Petition ¶¶ 7-8, 15-16, 18, 20, 22. But Mr. Wilkins's filings were more often than not determined by the courts to have been untimely filed and, therefore, were not accepted. *See, e.g.*, Petition ¶¶ 17, 19, 21, 23. In a sense, then, from procedural, substantive, and

outcome standpoints, it is as though Mr. Wilkins never made those filings in furtherance of Ms. Coltrane's interests. The eventual outcome of Mr. Wilkins's pattern of untimely filings was that the case was dismissed by the Fifth Circuit Court of Appeals, bringing the case to a close and leaving Ms. Coltrane without any further recourse.

"Following the Fifth Circuit's disposition of the case, Respondent falsely told Ms. Coltrane that her case was still viable even though it had been dismissed." Petition ¶ 24. Mr. Wilkins's lie not only concealed his neglect from Ms. Coltrane, it also served as an unnecessary act of cruelty. His gesture in offering false hope to Ms. Coltrane only further exacerbated the harm that had already been done to her. Mr. Wilkins's heartless lie is hard to reconcile with any recent expression of remorse.

Admittedly there is a difference between having "never filed any pleadings or briefs in the case" (as in *Chisholm*) and attempting, but repeatedly missing, filing deadlines (as Mr. Wilkins did here). However, both clients suffered similar grievous harm, rendering the cases not as "distinguishable" as the Majority asserts. In *Chisholm* the client suffered a needless, but finite term of incarceration. 679 A.2d at 502. Here, Mr. Wilkins's misconduct caused harm to Ms. Coltrane that continues to this day, with no apparent end in sight. As in *Chisholm*, Mr. Wilkins lied to his client when advising her that her case was still viable after it (and any future prospect of the financial compensation sought for her loss) had been dismissed by the Fifth Circuit Court of Appeals. *Compare* 679 A.2d at 498 ("Chisholm's repeated reassurances lulled [the client] into believing that his immigration matter had been

resolved and that he had nothing to worry about."), *with* Petition ¶ 24 ("Respondent falsely told Ms. Coltrane that her case was still viable even though it had been dismissed."). This, in addition to having left Ms. Coltrane at the outset of his representation with the implicit understanding that his filings with the courts would be made in a timely manner, which, regrettably, turned out not to be the case, results in tragic consequences. It is hard to see how Mr. Wilkins's failures to meet court filing deadlines cannot be seen as a form of repeated neglect. The number of instances of Mr. Wilkins's neglect far exceeds the single occurrence of neglect discussed in *Chisholm*.

Prejudice to the client is a relevant factor in determining sanction. There are not sufficient facts in the record before the Hearing Committee to know, one way or the other, how strong Ms. Coltrane's claim would have been if Mr. Wilkins had done a better job. Ms. Coltrane was not only prejudiced in pursuing monetary damages. Ms. Coltrane also lost the opportunity to obtain a settlement or judgment that could lead to the correction of the Federal Bureau of Prisons operations that allowed for the negligent or malicious wrongful death of her son and could prevent further similar deaths from occurring. *See* Tr. 68 ("I speak not only for myself but also for my son, Carlton Rama Coltrane, and all who trust our legal and judicial processes to correct wrongs done to them.").

In addition to the six-month suspension imposed in light of Mr. Chisholm's failure to file a brief on his client's behalf, the sanction imposed on Mr. Chisholm also called for a demonstration of fitness as a condition of returning to practice. 679

A.2d at 505-506. While the sanction the Majority recommends be approved does not call for a demonstration of fitness, Mr. Wilkins's repeated failures to submit court filings critical to Ms. Coltrane's case in a timely manner proved to be no less consequential than Mr. Chisholm's failure to file a single brief on his client's behalf. *See* 679 A.2d at 499-500. As a result, Chisholm's client was arrested and needlessly spent time in federal custody. 679 A.2d 496, 503. While I do not mean to minimize the severity of the consequences suffered by Mr. Chisholm's client, the severity and duration of the harm Ms. Coltrane suffered – and continues to suffer – as a result of Mr. Wilkins's misconduct are of at least comparable significance. And yet, the Hearing Committee Majority Report approves of a lesser sanction and is silent on the matter of the need for Respondent to demonstrate fitness as a condition for returning to active practice.

In *In re Addams*, 579 A.2d 190 (D.C. 1990), the *en banc* Court of Appeals discussed the purpose of sanctioning lawyers who engage in professional misconduct:

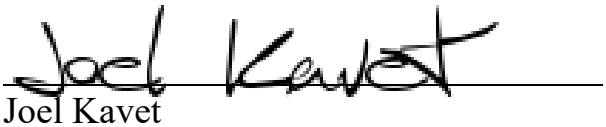
> The basic purpose of disciplinary proceedings is to protect the public, the courts, and the legal profession from the depredations of unethical practitioners . . . . *Sanctions are also designed to deter other attorneys from engaging in similar misconduct.*

579 A.2d at 204 (emphasis added) (citations omitted). Any disciplinary sanction, no matter how brief, should deter others from engaging in misconduct. However, where money damages cannot make the client whole, and the lawyer's misconduct has foreclosed the client's ability to seek the relief she sought, the need to deter the misconduct is greater, and thus a longer suspension should be imposed.

In volunteering to serve as a representative for the voice of the D.C. public in the oversight of lawyer professional responsibility, I understood that I was a quite literal reminder that ultimately there are people involved in the matters that come before the Hearing Committees. These matters can be of considerable consequence to a lawyer's clients, especially when they are left without a sought-after remedy as a result of a lawyer's failure to serve their client in accordance with the Rules of Professional Conduct.

Considering the facts of this case, especially in the face of Ms. Coltrane's strenuous and repeatedly stated objections, together with the precedent discussed above, the modest sanction agreed to in these proceedings is unduly lenient because it does not account for the real harm done to the real people by Respondent's conduct.

Respectfully Submitted,



Joel Kavet
Public Member