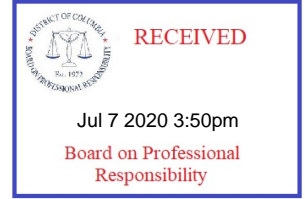


**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



In the Matter of	:	
	:	
	:	
JEWEL M. HARMON, ESQ.	:	Disciplinary Docket Nos.
	:	2015-D289; 2016-D104; 2017-D224
Respondent,	:	
	:	
	:	
An Administratively Suspended	:	
Member of the Bar of the	:	
District of Columbia Court of Appeals.	:	
	:	
Bar Number: 441232	:	
Date of Admission: March 7, 1994	:	

PETITION FOR NEGOTIATED DISCIPLINE

Pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondent Jewel M. Harmon, Esquire (“Respondent”) respectfully submit this Petition for Negotiated Discipline in the above-captioned matters. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because Respondent is a member of the Bar of the District of Columbia Court of Appeals.

I. STATEMENT OF THE NATURE OF THE MATTERS BROUGHT TO DISCIPLINARY COUNSEL’S ATTENTION

These proceedings are based on Ms. Harmon’s conduct in three probate matters, all of which were brought to Disciplinary Counsel’s attention by the Office of the Auditor Master. None of the matters involve dishonest or financial impropriety on the part of Respondent, who was experiencing serious health issues during much of the time period. She did not petition for any fees in two of the matters and did not petition for fees in the

last accounting period of the third. Moreover, in one matter where she was administering a trust, she used her own funds to forestall foreclosure of the beneficiaries' home. The stipulated violations are based on Respondent's failure to timely meet her obligations to the court and promptly turn over a file to a successor guardian. The proposed stayed suspension would constitute the only discipline imposed on Respondent in the over 25 years since her admission to practice law.

In the first matter, Ms. Harmon was appointed by the probate court to serve as a guardian for a minor ward. In the second matter, Ms. Harmon was appointed by the probate court to serve as a conservator and co-guardian of an incapacitated ward. In the third matter, Ms. Harmon was appointed by the probate court to serve as a successor trustee.

II. STIPULATION OF FACTS AND CHARGES

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on March 7, 1994, and assigned Bar number 441232.
2. From 2012 through 2015, Respondent was suffering from serious physical health issues, which included being placed on dialysis for kidney failure.

First Matter (2015-D289)

3. On September 21, 2007, the father of two minor wards petitioned the Probate Division of the Superior Court for the District of Columbia, in separate proceedings, to have Respondent appointed as guardian for his son, I.N. and daughter, D.N. Guardianships were necessary because the children's mother had died with a life insurance policy naming the children as (unequal) beneficiaries and the father could not post bond.
4. I.N. received approximately \$110,000 in connection with the policy and D.N. received approximately \$37,000 in connection with the policy.

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

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

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

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

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

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

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

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

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

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

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

16. Meanwhile, after reviewing Respondent's seventh accounting in the I.N. matter, a different probate auditor recommended that it be referred to the Auditor Master due to Respondent apparently 1) making approximately \$4,000 in expenditures that had not been approved (which were used to assist the wards' father in paying back rent and

purchase clothes and Christmas gifts for both the wards); and 2) making the \$84,000 and \$3,000 withdrawals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31. On November 24, 2015, the court held a hearing on the Auditor Master's report in I.N. The court approved the account, and appointed Mr. Johnson as I.N.'s guardian (in addition to his current role as D.N.'s guardian). At the hearing, the court

instructed Respondent to turn over her accounting information so Mr. Johnson could prepare an account.

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

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

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

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

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

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

38. During the course of its investigation, Disciplinary Counsel subpoenaed all documentation from Wells Fargo concerning the cashier's checks. The documentation

corroborated the Branch Manager's testimony and further demonstrated that Respondent did not spend the \$87,000 that she withdrew from I.N.'s accounts. Disciplinary Counsel also subpoenaed documentation from Respondent's files about the IRS issue, and she provided documentation that demonstrated she did have reason to be concerned that the IRS would seize I.N.'s funds at the time she made the withdrawals.

**Second Matter
(2016-D104)**

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

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

41. On August 15, 2014, the probate court issued Letters of Conservatorship advising of Respondent's appointment. Respondent failed to file these letters of conservatorship with the Recorder of Deeds, as required by D.C. Code § 21-2067.

