

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER ELEVEN



FILED

Jun 27 2022 9:50am

In the Matter of: : Board on Professional Responsibility
: :
CLAUDIA PS BOTTY-VAN :
DEN BRUELE¹ :
Respondent. : Board Docket No. 21-ND-008
: Disciplinary Docket Nos. 2016-
: D127, 2017-D276
A Member of the Bar of the :
District of Columbia Court of Appeals :
(Bar Registration No. 459210) :

REPORT AND RECOMMENDATION OF
HEARING COMMITTEE NUMBER ELEVEN
APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before Hearing Committee Number Eleven on April 25, 2022, for a limited hearing on a Petition for Negotiated Discipline ("Petition"). The members of the Hearing Committee are Eric L. Hirschhorn, Esquire, Chair; Roxanne Littner, Public Member; and Rebecca Goldfrank, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Caroll Donayre Somoza, Esquire. Respondent, Claudia PS Botty-Van Den Bruele, Esquire, was present and represented by Dennis Quinn, Esquire.

The Hearing Committee has carefully considered the Petition signed by Disciplinary Counsel, Respondent, and Respondent's counsel, the supporting

¹ The Petition identifies Respondent as "Claudia Botty." We use the name associated with Bar Registration No. 459210.

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

affidavit submitted by Respondent ("Affidavit"), and the representations during the limited hearing made by Respondent, Respondent's counsel, and Disciplinary Counsel. The Hearing Committee also has fully considered the Chair's *in camera* review of Disciplinary Counsel's files and records, and his *ex parte* communications with Disciplinary Counsel. *See Confidential Appendix, infra.* For the reasons set forth below, we approve the Petition, find the negotiated discipline—a sixty-day suspension, thirty-days stayed, provided Respondent complies with the conditions of probation set forth in ¶ 12, below—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 her an investigation involving allegations of misconduct. Tr. 21²; Affidavit ¶ 2.
3. The allegations that were brought to the attention of Disciplinary Counsel involved a violation of Rule 1.5(b) (failing to provide a writing setting forth the basis or rate of the fee and the scope of the representation within a reasonable time after commencing the representation), and Rule 1.15(a) and (e) (failing to maintain complete financial records, failing to hold advances of unearned fees and unincurred costs that were in her possession in connection with a representation

² "Tr." Refers to the transcript of the limited hearing held on April 25, 2022.

separate from her own funds, failing to obtain informed consent from the client to a different arrangement and thereby engaging in commingling). Petition at 5, 8.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 21-23; Affidavit 4.

Specifically, Respondent acknowledges that:

A. Botty/Ordonez, Disciplinary Docket No. 2017-D276

1. On January 23, 2014, Luis Alberto Ortez Canales retained Respondent to represent him in his removal proceedings.

2. Respondent provided Mr. Ortez Canales a retainer agreement agreeing to represent him in Immigration Court. The retainer set the legal fee at \$4,500 with an initial payment of \$1,000, and the balance to be paid in monthly increments of \$250.

3. The retainer agreement did not discuss that advanced fees and costs would not be deposited in a trust account.

4. Respondent deposited advanced fees and costs in her SunTrust business account ending in #6405.

5. On July 31, 2014, February 26, 2015, and August 27, 2015, Respondent and Mr. Ortez Canales attended Master Calendar hearings in Arlington Immigration Court.

6. On August 27, 2015, Respondent submitted an application for Cancellation of Removal for non-permanent residents (Form EOIR-42B) based on a United States citizen child.

7. In February 2016, Mr. Ortez Canales advised Respondent that he had married his United States citizen girlfriend.

8. Mr. Ortez Canales and his now wife, Mrs. Ordonez, retained Respondent to represent them in seeking his adjustment of status based on a family petition (Form I-130).

9. Respondent did not provide the clients with a retainer for her joint representation. The clients requested a written contract several times.

10. On February 19, 2016, Respondent submitted an I-130 and it was approved on May 25, 2016.

11. The approved I-130 was sent to the National Visa Center because Mr. Ortez Canales had entered the United States without inspection and was unable to adjust his status in the United States.

12. On November 11, 2016, Respondent filed a request for prosecutorial discretion seeking to close the removal proceedings administratively.

13. Mr. Ortez Canales's case was pending without a hearing date for some months.

14. On January 25, 2017, Respondent filed a Motion to Re-calendar and schedule a Master Calendar hearing to request that the proceedings be administratively closed.

15. On July 18, 2017, Respondent told the clients she was withdrawing from their case.

16. On July 29, 2017, a Master Calendar hearing was scheduled for August 23, 2017.

17. On August 23, 2017, Respondent filed a Motion to Withdraw, which was granted in court.

18. On August 25, 2017, Mrs. Ordonez and Mr. Ortez Canales filed a disciplinary complaint with Disciplinary Counsel.

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B. Botty/Martinez Orellana, Disciplinary Docket No. 2016-D127

21. In or about February 2012, Obed Martinez Orellana, a Salvadorian national, was detained by Immigration and Customs Enforcement (ICE) and placed in removal proceedings.

