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

In the Matter of:	:	
	:	
BERHAN DARGIE,	:	
	:	Board Docket No. 17-ND-009
Respondent.	:	Bar Docket No. 2016-D126
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Membership No. 455288)	:	

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 on June 12, 2017, for a limited hearing on a Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Theodore C. Hirt, Esquire, Chair, Gwen S. Green, Esquire, Attorney Member, and Mary C. Larkin, Public Member. The Office of Disciplinary Counsel was represented by Disciplinary Counsel Hamilton P. Fox III, Esquire. Respondent, Berhan Dargie, was represented by Thomas B. Mason, Esquire, and was present throughout the limited hearing.

The Hearing Committee has carefully considered the Revised Petition for Negotiated Discipline signed by Disciplinary Counsel ("Revised Petition"), the supporting affidavit submitted by Respondent (the "Affidavit") the attachment thereto, and the representations during the limited hearing made by Mr. Mason,

Respondent, and Disciplinary Counsel. The Hearing Committee also has fully considered the Supplemental Affidavit of Negotiated Discipline, ("Supplemental Affidavit"), its in camera review of Disciplinary Counsel's files and records, and its ex parte communications with Disciplinary Counsel. For the reasons set forth below, we approve the Revised Petition, find that the negotiated discipline of a suspension of sixty days 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 Revised Petition and Affidavit are full, complete, and in proper order.

2. Respondent is aware that there is currently pending against him an investigation into and/or a proceeding involving allegations of misconduct. June 12, 2017 Hearing Transcript ("Tr.") at 16; Affidavit at ¶ 5.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Berhan Dargie violated District of Columbia Rules of Professional Conduct 4.1(a) (in that he knowingly made a false statement of material fact to a third person), and 8.4(c) (in that he engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation). Revised Petition at ¶ 1.

4. Respondent has knowingly and voluntarily acknowledged that the material facts and misconduct reflected in the Revised Petition are true. Tr. at 17-19; Affidavit at ¶ 6. Specifically, Respondent acknowledges that:

(a) Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on July 7, 1997, and subsequently assigned Bar number 455288.

(b) In October 2012, Tsegay Gebremedhin retained Respondent to represent him in claims arising from an automobile accident.

(c) On October 25, 2012, Mr. Gebremedhin executed an Authorization and Assignment ("A & A") with Houng King of Tri-Service Clinic ("Tri-Service"). The A & A authorized Respondent to deduct and pay from the proceeds of any recovery any fees owed to Dr. King. Respondent signed the A & A and agreed to comply fully with it.

(d) On August 7, 2013, Tri-Service issued an invoice for medical services provided to Mr. Gebremedhin in the amount of $7,800.

(e) By letter dated May 12, 2015, State Farm agreed to settle Mr. Gebremedhin's claim. State Farm forwarded to Respondent a release and promised to pay $9,466.22[1] once it received an executed release.

(f) Respondent emailed or faxed a letter to Dr. King at Tri-Service after receiving the May 12, 2015, letter from State Farm, which falsely represented that the "insurance company has offered $7[,]486.22 to settle Mr. Gebremedhin's claim." Respondent represented that after paying an emergency room bill, the net would be $5,300.27 and offered to divide this amount into three $1,766.75 shares, one share each for himself, for Mr. Gebremedhin, and for Dr. King.

[1] It appears that State Farm forwarded Respondent a release and promised to pay $9,466.22 (Revised Petition at 2(e)), but that State Farm in fact forwarded Respondent a check in the amount of $9,486.22 (Revised Petition at 2(h); Tr. at 6). Whether the settlement amount was $9,466 or $9,486 is immaterial to our consideration of the Revised Petition.

(g) On June 9, 2015, Dr. King's son, on behalf of his father and Tri-Service, agreed to accept the $1,766.75 payment, but stated that they would need to bill Mr. Gebremedhin for another $1,000.

(h) On June 12, 2015, State Farm forwarded to Respondent a check in the amount of $9,486.22 to settle Mr. Gebremedhin's claim, and thereafter Respondent distributed $1,766.65 to Tri-Service Clinic.

(i) This conduct violated Rule 4.1(a) in that Respondent, while representing a client, Mr. Gebremedhin, knowing made a false statement of material fact, the amount of the settlement with State Farm, to a third person, Dr. King; and Rule 8.4(c) in that Respondent engaged in conduct that involved dishonesty, fraud, and misrepresentation by representing to Dr. King that settlement offer was $2,000 less than the actual offer in order to induce him to take a lesser amount in payment for his medical services.

