

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE\*

DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY  
AD HOC HEARING COMMITTEE



FILED

Sep 15 2020 2:51pm

Board on Professional Responsibility

In the Matter of: :  
: :  
WILLIAM H. BRAMMER, JR., :  
: Board Docket No. 19-ND-007  
Respondent. : Disciplinary Docket No. 2012-D174  
: :  
A Member of the Bar of the :  
District of Columbia Court of Appeals :  
(Bar Registration No. 478206) :

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

I. PROCEDURAL HISTORY

This matter came before this Ad Hoc Hearing Committee on August 12, 2020, for a limited hearing on a Petition for Negotiated Discipline (the “Petition”). The members of the Hearing Committee are Stephen D. Juge, Esquire (Chair), Dr. Robin J. Bell (Public Member), and Mitchell F. Dolin, Esquire (Attorney Member). The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel H. Clay Smith, III. Respondent, William H. Brammer, Jr., was represented by Daniel Schumack, Esquire.

The Hearing Committee has carefully considered the Petition 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 and Respondent’s counsel, and Disciplinary Counsel. The Hearing Committee also has fully considered the Chair’s *in camera*

\* 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.

review of Disciplinary Counsel’s files and records and the Chair’s *ex parte* communications with Disciplinary Counsel. The Hearing Committee also heard the statement of the complainant, Ms. Neema Mgana. For the reasons set forth below, we approve the Petition, find the negotiated discipline of a 30-day suspension, stayed upon the successful completion of a one-year period of probation during which Respondent will not engage in any ethical misconduct, and conditioned upon Respondent making restitution in the amount of \$5,000 to Ms. Mgana within one year of the approval of this Petition by the Court, 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 him an investigation into allegations of misconduct. Tr. 23<sup>1</sup>; Affidavit ¶ 2.
3. The allegations involving issues of competency, diligence, and communications in violation of D.C. Rules of Professional Conduct 1.1(a) (competence), 1.3(c) (reasonable promptness), and 1.4(a) (keep his client reasonably informed about the status of a matter), were brought to the attention of Disciplinary Counsel by the complainant. This matter was docketed for investigation upon Disciplinary Counsel’s receipt and review of an ethical complaint filed by

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<sup>1</sup> “Tr.” refers to the transcript of the limited hearing held on August 12, 2020, via Zoom virtual meeting.

Respondent's former client, Neema Mgana, reporting that Respondent had neglected her case. Petition at 1, 3 ¶ 9(a)-(c).

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 27-28; Affidavit ¶ 4. Specifically, Respondent acknowledges the following factual stipulations contained in the Petition at 2-3 (¶¶ 1-9):

1. Respondent was retained by Ms. Neema Mgana on February 15, 2005 to represent her in pursuit of remedies for the breach of a professional services contract by her employer. Respondent agreed to represent the client on an hourly basis of \$200 per hour. The initial retainer payment was \$5,000, which the client paid in two installments.

2. Respondent conducted legal research regarding Ms. Mgana's claim and developed a litigation strategy. Respondent also contacted the putative defendant for purposes of attempting to negotiate settlement, but settlement overtures were rebuffed.

3. In or about June 2006, Respondent's wife accepted a position in California. Shortly thereafter, Respondent moved to California with his wife.

4. Respondent did not regularly communicate with Ms. Mgana during the representation, due to his relocation to California and a disability (as described in more detail in the Petition). *See* Petition ¶ 15 (Mitigation).

5. In March 2007 and again in August 2007, Respondent suggested to Ms. Mgana that she retain additional counsel to assist him with her claim. Ms. Mgana declined to do so because of the expense.

6. In August and September 2007, Ms. Mgana sent electronic correspondence to Respondent asking for an update on the status of her claim. Respondent did not respond to the correspondence, nor did he communicate with his client thereafter.