22. Mr. Martinez Orellana retained Respondent in 2012 to represent him in Immigration Court, five years after he left El Salvador. Respondent secured his release on bond and filed several forms of relief on behalf of Mr. Martinez which were all denied. In 2014 and [sic] Respondent applied [sic] on behalf of M[r]. Martinez Orellana.

23. Respondent provided Mr. Martinez Orellana a retainer agreement agreeing to represent him in Immigration Court. The retainer set the legal fee at \$4,500 with an initial payment of \$1,500, and the balance to be paid in monthly increments of \$200.

24. The retainer agreement did not discuss that advanced fees and costs would not be deposited and maintained in a trust account.

25. Respondent deposited advanced fees and costs in her SunTrust business account ending in #6405.

26. On February 22, 2013, Respondent and Mr. Martinez Orellana attended a Master Calendar hearing in Baltimore Immigration Court.

27. On June 3, 2014, Respondent filed an application for Asylum (Form I- 589) in open court. An individual hearing was scheduled for August 4, 2015.

28. In January 2015, Mr. Martinez Orellana received a letter from Respondent requesting a meeting to go over his asylum application.

29. Mr. Martinez Orellana did not attend the August 2015 asylum hearing because he was afraid to appear without counsel.

30. Unbeknownst to Mr. Martinez Orellana, Respondent had filed a Motion to Withdraw as his attorney of record on July 21, 2015,

two weeks before the hearing. In her motion, Respondent alleged that she had been unable to get in touch with Mr. Martinez Orellana.

31. In February 2016, Mr. Martinez Orellana got a call from Respondent after almost a year since they had last spoken. Respondent was calling in connection with his bond.

32. From at least February 2012 through January 2018, Respondent maintained a business account at Sun[]Trust Bank.

33. During this period, Respondent engaged in commingling when she deposited advances of unearned fees and unincurred costs in her business account together with her own funds.

34. Respondent failed to keep and maintain complete records of all the entrusted funds deposited in the business account. Although most of the funds deposited in the account could be traced to a particular client, there were several cash deposits for which Respondent had no records.

35. Respondent also failed to keep and maintain records for several withdrawals from the account. Respondent wrote herself several 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.

36. Respondent failed to keep and maintain a general ledger reflecting the entrusted funds deposited in and withdrawn from the business 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 clients' funds.

Petition at 2-8.

5. Respondent is agreeing to the disposition because Respondent believes that she cannot successfully defend against discipline based on the stipulated misconduct. Tr. 20-21; Affidavit 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Affidavit 7. Those promises and inducements are to recommend the sanction set forth in this negotiated disposition. Petition at 8. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 26.

7. Respondent has conferred with her counsel. Tr. 13-14; Affidavit 1.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 21-23, 28; Affidavit 6.

9. Respondent is not being subjected to coercion or duress. Tr. 20, 28; Affidavit 6.

10. Respondent is competent and was not under the influence of any substance or medication that would affect her ability to make informed decisions at the limited hearing. Tr. 14-15.

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. 15-19; Affidavit 1, 9-12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a sixty-day suspension, thirty-days stayed, provided Respondent comply with the conditions of probation set forth in subparagraph b, below.

a) Respondent further understands that she must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for her suspension to be deemed effective for purposes of reinstatement. Tr. 30.

b) Respondent understands that conditions of this negotiated disposition are that she will be required to (i) take three hours of pre-approved continuing legal education related to the maintenance of trust accounts, record keeping, and/or safekeeping client property, including advanced costs, and Respondent must certify and provide documentary 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; and (ii) meet with Dan Mills, Esquire, the Manager of the Practice Management Advisory Service of the District of Columbia Bar, in Respondent's office within two months of the date of the

Court's final order. At that time, Respondent must execute a waiver allowing Mr. Mills and/or the practice monitor to communicate directly with the Office of Disciplinary Counsel regarding her compliance. When Respondent meets with Mr. Mills in her office, Mr. Mills shall conduct a full assessment of Respondent's business structure and her practice, including but not limited to reviewing financial records, client files, engagement letters, supervision and training of staff, responsiveness to clients. Mr. Mills and/or the assigned practice monitor shall ensure that Respondent maintains complete records relating to maintenance of client funds and that Respondent complies with all of the practice monitor's recommendations. 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 9-10; Tr. 24-26.

13. The Petition contains no circumstances in aggravation.

14. The following circumstances are in mitigation of sanction:

(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 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 13-14; Tr. 28-30.

15. The complainants were notified of the limited hearing but did not appear and did not provide any written comment. Tr. 11, 30-31.