(j) As Dr. King's son had represented on June 9, 2015, Tri-Service billed Mr. Gebremedhin for an additional $1,000. When Mr. Gebremedhin failed to pay that amount, Tri-Service filed suit against both Mr. Gebremedhin and Respondent in Maryland. Tri-Service served Mr. Gebremedhin, but did not serve Respondent.

(k) Following the filing of a Specification of Charges in this matter, Respondent made a voluntary payment in the amount of $1,007.25 to Tri-Service Clinic. Tri-Service accepted the payment but maintained its lawsuit against Mr. Gebremedhin.

(l) Acting pro se, Mr. Gebremedhin settled the Tri-Service action for an additional $2,500. He asked Respondent to contribute $1,250 or one-half of the settlement amount. Respondent agreed and on March 6, 2017, caused a cashier's check in the amount of $2,500 to be issued to Tri-Service. Respondent and Mr. Gebremedhin each provided $1,250 to fund this check. In total, Respondent contributed $2,257.25 of his own funds to resolve the action brought by Tri-Service.

Revised Petition at ¶ 2.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. at 15-16; Affidavit at ¶ 7.

6. Disciplinary Counsel has made no promises or inducements to Respondent other than not to seek a sanction other than a sixty-day suspension for the misconduct set forth in the Revised Petition. Tr. at 19; Affidavit at ¶ 4; Revised Petition at ¶ 3.

7. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than Disciplinary Counsel's stipulation that its office agrees to ask for a sanction of a sixty-day suspension. Affidavit at ¶ 3; Tr. at 19. Respondent is not being subjected to coercion or duress. Affidavit at ¶ 2; Tr. at 20.

8. Respondent is competent and was not under the influence of any substance or medication at the limited hearing. Tr. at 11-12.

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

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

(b) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and conniving evidence;

(c) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;

(d) the negotiated discipline, if approved, may affect his present and future ability to practice law;

(e) the negotiated discipline, if approved, may affect his bar memberships in other jurisdictions; and

(f) any sworn statement by Respondent in his Affidavit or any statements made by the Respondent during the proceeding may be used to impeach his testimony if there is a subsequent hearing on the merits. Tr. at 14, 22-25; Affidavit at 5.

10. Respondent has conferred with his counsel. Tr. at 10-11; Affidavit at ¶ 1.

11. The complainant(s) were notified of the limited hearing, but did not appear and did not provide any written comment. Tr. at 8, 43.

12. In mitigation, Disciplinary Counsel stipulated to the following at the limited hearing: Respondent has accepted responsibility for his action and blames no one but himself; Respondent has cooperated with Disciplinary Counsel; Respondent has made payment to Tri-Service in the amount of $1,007.25; Respondent paid Complainant $1,250 (half of the Complainant's settlement with Tri-Service); Respondent has offered pro bono services; and Respondent has participated in his professional community and charitable services as described in the attachment to Respondent's Affidavit. Tr. at 20-22; Affidavit at ¶ 8 and Attachment (noting that he is one of a few attorneys serving the large Ethiopian

Community in and around D.C., and has a substantial pro bono docket); Supplemental Affidavit at ¶ 3.

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).

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. Tr. at 10, 17-20, 25. Respondent understands the implications and consequences of entering into this negotiated discipline. Tr. at 22-25.

Respondent has acknowledged that the only promise that has been made to him by Disciplinary Counsel as part of this negotiated discipline is an agreement to

ask for a sixty-day suspension. There are no other promises or inducements that have been made to him. Tr. at 19; Affidavit at ¶ 4.

B. The Stipulated Facts Support the Admissions of Misconduct and the Agreed-Upon Sanction.

The Hearing Committee has carefully reviewed the facts set forth in the Petition and established during the hearing, and we conclude that they support the admission of misconduct and the agreed-upon sanction. We appreciate that a sixty-day suspension will likely have a serious impact on Respondent's solo practice Tr. at 41. Respondent is agreeing to this negotiated discipline because he believes that he could not successfully defend against the misconduct described in the Petition. Tr. at 15-16: Affidavit at ¶ 7.

The Petition states that Respondent violated Rule of Professional Conduct 4.1(a) (in that he knowingly made a false statement of material fact to a third person). The evidence supports Respondent's admission that he violated Rule 4.1(a) in light of the following stipulated facts (Revised Petition at ¶ 2(i); Tr. at 5, 18):

1. State Farm forwarded to Respondent a release and promised to pay $9,466.22, once it received an executed release. Finding 4(e), *supra*.

