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:	:	
	:	
CHIDINMA M. IWUJI,	:	
	:	Board Docket No. 19-ND-004
Respondent.	:	Disciplinary Docket No. 2018-D007
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 478118)	:	

REPORT AND RECOMMENDATION
APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before The Ad Hoc Hearing Committee on June 25, 2019, for a limited hearing on an Amended Petition for Negotiated Discipline (the "Petition"). The Office of Disciplinary Counsel was represented by Deputy Disciplinary Counsel Julia L. Porter. Respondent, Chidinma M. Iwuji, appeared *pro se*.

The Hearing Committee has carefully considered the Petition signed by Disciplinary Counsel and Respondent, the supporting affidavit submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent and Disciplinary Counsel. The Hearing Committee also has fully considered the Hearing Committee Chair's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* discussion with Disciplinary Counsel. For the reasons set forth below, the Hearing Committee approves the Petition, finds the

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

negotiated discipline of a public censure with conditions 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. Respondent is aware that there is currently pending against her an investigation into allegations of misconduct. Tr. 16[1]; Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent engaged in commingling and failed to maintain complete records of entrusted funds, in violation of Rule 1.15(a). Petition at 4.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 17, 20; Affidavit ¶¶ 4, 6. Specifically, Respondent acknowledges that:

> (a) From at least January 2016 through December 2018, Respondent maintained an IOLTA or client trust account at Capital One Bank.
>
> (b) During this period, Respondent engaged in commingling when she failed to withdraw earned fees or other funds belonging to her that were in the trust account while she continued to deposit advances of unearned fees and other entrusted funds in the trust account.
>
> (c) Respondent used funds in the trust account to pay non-client expenses, including the school fees of her administrative assistant. When she wrote the checks on behalf of her billing assistant, Respondent was travelling out of the country and did not consider the implications at the time. Disciplinary Counsel could not prove that

[1] "Tr." Refers to the transcript of the limited hearing held on June 25, 2019.

Respondent used entrusted funds to pay for these and other non-client expenses. Rather, Respondent paid these personal and non-client expenses with funds that she had earned but had not withdrawn from her trust account.

(d) Respondent failed to keep and maintain complete records of all the client funds deposited in the trust account. Although most of the funds deposited in the account could be traced to a particular client, there were two cash deposits for which Respondent had no records. Respondent also accepted payments by credit card but did not maintain records for the clients who made the payments and what she did with the funds.

(e) Respondent also failed to keep and maintain records for a number of withdrawals from the account. Respondent wrote herself a number of checks for earned fees, but did not note on the check the client matter associated with the payment. Respondent also had no other records that would indicate what fees the checks covered.

(f) Respondent failed to keep and maintain a general ledger reflecting the funds deposited in and withdrawn from the trust account. Respondent also failed to keep and maintain individual client ledgers reflecting the money she received on behalf of the client and how she had handled the client's funds.

(g) Respondent did have records for many of the client matters including retainer agreements, invoices to clients for her time charges, and receipts and checks for client expenses. The records Respondent kept and maintained, however, were not complete and prevented Disciplinary Counsel from auditing her handling of entrusted funds, even with the additional information that Respondent provided during the investigation.

(h) Disciplinary Counsel could not prove that Respondent engaged in misappropriation of client funds.

(i) Disciplinary Counsel also could not prove that any client or third party was prejudiced or harmed by Respondent's handling of entrusted funds and failure to maintain complete records of those funds.

> (j) Respondent has agreed to meet with the D.C. Bar's Practice Management [Advisory Service] program and take remedial measures to ensure she is complying with her ethical obligations.

Petition at 2-4.

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

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Affidavit ¶ 7. The only promise made by Disciplinary Counsel is to recommend a public censure with conditions as part of this negotiated discipline. Petition at 4-5. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 19-20;

7. Respondent is aware of her right to confer with counsel and is proceeding *pro se*. Tr. 10-11; 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. 17-20; Affidavit ¶¶ 4, 6.

9. Respondent is not being subjected to coercion or duress. Tr. 20; Affidavit ¶ 6.

10. Respondent is competent and was not under the influence of any substance or medication that would have affected her ability to make informed decisions at the limited hearing. Tr. 11-12.