7. In his responses to the bar complaint, Respondent stated his belief and recollection that he returned to Ms. Mgana her file via the U.S. Postal Service in or about September 2007. He conceded that he has no USPS receipts and does not recall whether he used Certified Mail. He further reported having found no copies of any Mgana related materials from 2006 or 2007 by which to challenge Ms. Mgana's report of events. Respondent further recalled that there were legal problems with Ms. Mgana's claims, which were not discussed at the time of engagement that seriously impacted the merits of her claim (such as visa eligibility for the job she sought and a prior settlement with the putative defendant).

8. Respondent did not file an action on behalf of his client before the statute of limitations on her claim expired.

9. Respondent's conduct violated the following District of Columbia Rules of Professional Conduct:

- a. Rule 1.1(a), in that Respondent did not provide competent representation to his client;
- b. Rule 1.3(c), in that Respondent did not act with reasonable promptness in representing his client; [and]
- c. Rule 1.4(a), in that Respondent did not keep his client reasonably informed about the status of a matter.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 22; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises or inducements other than what is contained in the Petition. Petition at 7; Affidavit ¶ 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. 27.

7. Respondent is aware of his right to assistance of counsel and has conferred with his counsel. *See* Tr. 12-13; 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. 23-27; Affidavit ¶¶ 4, 6.

9. Respondent is not being subjected to coercion or duress. Tr. 27-28; 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. 17-18.

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

- a) he has the right to assistance of counsel;
- b) he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;
- c) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;
- d) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;
- e) the negotiated disposition, if approved, may affect his present and future ability to practice law;
- f) the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and
- g) 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. 18-21; Affidavit ¶¶ 1, 9(a)-(d), 10(a)-(b), 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a 30-day suspension, stayed upon the successful completion of a one-year period of probation during which Respondent will not engage in any ethical misconduct, and conditioned upon Respondent making restitution in the amount of \$5,000 to Ms. Mgana within one year of the approval of this Petition by the Court. Petition at 1, 5; Tr. 25-27.

13. Disciplinary Counsel has provided a statement demonstrating the following circumstances in aggravation, which the Hearing Committee has taken into consideration: an Informal Admonishment issued on May 13<sup>2</sup>, 2011 in the matter styled *In re Brammer*, Bar Docket No. 2010-D338, for a violation of Rules 1.1(a) and (b) and 1.4(b). Petition at 4; Tr. 33.

14. Respondent has provided the following circumstances in mitigation, which the Hearing Committee has taken into consideration:

- a) Respondent has cooperated with Disciplinary Counsel's investigation of this matter and has accepted responsibility for his misconduct;
- b) Respondent's misconduct did not involve dishonesty;
- c) Respondent's misconduct in this matter dates to events that began in 2005, and Ms. Mgana reported this matter to Disciplinary Counsel in 2012;

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<sup>2</sup> The Petition notes this date as May 10, 2011, but the informal admonition letter was issued on May 13, 2011,

- d) In or about October 2006, Respondent relocated his residence to the State of California, and unsuccessfully attempted to find successor counsel for his client's case;
- e) During the time that Respondent was living in California, he was experiencing troubles in his marriage which culminated in a divorce from his wife in 2011;
- f) During the time relevant to his representation of Ms. Mgana, Respondent was suffering from alcohol addiction, but the agreed sanction in this matter is not materially impacted by the principles set forth in *In re Kersey*, 520 A.2d 321 (D.C. 1987) because the sanction agreed here would be within the range of proper sanctions even if there were no *Kersey* issues. Thus, there is no need for the disciplinary system to determine whether Respondent could meet his burden of proof on *Kersey* in a contested case;
- g) The combination of his personal issues and his relocation to California, contributed significantly to Respondent's mishandling of Ms. Mgana's case;
- h) In June 2011, Respondent voluntarily sought and received assistance for his alcohol addiction from the District of Columbia Bar's Lawyer's Assistance Program ("LAP");
- i) Respondent has successfully remained sober since his involvement with LAP;
- j) Disciplinary Counsel is not aware that Respondent has engaged in any other misconduct since the filing of Ms. Mgana's ethical complaint in 2012; and
- k) Respondent has agreed to make restitution in the amount of \$5,000 to Ms. Mgana, within one year of the approval of this petition by the Court.