2. Respondent emailed or faxed a letter to Dr. King at Tri-Service after receiving the May 12, 2015, letter from State Farm, which falsely represented that the "insurance company has offered $7[,]486.22 to settle Mr. Gebremedhin's claim." Finding 4(f), *supra*.

3. Respondent represented that after paying an emergency room bill, the net would be $5,300.27 and offered to divide this amount into three $1,766.75 shares, one share each for himself, for Mr. Gebremedhin, and for Dr. King. *Id.*

4. On June 12, 2015, State Farm forwarded to Respondent a check in the amount of $9,486.22 to settle Mr. Gebremedhin's claim, and thereafter, Respondent distributed $1,766.65 to Tri-Service Clinic. Finding 4(h), *supra*.

This conduct violated Rule 4.1(a) in that Respondent, while representing a client, Mr. Gebremedhin, knowing made a false statement of material fact, the amount of the settlement with State Farm, to a third person, Dr. King.

The Petition also states that Respondent violated Rule of Professional Conduct 8.4(c) (in that he engaged in conduct involving dishonesty, fraud, and misrepresentation). Revised Petition at ¶ 2(i). The evidence supports Respondent's admission that he violated Rule 8.4(c) in light of the same stipulated facts as those supporting Rule 4.1(a) above. Respondent's conduct violates Rule 8.4(c) in that Respondent engaged in dishonesty, fraud, and misrepresentation by representing to Dr. King that the settlement offer was $2,000 less than the actual offer in order to induce him to take a lesser amount in payment for his medical services.

C. <u>The Agreed-Upon Sanction Is Justified.</u>

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). Based on the record as a whole, including the stipulated circumstances in mitigation, the Hearing Committee 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:

The Hearing Committee has reviewed the applicable Court precedents that exemplify the range of discipline for acts of fraud or dishonesty by Bar members. In the Hearing Committee's judgment, the proposed sixty-day suspension negotiated and agreed to by Disciplinary Counsel and Respondent is not unduly lenient, and is equitable under the specific circumstances of the case.

For example, in *In re Zeiger*, 692 A.2d 1351, 1352, 1354-55 (D.C. 1997) (per curiam) (appended Board Report), the Court imposed a sixty-day suspension where an attorney falsified medical records in order to benefit his client during settlement negotiations with an insurance company. In that case, the Hearing Committee found that the attorney engaged in dishonesty by deleting material information harmful to his client, albeit that the attorney's motive also may have included self-interest. 692 A.2d at 1355 (appended Board Report). In reasoning that the proposed sixty-day suspension was an appropriate sanction, the Board observed that the deletions did not harm the client, the violation "consisted of a single incident," and the misconduct did not occur during the course of a legal proceeding. *Id.* at 1356 (appended Board Report). In addition, the Board noted, the case presented several mitigating factors, including the fact that the attorney represented many poor Spanish-speaking clients,

was active in his community, and was a sole practitioner making less than $38,000 per year. *Id.* (appended Board Report). The Board also noted that the attorney had never had another disciplinary problem in the course of his eleven-year career and expressed contrition. *Id.* at 1356-57 (appended Board Report).[2]

Further, in *In re Amberly*, 974 A.2d 270, 272, 274-75 (D.C. 2009), a reciprocal matter following an admonition in Virginia, the Court imposed the "substantially different discipline" of a thirty-day suspension for an attorney's false certification that he had tried to serve a counterclaim on an opposing party. The Court explained that it had imposed the sanction of suspension in "numerous cases involving dishonesty," including the suspension of an attorney for falsifying signatures. 974 A.2d at 274.

Additionally, in *In re Rosenau*, 132 A.3d 1174, 1175 (D.C. 2016) (per curiam), the Court approved a Hearing Committee's recommendation that, in a negotiated discipline proceeding, a thirty-day suspension was not unduly lenient and was supported by discipline imposed by the Court.[3] In that case, the attorney failed to disclose during mediation that his client had died. *In re Rosenau*, Board Docket

[2] In contrast, in *In re Slaughter*, 929 A.2d 433, 447 (D.C. 2007), the Court held that a three-year suspension was an appropriate sanction because the attorney had "engaged in repeated acts of dishonesty, deliberately preparing and forging documents to support his on-going misrepresentations to his law firm." In this case, Respondent engaged in one misrepresentation, not a pattern of dishonesty.