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

a) she has the right to assistance of counsel if Respondent is unable to afford counsel;

b) she will waive her right to cross-examine adverse witnesses and to compel witnesses to appear on her behalf;

c) she will waive her right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;

d) she will waive her right to file exceptions to reports and recommendations filed with the Board and with the Court;

e) the negotiated disposition, if approved, may affect her present and future ability to practice law;

f) the negotiated disposition, if approved, may affect her bar memberships in other jurisdictions; and

g) any sworn statement by Respondent in her affidavit or any statements made by Respondent during the proceeding may be used to impeach her testimony if there is a subsequent hearing on the merits.

Tr. 11, 14, 23-25; Affidavit ¶¶ 9-12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a public censure with the conditions that:

(a) Respondent must take three hours of pre-approved continuing legal education related to the maintenance of trust accounts, record keeping, and/or safekeeping client property, and Respondent must certify and provide documenting proof that she has met this requirement to the Office of Disciplinary Counsel within six months of the date of the Court's final order.

(b) Respondent met with Dan Mills, Manager of the Practice Management Advisory Service of the District of Columbia Bar, on March 28, 2019, in Respondent's office, and met again with Mr. Mills at his office on April 3, 2019. If she has not done so already,

> Respondent will execute a waiver allowing Mr. Mills and/or the assigned practice monitor to communicate directly with the Office of Disciplinary Counsel regarding her compliance. Mr. Mills or the assigned practice monitor will conduct a full assessment of Respondent's practices, including but not limited to reviewing financial records, client files, engagement letters, and her supervision and training of staff. Mr. Mills or the assigned practice monitor shall take steps to ensure that Respondent is aware of and has taken steps to comply with her obligations under Rule l.15(a), including maintaining complete records relating to client funds and that Respondent complies with all of the practice monitor's recommendations.
>
> (c) Respondent must be in full compliance with the practice monitor's requirements for a period of twelve consecutive months. After the practice monitor determines that Respondent has been in full compliance for twelve consecutive months, Respondent must sign an acknowledgement that she is in compliance with the practice monitor's requirements and file the signed acknowledgement with the Office of Disciplinary Counsel. This must be accomplished no later than two years after the date of the Court's final order.

Petition at 5-6; Tr. 18-19.

13. In mitigation of sanction, the parties agree that (a) Respondent has no prior discipline; (b) Respondent has taken full responsibility for her misconduct and has demonstrated remorse; (c) Respondent has fully cooperated with Disciplinary Counsel, including meeting with Disciplinary Counsel, and providing written responses, bank statements, and client records; and (d) prior to agreeing to this negotiated disposition, Respondent contacted Dan Mills to begin the process of having her practices and procedures assessed and modified to comply with the requirements of the Rules. Petition at 8; Tr. 21; Affidavit ¶ 15. During the limited hearing, pursuant to Board Rule 17.4(a), Respondent gave a statement in mitigation indicating that she has already consulted with Mr. Mills and begun implementing his

recommendations. Tr. 21-22. Disciplinary Counsel confirmed that Respondent's statement was accurate to the best of its understanding. Tr. 22.

14. Because Disciplinary Counsel's investigation arose from an overdraft notification, there are no complainants in this matter who would have been entitled to be notified of the limited hearing and given an opportunity to provide a statement. Tr. 8.

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;
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> 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 she is under duress or has been coerced into entering into this disposition. Tr. 17-20. Respondent understands

the implications and consequences of entering into this negotiated discipline. Tr. 11, 14, 23-25.

Respondent has acknowledged that any and all promises that have been made to her 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 her. Tr. 19-20; Affidavit ¶ 7.

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 the Hearing Committee concludes that they support the admission(s) of misconduct and the agreed upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because she believes that she could not successfully defend against the misconduct described in the Petition. Tr. 15-16; Affidavit ¶ 5.

With regard to the second factor, the Petition states that Respondent engaged in commingling in violation of Rule of Professional Conduct 1.15(a).[2] The evidence

[2] Rule 1.15(a) provides:

> A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

supports Respondent's admission that she engaged in commingling in that the stipulated facts show that during the January 2016 – December 2018 period, Respondent failed to withdraw earned fees or other funds belonging to her from her trust account. Findings ¶ 4b. Respondent then used funds from the trust account to pay non-client expenses. Findings ¶ 4c.