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

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

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

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

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

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

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

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

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

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

52. Respondent did not file an account and did not appear at the November 17 hearing. However, she called the court prior to the hearing to advise that she would not attend. The court ordered Respondent removed as conservator and referred the matter to

the Auditor Master for a final accounting. The court appointed Mr. Dixon as successor conservator.

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

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

**Third Matter
(2017-D224)**

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

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

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

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

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

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

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

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

63. Respondent did not timely file all delinquent accounts.

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

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

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

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

68. On June 13, 2017, the Office of the Auditor Master filed its Report. The Auditor Master found that all assets were accounted for. Further, the Auditor Master found that although Respondent had failed to account to the court as ordered, she did account to the beneficiaries.

* * * * *

69. Respondent violated the following provisions of the Rules of Professional Conduct in all three matters:

a. Rule 1.1(b), in that Respondent failed to serve the court with the skill and care commensurate with other court-appointed lawyers in similar matters;

b. Rule 1.3(a), in that Respondent failed to serve the court zealously and diligently within the bounds of the law; and

c. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice.

70. Respondent violated Rule 1.16(d) of the Rules of Professional Conduct in the 2015-D289 matter.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

In connection with this Petition for Negotiated Discipline, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II, *supra*, other than those set forth above, or any sanction other than that set forth below.

IV. AGREED UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed in this matter is a 60-day suspension, fully stayed in favor of a one-year probation. In agreeing to fully stay the suspension in this matter, the parties are taking into account Respondent's lack of prior disciplinary history as well as the other mitigating factors described herein. *See Section V.*

Respondent will begin her one-year probationary period when the Court issues its Order approving the negotiated discipline. The Court's order should include a condition that if probation is revoked, Respondent may be required to serve the entire suspension and demonstrate fitness prior to reinstatement.

Within the first 30 days of the one-year probationary period, Respondent shall consult with the D.C. Practice Management Advisory Service (PMAS) about her case management system and provide Disciplinary Counsel with written confirmation of such consultation from PMAS. Within the first six months of the one-year probationary period, Respondent shall attend six hours of ethics continuing legal education courses, approved by Disciplinary Counsel, and provide written confirmation of her attendance. Further, during the entire one-year period, Respondent shall not be found to have engaged in any misconduct in this or any other jurisdiction. If Disciplinary Counsel has probable cause to believe that Respondent has violated the terms of her probation, Disciplinary Counsel may seek to revoke Respondent's probation pursuant to D.C. Bar R. XI, §3 and Board Rule 18.3, and request that Respondent be required to serve the suspension previously stayed herein, consecutively to any other discipline or suspension that may be imposed, and that her reinstatement to the practice of law will be conditioned upon a showing of fitness.

Respondent and Disciplinary Counsel have agreed that there are no additional conditions attached to this negotiated discipline that are not expressly agreed to in writing in this Petition.

V. RELEVANT PRECEDENT

The agreed-upon sanction in a negotiated discipline case must, *inter alia*, be supported by relevant precedent under D.C. Bar R. XI § 12.1(b)(1)(iv) and justified when taking into consideration the record as a whole under Board Rule 17.5(a)(iii). As set forth below, the agreed-upon sanction in this matter is appropriate given 1) the range of sanctions for cases involving neglect where the Respondent has no prior disciplinary history, and 2) the mitigating factors present.

Sanctions for violations sounding in neglect range from an informal admonition issued by Disciplinary Counsel to a suspension from the practice of law.¹ Where neglect is significantly protracted, as it is here, the Court has imposed a suspension. However,

¹ See, e.g., *In re Murdter*, 131 A.3d 355 (D.C. Feb. 4, 2016) (six-month suspension, all but 60 days stayed and subject to conditions, for failing to pursue five criminal appeals in which Court had appointed lawyer to represent convicted defendants under the Criminal Justice Act); *In re Thai*, 987 A.2d 428 (D.C. 2009) (60-day suspension, with 30 days stayed and subject to probationary terms (including restitution), for incompetence, neglect, failure to communicate, and failing to promptly deliver client file in immigration matter); *In re Chapman*, 962 A.2d 922, 926 (D.C. 2009) (60-day suspension, with 30 days stayed in favor of probation with terms, for incompetence and neglect with aggravating factors of dishonesty in dealings with Bar Counsel and testifying in a non-credible manner; Court noted that generally, in absence of aggravating factors, “a first instance of neglect of a single client matter warrants a reprimand or public censure”); *In re Schlemmer*, 870 A.2d 76 (D.C. 2005) (Board Reprimand for violation of Rule 1.3(a) and Rule 1.4(a); Board did not find Rule 1.3(b) violation); *In re Dory*, 528 A.2d 1247, 1248 (D.C. 1987) (30-day suspension for neglect, failure to seek client’s lawful objectives; no prior disciplinary history; client prejudiced by loss of right to appeal in civil case).