III. DISCUSSION

The Hearing Committee shall recommend approval of a petition for negotiated discipline if it finds:

- (1) The attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition and agreed to the sanction set forth therein;
- (2) The facts set forth in the petition or as shown at the hearing support the admission of misconduct and the agreed upon sanction; and
- (3) The sanction agreed upon is justified. . . .

D.C. Bar R. XI, § 12.1(c)(1)-(3); *see also* 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. *See supra* ◆◆ 8-9. Respondent understands the implications and consequences of entering into this negotiated discipline. *See supra* ◆ 11.


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. *See supra* ¶ 6.


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 admissions 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. *See supra* ¶ 5.

With regard to the second factor, the Petition states that Respondent violated Rule of Professional Conduct Rules 1.5(b) (failing to provide a writing setting forth the basis or rate of the fee and the scope of the representation within a reasonable time after commencing the representation), and 1.15(a) and (e) (failing to maintain complete financial records, failing to hold advances of unearned fees and unincurred costs that were in her possession in connection with a representation separate from her own funds, failing to obtain informed consent from the client to a different arrangement and thereby engaging in commingling).

The evidence supports Respondent's admission that she violated Rule 1.5(b) in that the stipulated facts describe Respondent's failure to communicate to Mr. Ortiz Canales and Mrs. Ordonez in writing the basis or rate or fee and the scope of

her representation before or within a reasonable time after commencing such representation. Petition at 3-5; Affidavit  4; Tr. 22.

The evidence supports Respondent's admission that she violated Rules 1.15(a) and (e) in that the stipulated facts describe her failure to maintain complete financial records, hold advances of unearned fees and unincurred costs that were in her possession in connection with the representation separate from her own funds, or obtain informed consent from Mr. Martinez Orellana to different arrangements, thereby engaging in commingling. Petition at 5-8; Affidavit  4; Tr. 23.

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) (explaining that hearing committees should consider "the record as a whole, including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel's evidence, any circumstances in aggravation and mitigation (including respondent's cooperation with Disciplinary Counsel and acceptance of responsibility), and relevant precedent"); *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* discussions 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:

First, the circumstances in mitigation are many. Respondent has acknowledged her misconduct, has no prior discipline, has demonstrated remorse, has cooperated fully with Disciplinary Counsel, including meeting with Disciplinary Counsel and providing written responses and client records as requested, and prior to agreeing to negotiated discipline has communicated with Mr. Dan Mills, the Manager of the D.C. Bar's Practice Management Advisory Service, to begin the process of having her practices and procedures assessed and, as necessary, modified to comply with the requirements of the Rules of Professional Conduct. Tr. 28-30.

Second, the Hearing Committee is aware of no aggravating circumstances.

Third, the Hearing Committee found the Respondent's testimony at the limited hearing in this matter to be credible.

Finally, the parties have stipulated to a sixty-day suspension with thirty days stayed in favor of probation with CLE and practice monitoring conditions. Non-suspensory sanctions and brief suspensions have been imposed in contested cases involving failure to provide written fee agreements, commingling, and/or record-keeping violations. *See, e.g., In re Iwuji*, 223 A.3d 108 (D.C. 2020) (per curiam) (in a negotiated discipline matter, public censure with conditions for commingling and failure to keep records of entrusted funds); *In re Szymkowicz*, 124 A.3d 1078, 1088-89 (D.C. 2015) (per curiam) (concluding that informal admonition was appropriate sanction for failure to provide written fee agreement and remanding case to Board

for further consideration of a conflict-of-interest charge); *In re Graham*, 795 A.2d 51 (D.C. 2002) (per curiam) (public censure for three instances of commingling, failure to designate a trust account, and failure to promptly pay a third-party); *In re Iglehart*, 759 A.2d 203 (D.C. 2000) (per curiam) (thirty-day suspension for commingling and failure to keep records of entrusted funds); *In re Ukwu*, 712 A.2d 502, 502-03 (D.C. 1998) (per curiam) (thirty-day suspension stayed in favor of probation with conditions for commingling and failure to keep records of entrusted funds); Order, *In re Klass*, Board Docket No. 13-BD-041, at 4-5 (BPR Dec. 22, 2014) (Board reprimand for commingling and failure to keep records of entrusted funds). Based on the foregoing, the stipulated sanction appears to fall within the range of discipline imposed for similar misconduct.

IV. CONCLUSION AND RECOMMENDATION

Based upon the foregoing and the additional information contained in a Confidential Appendix to this Report 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, with thirty days stayed, in favor of probation subject to the conditions discussed in paragraph 12 above.

HEARING COMMITTEE NUMBER ELEVEN

Eric L. Hirschhorn

Eric L. Hirschhorn, Chair

Roxanne Littner

Roxanne Littner, Public Member

Rebecca Goldfrank

Rebecca Goldfrank, Attorney Member