The Petition further states that Respondent also violated Rule 1.15(a) by failing to keep complete records of entrusted funds. The evidence supports Respondent's admission that she failed to maintain complete records in that the stipulated facts show that Respondent had no records identifying two cash deposits to a specific client's case, and also accepted credit card payments without maintaining records as to the clients who made those payments, or identifying the dispositions of the funds. Findings ¶ 4d. Respondent also failed to keep and maintain records for some withdrawals from the trust account and wrote checks to herself for earned fees without identifying on the checks, or elsewhere, the specific client matter. *Id.* ¶ 4e. Finally, Respondent did not have a general ledger for her account and also failed to keep and maintain individual client ledgers. *Id.* ¶ 4f.

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 the Hearing Committee's review of relevant precedent, the Hearing Committee finds that the proposed negotiated discipline of a public censure is appropriate and justified under the facts of this case.

Respondent engaged in commingling of entrusted funds over an extensive period of time—three years. Findings ¶ 4c. During that same period, Respondent failed to keep and maintain complete records of entrusted funds. *Id.* ¶¶ 4d-f. Respondent did not maintain a general client ledger, nor even individual client ledgers. *Id.* ¶ 4f. Because of the duration of this proscribed conduct, a public censure, rather than a reprimand, is the more appropriate sanction. *See In re Mance*, 980 A.2d 1196, 1208-09 (D.C. 2009) (public censure where respondent engaged in commingling, failed to refund unearned fees, and failed to keep adequate records); *In re Clower*, 831 A.2d 1030, 1033-35 (D.C. 2003) (per curiam) (same; respondent failed to keep complete records during a two-year period); *In re Graham*, 795 A.2d 51, 52 (D.C. 2002) (per curiam) (same; respondent engaged in commingling in three

cases over a six-month period); *In re Goldberg*, Bar Docket No. 479-95, at 7 (BPR Apr. 14, 1998) (same; respondent "knowingly and deliberately" engaged in commingling for the sake of convenience for a brief period of time), *recommendation adopted where no exceptions filed*, 721 A.2d 627, 628 (D.C. 1998) (per curiam). The proposed public censure reflects conduct that was not simply fleeting in time or caused by inexperience. *See In re Klass*, Board Docket No. 13-BD-041 (Board Order Dec. 22, 2014) (Hearing Committee Report appended) (Board reprimand where commingling occurred during one-month period and respondent failed to maintain complete records); *In re Canty*, Bar Docket No. 310-02 (Board Order Dec. 31, 2003) (same; respondent engaged in commingling during a thirteen-month period and failed to maintain complete records, mistakes that were caused by inexperience, but then engaged in "extraordinary cooperation" with Disciplinary Counsel).

The Hearing Committee also acknowledges that, although Respondent engaged in commingling and failed to maintain complete records of entrusted funds, there is no indication in the record that any client was harmed by that misconduct. Findings ¶ 4i; *see In re Goldberg*, 721 A.2d at 628 n.1 (taking "particular note both of the lack of any actual prejudice or harm to any client" and recommending public censure). In addition, Disciplinary Counsel has stated that it could not prove that Respondent engaged in misappropriation of client funds. *Id.* ¶ 4h.

The Hearing Committee also takes into account that there are significant mitigating factors. Respondent has no prior disciplinary history. *See id.* ¶ 13. She

has fully cooperated with Disciplinary Counsel, and prior to agreeing to the negotiated disposition, Respondent contacted Mr. Mills of the District of Columbia Bar to begin the process of having her practices and procedures assessed and modified to comply with the Rules. *Id.*

Although there are no aggravating factors, the Hearing Committee observes that a public censure with conditions, which is not the most lenient sanction that has been imposed for comparable misconduct, will convey that the misconduct was serious, since commingling can put client funds at risk of loss. *See In re Hessler*, 549 A.2d 700, 702 (D.C. 1988) ("The rule against commingling was adopted to provide against the probability in some cases, the possibility in many cases, and the danger in all cases that such commingling will result in the loss of clients' money."). Similarly, maintaining complete client records facilitates the effectiveness of the disciplinary system. *In re Clower*, 831 A.2d 1030, 1033-34 (D.C. 2003) (per curiam).

IV. CONCLUSION AND RECOMMENDATION

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

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court impose a public censure with the conditions that Respondent (1) take three hours of pre-approved continuing legal education, (2) complete a practice management

assessment, and (3) comply with the requirements of an assigned practice monitor for one year, as described in Findings, paragraph 12 above.

AD HOC HEARING COMMITTEE

Theodore C. Hirt
Chair

Joel Kavet
Public Member

Mary E. Kuntz
Attorney Member