[3] We recognize that prior negotiated discipline cases are of limited precedential value here, as they may not be cited as precedent at all in *contested* disciplinary proceedings. *See* Rule XI, § 12.1(d).

No. 15-ND-003, at 3 (HC Rpt. Jan. 15, 2016). In recommending approval of the petition, the Hearing Committee noted the attorney's acceptance of responsibility for his misconduct, and the absence of any prior disciplinary action during the attorney's thirty-five years of practicing law.[4] *Id.* at 10.

In this case, Respondent has shown remorse for his misconduct, as was the situation in *Zeiger* and in *Rosenau*. In addition, the Hearing Committee has determined, based on its evaluation of Respondent's Affidavits and his June 12, 2017 testimony, that Respondent was a credible witness and appeared genuinely contrite in acknowledging his wrongdoing. *See* Affidavit at ¶¶ 5-7; Tr. at 20-22. The Hearing Committee considers this to be an important mitigating factor.

The Hearing Committee also observes the absence of any evidence in the record that Respondent has been the subject of any prior disciplinary proceeding in the District of Columbia—or in any other jurisdiction. At issue is one act of misrepresentation, not a series or pattern of misrepresentations. This case is therefore similar to the *Zeiger* and *Rosenau* cases.

[4] In contrast to these comparable cases, *see In re McClure*, 144 A.3d 570, 572 (D.C. 2016) (per curiam) (imposing disbarment; finding that attorney's misconduct was similar to a prior case in which the Court found, *inter alia*, that the respondent's "dishonesty was very serious," "repeated and protracted," "came at the expense of his client's interests and was in large part driven by a desire for personal gain") (citation omitted); *In re Baber*, 106 A.3d 1072, 1076-77 (D.C. 2015) (per curiam) (imposing disbarment where the attorney "pressured his client to pay an excessive fee that she had not agreed to pay; improperly used confidential information from his client to make knowingly false accusations of fraud against his client in several pleadings; [and] reiterated those false accusations during the disciplinary process").

There is also no evidence that Respondent's misrepresentation harmed his client, or was intended to harm his client.[5] Indeed, Disciplinary Counsel verified at the limited hearing that there are no aggravating circumstances in this case. Tr. at 22.

The Hearing Committee further notes that Respondent has taken several steps to remedy the dishonest representation he made to Tri-Service. First, Respondent made a voluntary payment of $1,007.25 to Tri-Service, without precondition. Revised Petition, ¶ 2(k); Tr. at 20-21; Supplemental Affidavit at ¶ 2. Second, and perhaps more importantly, Respondent subsequently contributed $1,250.00, which constituted half of the amount in settlement that ultimately was paid to Tri-Service, resolving the suit against Mr. Gebremedhin and Respondent that was pending in the Maryland court. Revised Petition, ¶ 2(l); Tr. at 21-22; Supplemental Affidavit at ¶ 3. Finally, the Hearing Committee takes into account as mitigating factors the parties' stipulations on the record during the limited hearing regarding Respondent's prior legal services to the local community, including his pro bono legal services. *See* Tr. at 20-21; Attachment to Affidavit at 1-2. Respondent, a native of Ethiopia, is one of the few Ethiopian-origin attorneys who serve the D.C. Ethiopian community. Attachment to Affidavit at 1; Tr. at 21-22. In that context, Respondent has maintained an active pro bono docket for many years. Attachment to Affidavit

[5] The Revised Petition is unclear as to whether the lawsuit was brought by Tri-Service against Mr. Gebremedhin, which caused him to pay $1,250, would have occurred absent Respondent's misrepresentation. Revised Petition, ¶ 2(l).

at 1; Tr. at 20-21. Respondent also provides four examples of such matters that he has handled. Attachment to Affidavit at 2; Tr. at 21-22. In this respect, Respondent's situation is similar to *Zeiger*, where the attorney's provision of legal services to low-income clients was an appropriate mitigating factor in considering the proposed sixty-day suspension at issue. *See* 692 A.2d at 1356 (appended Board Report).

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 suspend Respondent for sixty days.

AD HOC HEARING COMMITTEE

/TCH/
Theodore C. Hirt
Chair

/MCL/
Mary C. Larkin
Public Member

/GSG/
Gwen S. Green
Attorney Member

Dated: August 10, 2017