

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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



FILED

Mar 23 2022 9:34am

In the Matter of:

J.B. DORSEY, III,

Respondent.

A Member of the Bar of the
District of Columbia Court of Appeals
(Bar Registration No. 265181)

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Board Docket No. 21-ND-001

Disciplinary Docket No. 2014-D112

Board on Professional Responsibility

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

I. PROCEDURAL HISTORY

This matter came before Hearing Committee Number Three on February 10, 2022, for a limited hearing on an Amended Petition for Negotiated Discipline (hereinafter the "Petition"). The members of the Hearing Committee are Charles Davant, Esquire, Chair; Dr. William Hindle, Public Member; and Christina Biebesheimer, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Traci Tait. Respondent, J.B. Dorsey, III, was present and represented by Irwin Kramer, 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, Respondent's counsel, and Disciplinary

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

Counsel. The Hearing Committee also has fully considered the Chair's *in camera* review of Disciplinary Counsel's files and records, and *ex parte* communications with Disciplinary Counsel. *See Confidential Appendix, infra.* For the reasons set forth below, we approve the Petition, find the negotiated discipline of a public censure, with probation and conditions, 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 involving allegations of misconduct. Tr. 15¹; Affidavit 1 4.
 3. The allegation that was brought to the attention of Disciplinary Counsel involves a violation of Rule 1.15(a) (record-keeping). Petition at 4.
 4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 15, 20-21; Affidavit 1 5.
- Specifically, Respondent acknowledges that:

- 1) Respondent is a member of the District of Columbia Bar, having been admitted on April 27, 1979, and subsequently assigned Bar number 265181.
- 2) Respondent is also a member of the bars of Maryland, Michigan, and inactive in Pennsylvania.
- 3) During the course of an investigation, Disciplinary Counsel asked Respondent to produce an accounting of his trust account for November

¹ "Tr." refers to the transcript of the limited hearing held on February 10, 2022.

1, 2013 through May 31, 2014, in order to see if he had mishandled entrusted funds.

4) Respondent produced numerous records to Disciplinary Counsel reflecting "left over" funds resulting from multiple client settlements. Disciplinary Counsel asked Respondent to clarify what he meant by "left over" funds and Respondent clarified that these consisted of earned attorney's fees, which were usually withdrawn within 30 days of client settlements.

5) According to Respondent, after he deposited clients' settlement funds, he disbursed payments to the pertinent clients and their medical providers, as well as to himself as attorney's fees. These disbursements were reflected on the pertinent clients' respective disbursement sheets. Respondent also claimed that many clients had "left over" funds not reflected on his clients' respective disbursement sheets, which funds Respondent used as his own. However, Disciplinary Counsel's review of Respondent's trust account failed to reveal these disbursements to him or his clients.

6) Respondent's own records cannot be fully reconciled with the bank records for his trust account. For example:

A. The "left over" funds he set forth in the client ledgers were not revealed in the related bank records or the disbursement sheets Respondent provided his clients.

B. On at least one occasion, Respondent disbursed more funds to himself than he reflected on the disbursement sheet to his client. Respondent was unable to explain this discrepancy.

7) Respondent has failed to maintain sufficient records on all transfers of funds.

8) Records from Respondent's bank showed that Respondent often wrote hundreds of thousands of dollars' worth of checks from his trust account to himself with no indication on the check or elsewhere identifying the client and matter to which it pertained or the nature of the funds (e.g., payment for services rendered or other permissible disbursements).

9) A forensic accounting by Disciplinary Counsel does not reveal clear and convincing evidence that Respondent misappropriated any "left over" or other funds.

Petition at 2-4 (The Facts).

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 14; Affidavit 1 6.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition for Negotiated Discipline. Affidavit 1 3. Those promises and inducements are that Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in the Stipulation of Facts or any sanction other than the agreed-upon sanction. Petition at 4. 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.

7. Respondent has conferred with his counsel. Tr. 11; Affidavit 1 2.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 16, 19-20; Affidavit 11 5, 13.

9. Respondent is not being subjected to coercion or duress. Tr. 10; Affidavit 1 3.

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. 11-12.