Petition at 3-4 (¶¶ 10-20); Affidavit ¶ 4.

Respondent also asserted that he made payments totaling \$1,000 to Ms. Mgana prior to the August 12, 2020 limited hearing. Tr. 31, 38.

15. The complainant, Ms. Mgana, made a statement during the limited hearing pursuant to Board Rule 17.4(a). The complainant provided the following information, which the Hearing Committee has taken into consideration: she agreed with the proposed sanction and appreciated Respondent's cooperation in this matter. She further wished the Respondent well in the future, and confirmed she had received the two reimbursement checks from Respondent. Tr. 39-40.

### 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 limited 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) (competence), 1.3(c) (reasonable promptness), and 1.4(a) (keep his client reasonably informed about the status of a matter).

The evidence supports Respondent's admission that he violated Rule 1.1(a) in that the stipulated facts describe Respondent's incompetent representation in failing to file an action before the statute of limitations expired. Petition at 2-3 (¶¶ 7-8). Respondent's incompetence in allowing the statute to toll was seriously deficient

because he caused the client to be deprived of the opportunity to pursue her claim, violating Rule 1.1(a). Petition at 6-7.

The evidence also supports Respondent's admission that he violated Rule 1.3(c) (reasonable promptness) in that the stipulated facts describe Respondent's failure to pursue the client's matter during the course of his representation, which commenced on February 15, 2005 and concluded after he stopped communicating with the client after August 2007. Petition at 2-3 (¶¶ 1, 6-7). Respondent's failure to file suit or formally terminate the representation prior to September 2007 violated Rule 1.3(c). Petition at 7.

The evidence further supports Respondent's admission that he violated Rule 1.4(a) (keep his client reasonably informed about the status of a matter) in that the stipulated facts describe his failure to respond to the client's requests for status updates during the course of the representation or discuss the legal problems impacting the merits of the client's claims. Petition at 2-3 (¶¶ 4, 6-7). Respondent's failure to consistently communicate with his client throughout the representation and his specific failure to respond to his client's August and September 2007 requests for an update of the status of her case violate Rule 1.4(a). Petition at 7.

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 and aggravation, 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:

1. The misconduct involves one client representation in which Respondent failed to exercise adequate competence, diligence and communication, and not more numerous charges over several representations or clients nor any broader pattern of misconduct.
2. There are substantial persuasive mitigating factors, including no involvement of dishonesty; relocation, marital difficulties and an addiction issue for which Respondent sought the assistance of the D.C. Bar's LAP; the dated nature of the representation and client complaint; Respondent's agreement to make full restitution of the fees within one year and having already taken steps to make partial restitution; and the complainant has no objection to approval of the sanction and has acknowledged receipt of partial restitution.
3. There is one relatively more limited aggravating factor, the May 13, 2011 prior admonishment, which has the specific impact of making Respondent ineligible for an admonishment in this case but does not in our opinion, based upon the relevant cases invoked, justify a sanction harsher than proposed.

4. Respondent cooperated with Disciplinary Counsel's investigation, has taken responsibility for his misconduct, and in our opinion demonstrated genuine remorse at the limited hearing.
5. The parties' stipulation concerning Respondent's misconduct and intent is fully supported by the record and our assessment of Respondent's credible testimony at the limited hearing.
6. There are no further serious charges which Disciplinary Counsel agreed not to pursue as part of the negotiated discipline.
7. The proposed sanction in our opinion falls squarely within the range of and is entirely consistent with the sanctions imposed in cases cited involving comparable misconduct.
8. There were legal problems with the client's claims, which were not discussed at the time of engagement that seriously impacted the merits of the claims and accordingly mitigated the potential harm done by the lack of competence and diligence, without excusing such misconduct.