those cases tended to involve aggravating factors, including prior discipline, not present in this matter.²

Here, the protracted nature of Respondent's neglect should be weighed against Respondent's lack of disciplinary history and other mitigating factors. Accordingly, the appropriate sanction in this case should follow those cases where the Court has ordered suspensions but stayed their imposition and placed the lawyer on probation with terms. *See, e.g., In re Mance*, 869 A.2d 339, 341 (D.C. 2005) (30-day stayed suspension, with probationary terms, for incompetence, neglect, intentional failure to pursue client's matter, failure to communicate, and conduct prejudicial in a criminal representation); *In re Baron*, 808 A.2d 497 (D.C. 2002) (30-day stayed suspension and probation with terms for failing to communicate with client in criminal appeal and ignoring court requests to contact the client); *In re Vohra*, 762 A.2d 544 (D.C. 2000) (30-day stayed suspension, with probationary terms, for neglect, misrepresentations about incomplete tasks, and allowing firm to seek reimbursement for fees not incurred; lawyer suffering from depression at the time of misconduct); *In re Dunietz*, 687 A.2d 206 (D.C. 1996) (30-day stayed suspension, with probationary terms, for neglecting legal matter, intentionally failing to seek lawful

² *See In re Douglass*, 859 A.2d 1069, 1086 (D.C. 2004). *In Douglass*, the Court imposed a 90-day suspension for neglect, incompetent handling of a personal injury matter, conflict of interest, and failure to promptly return papers to a client following termination. The Court adopted the Board Report, describing Douglass's "extraordinary" failure to take action in the case for two years. *Id.* at 1072. Douglass had prior discipline although he had never previously been suspended. *Id.* at 1086. *See also In re Speights*, 173 A.3d 96 (D.C. 2017) (attorney suspended for six months in matter involving protracted neglect, as well as failure to accept responsibility and dishonest testimony before the hearing committee); *Matter of Knox*, 441 A.2d 265, 268 (D.C. 1982) (three-month suspension where attorney neglected matter over the course of nine years while client believed case was moving forward).

objectives of client, failing to act with reasonable promptness, and failing to keep client reasonably informed; lawyer's depression considered a mitigating factor).

Mitigating Factors

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

Aggravating Factors

The parties agree they are not aware of any aggravating factors outside of the conduct as it is described in this petition.

* * * * *

Given these mitigating factors and the lack of aggravating factors, the parties submit that the agreed-upon sanction is appropriate.

VI. RESPONDENT'S AFFIDAVIT

Accompanying this Petition in further support of this Petition for Negotiated Discipline is Respondent's Affidavit pursuant to DC. Bar R. XI, § 12.1(b)(2).

VII. CONCLUSION

Wherefore, Respondent and Disciplinary Counsel request that the Executive Attorney assign a Hearing Committee to review the petition for negotiated discipline pursuant to D.C. Bar R. XI. § 12.1(c).

Dated: July 1, 2020

/s/ Hamilton P. Fox, III
Hamilton P. Fox, III
Disciplinary Counsel

/s/ Jewel M. Harmon
Jewel M. Harmon, Esquire
Respondent

/s/ Joseph C. Perry
Joseph C. Perry
Assistant Disciplinary Counsel

/s/ David D. Mendes
David D. Mendes, Esquire
Counsel for Respondent

OFFICE OF DISCIPLINARY COUNSEL
515 5th Street, N.W.
Building A, Room 117
Washington, D.C. 20001
(202) 638-1501

TAPPAN, RASTEGAR, MENDES, LLP
6105 Arlington Blvd., Suite G
Falls Church, VA 22044
(571) 766-8676