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. 24-26; Affidavit 11 2, 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a public censure by the Court and one year of unsupervised probation with conditions. Petition at 5-6; Tr. 6-8. Respondent understands that the conditions of this negotiated disposition are that he will be required to:

- (a) not be the subject of a disciplinary complaint that results in a finding that he violated the disciplinary rules of any jurisdiction in which he is licensed to practice during the probationary period;
- (b) take the new admittees continuing legal education (CLE) course, and provide Disciplinary Counsel proof of attendance at the CLE within 30 days;

- (c) notify Disciplinary Counsel promptly of any ethics complaint against him and its disposition;
- (d) consult with Dan Mills, Esquire, and the D.C. Bar's Practice Management Advisory Service to conduct a review of his practices surrounding how to handle - and document processing of - entrusted funds, and to waive confidentiality regarding all aspects of that review; and,
- (e) within 30 days of the Court's order of public censure, notify Disciplinary Counsel in writing of all jurisdictions in which he is or has been licensed to practice, and all tribunals before which Respondent has appeared as legal counsel within the last 365 days.

Tr. 16-19; Petition at 5-6.

13. As circumstances in aggravation, the parties have stipulated that Disciplinary Counsel had to expend additional time to account for the management of client funds because of Respondent's poor record-keeping and that Respondent has three prior informal admonitions from 2000, 2006, and 2014. Petition at 7-8.

14. As circumstances in mitigation, the parties have stipulated that Respondent is remorseful and has taken responsibility for his misconduct by admitting that he violated Rule 1.15(a) (record-keeping), Respondent has cooperated with the disciplinary investigation, and Respondent has refunded \$214 to the complainant. Petition at 8; Affidavit 1 15.

15. The complainant in this matter was notified of the limited hearing but did not appear and did not provide any written comment. *See* Tr. 8-9.

III. DISCUSSION

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

- (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).

Board Rule 17.5(a) explains that

(iii) the agreed upon sanction is justified, and not unduly lenient, taking into consideration 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. A justified sanction does not have to comply with the sanction appropriate under the comparability standard set forth in D.C. Bar R. XI, § 9(h).

Board Rule 17.5(a)(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 supra* Paragraphs 8-9.

Respondent understands the implications and consequences of entering into this negotiated discipline. *See supra* Paragraph 11.

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 no other promises or inducements have been made to him. *See supra* Paragraph 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 admission 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 supra* Paragraph 5.

With regard to the second factor, the Petition states that Respondent violated Rule of Professional Conduct 1.15(a) (record-keeping). The evidence supports Respondent's admission that he violated Rule 1.15(a) (record-keeping) in that the stipulated facts describe Respondent's failure to fulfill his obligation to keep records of his handling of entrusted funds.

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 aggravation and mitigation, the Hearing Committee Chair's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* discussion with Disciplinary Counsel, and the Confidential Appendix-and our review of relevant precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient, for the following reasons:

Respondent's stipulated violation is straightforward. Respondent failed to maintain records of his handling of entrusted funds such that his records could not be fully reconciled with his bank account statements. Although Respondent has three prior informal admonitions, the parties stipulated that Respondent has provided numerous records to Disciplinary Counsel, expressed remorse, refunded the complainant, and fully cooperated with the investigation. Additionally, the forensic accounting undertaken by Disciplinary Counsel did not establish evidence of a misappropriation. We conclude that the sanction of a public censure with unsupervised probation and conditions is justified and consistent with relevant precedent. *See, e.g., In re Thomas-Edwards*, 967 A.2d 178 (D.C. 2009) (per curiam) (public censure with conditions for failing, *inter alia*, to keep complete financial records); *In re Mott*, 886 A.2d 535 (D.C. 2005) (per curiam) (public censure for failing, *inter alia*, to keep complete financial records); *In re Millstein*, 855 A.2d 1137 (D.C. 2004) (per curiam) (public censure with conditions for attorney with prior

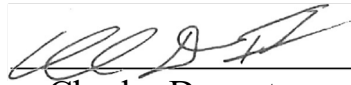
discipline for failing to maintain complete records of attorney's disbursements of settlement proceeds received in personal injury case).

IV. CONCLUSION AND RECOMMENDATION

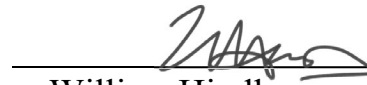
It is the conclusion of the Hearing Committee that the discipline negotiated in this matter is appropriate.

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court publicly censure Respondent and impose the conditions outlined herein, *see supra* Paragraph 12.

HEARING COMMITTEE NUMBER THREE



Charles Davant
Chair



William Hindle
Public Member



Christina Biebesheimer
Attorney Member