The parties agree that the sanction for violating the Rules of Professional Conduct involving competency, diligence, and communications ranges from an informal admonition to a six month suspension from the practice of law, with fitness attached. The parties assert that the following cases support their agreed upon sanction of a 30-day suspension, stayed upon the successful completion of a one-year period of probation. *In re Fay*, 111 A.3d 1025 (D.C. 2015) (per curiam) (informal admonition for violating Rule 1.1(b), 1.3(a) and (c), 1.4(a) and (b) and

1.5(b)); *In re Chapman*, 962 A.2d 922 (D.C. 2009) (per curiam) (60-day suspension, with 30 days stayed in favor of one year of supervised probation and CLE for neglect of a client); *In re Douglass*, 745 A.2d 307 (D.C. 2000) (per curiam) (public censure for violating Rules 1.1(a) and (b), 1.2(a), 1.3(a) and (c); where the serious misconduct was mitigated by the deaths of the lawyer's mother and son, as well as the lawyer's serious medical problems, all of which occurred about a year before his misconduct and respondent paid half of the \$4,500 claim that resulted from his neglect, but aggravated by two prior informal admonitions); and *In re Francis*, 137 A.3d 187 (D.C. 2016) (per curiam) (30-day suspension for intentional neglect and other violations, stayed on condition of completion of probation and CLE).

More severe sanctions of greater than a 30-day suspension are imposed where the neglect is accompanied with violations involving dishonesty, fraud, misrepresentation, or deceit. *See In re Outlaw*, 917 A.2d 684 (D.C. 2007) (per curiam) (60-day suspension); *In re Schoeneman*, 891 A.2d 279 (D.C. 2006) (per curiam) (four-month suspension for neglect of three matters, failure to communicate, dishonesty and serious interference with the administration of justice); *In re Chisholm*, 679 A.2d 495 (D.C. 1996) (six-month suspension with fitness and restitution for extensive neglect, persistent intentional dishonesty, and significant prejudice to the client). There are no allegations of a Rule 8.4(c) (dishonesty, fraud, misrepresentation, or deceit) violation in this matter.

Respondent acknowledges that he was issued an Informal Admonishment in 2011, for violating Rules 1.1(a) and (b) and Rule 1.4(b) when he failed to provide

competent representation in an immigration matter. *See In re Brammer*, Bar Docket No. 2010-D338 (Informal Admonition May 13, 2011). The parties agree that because of this prior discipline, Respondent is not eligible for an informal admonition in this matter. Although the 2011 misconduct also involves competency and communication charges, that misconduct occurred more than ten years ago and took place prior to Respondent becoming a client of the D.C. Bar's LAP in June 2011. Petition at 4 (¶ 17). The parties assert that Respondent has remained successfully sober since receiving LAP's assistance in 2011, and has not been involved in any misconduct since the filing of the compliant in this matter. Petition at 4 (¶¶ 18-19). Thus, the agreed upon sanction here does not have to be more severe. *See In re Parsons*, Bar Docket No. 72-91, at 5-6 (BPR Feb. 1, 1996) (declining Disciplinary Counsel's request to impose a sterner sanction based on the respondent's record where the prior discipline "is sufficiently remote in both time and substance that increasing the penalty herein would not be justified[,]") *affirmed where no exceptions filed*, 678 A.2d 1022 (D.C. 1996) (per curiam) (amended order) (public censure).

#### 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 should impose a 30-day suspension, stayed upon the successful completion of a one-year

period of probation during which Respondent will not engage in any ethical misconduct, and conditioned upon Respondent making restitution in the amount of \$5,000 to Ms. Mgana within one year of the Court's approval of the Petition.

AD HOC HEARING COMMITTEE



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Stephen D. Juge  
Chair



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Dr. Robin J. Bell  
Public Member



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Mitchell F. Dolin  
Attorney Member