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:	:	
	:	
LAWRENCE R. RADANOVIC,	:	
	:	Board Docket No. 19-ND-002
Respondent.	:	Bar Docket No. 2014-D422
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 10413)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee (the "Hearing Committee") on May 17, 2019, for a limited hearing on a Petition for Negotiated Discipline (the "Petition").[1] The members of the Hearing Committee are Amy E. Garber, Esquire, Dr. Robin J. Bell, and Gwen S. Green, Esquire.[2] The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Dolores Dorsainvil. Respondent, Lawrence Radanovic, appeared *pro se*.

[1] All references to the "Petition for Negotiated Discipline" or "Petition" refer to the Petition for Negotiated Disposition filed on March 26, 2019. Disciplinary Counsel initially filed a Petition for Negotiated Disposition on January 28, 2019. The March 26, 2019 Petition supersedes that document. Disciplinary Counsel and Respondent signed the Petition.

[2] Dr. Bell was unable to attend the limited hearing due to an unanticipated conflict. Both parties were notified of her absence and stated that they had no objection to proceeding with the limited hearing without her in attendance, and with her participation in the Hearing Committee's decision in this matter. Limited Hearing Transcript, May 17, 2019 ("Tr.") at 3; *see* Board Rule 7.12 (allowing an absent Hearing Committee member to participate in the decision with the parties' consent).

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

The Hearing Committee has carefully considered the Petition, Respondent's Affidavit of Negotiated Disposition (the "Affidavit")[3], and the representations that Respondent and Disciplinary Counsel made during the limited hearing. 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. Finally, the Hearing Committee has fully considered the written statement of Raj Patel, one of Respondent's clients in the underlying matter, which Mr. Patel submitted to Disciplinary Counsel on May 15, 2019.

For the reasons set forth below, the Hearing Committee approves the Petition and finds that the following negotiated discipline is justified: **a thirty (30)-day suspension, fully stayed in favor of six (6) months of probation with the conditions that (1) Respondent not engage in any misconduct in this or any jurisdiction; and (2) complete four (4) hours of ethics-related continuing legal education ("CLE") courses, pre-approved by Disciplinary Counsel, and submit proof of attendance within thirty (30) days of such attendance.** The Hearing Committee respectfully recommends that the Court impose this negotiated discipline.[4]

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[3] All references to the Affidavit refer to the Affidavit of Negotiated Disposition filed on April 4, 2019. Respondent also signed an Affidavit of Negotiated Disposition that was filed with the original January 28, 2019 Petition for Negotiated Disposition. The April 4, 2019 Affidavit supersedes that document.

[4] Respondent and Disciplinary Counsel further agreed that if Disciplinary Counsel has probable cause to believe that Respondent violated the terms of his probation, Disciplinary Counsel may seek to revoke the probation pursuant to D.C. Bar R. XI, § 3 and Board Rule 18.3, and request that Respondent be required to serve the thirty (30)-day suspension. Petition at 8.

II. STANDARD OF REVIEW AND FINDINGS PURSUANT TO D.C. BAR R. XI, § 12.1(c) AND BOARD RULE 17.5

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
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> c) that the agreed sanction is justified.

D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(i)-(iii).

The Hearing Committee, after full and careful consideration, finds that the negotiated discipline satisfies these factors. The Hearing Committee makes the following findings in support of these factors:

1. The Petition and Affidavit are full, complete, and in proper order.

2. Respondent was aware, at the time he signed the Affidavit, that there was pending against him an investigation into allegations of misconduct. Tr. 20; Affidavit ¶ 2.

3. The allegations of misconduct that were the subject of the investigation referenced in paragraph 2 are that Respondent entered a joint representation without a written fee agreement, failed to inform the clients that a conflict could arise out of the joint representation, continued the representation after a conflict arose, and after one client terminated his representation, continued to represent the other client

without obtaining informed consent, in violation of D.C. Rules of Professional Conduct (the "Rules") 1.5(b), 1.4(b), 1.7(b)(1), 1.9, and 1.16(a)(1).[5] Petition at 5-7 & n.1.

4. Respondent has affirmed that the stipulated facts in the Petition and Affidavit are true and support the agreed-upon sanction, and that he has knowingly and voluntarily entered into the negotiated disposition. Tr. 25; Affidavit ¶ 4. Specifically, Respondent acknowledges that:

> (1) Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on July 20, 1967, and assigned Bar number 10413.
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> (2) Respondent became a patent agent on June 1, 1966, and a patent attorney on September 28, 1967. Respondent's patent registration number is 23,077. At all times relevant, Respondent was subject to the USPTO [United States Patent and Trademark Office] Code of Professional Responsibility.
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> (3) On October 28, 2010, Respondent filed U.S. Utility Patent Application No. 12/926,157 ("the '157 Application"), naming Dr. McCoy and Mr. Patel as co-inventors for a patent for harvesting waste vibration energy from railway tracks and converting it into electricity.
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> (4) There was no written fee agreement between the parties.

[5] The Petition also alleges that Respondent's misconduct violated United States Patent and Trademark Office ("USPTO") Rules 10.66(b), 11.107(a), and 11.109(a). Pursuant to D.C. Rule of Professional Conduct 8.5(b)(2)(i), the choice-of-law Rule, the District of Columbia Rules of Professional Conduct apply to the Petition, because Respondent is licensed only in the District of Columbia. Rule 8.5(b)(2)(i) ("If the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction."). The USPTO Rules do not apply pursuant to Rule 8.5(b)(1) – which applies the rules of a "tribunal" in matters pending before it – because the USPTO does not act as a "tribunal" when it reviews patent applications. Rule 8.5(b)(1) ("For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise.").

(5) Dr. McCoy and Mr. Patel each granted Respondent Powers of Attorney in the ‘157 Application.

(6) Respondent did not explain to Dr. McCoy and Mr. Patel that potential conflicts could arise from his joint representation of two purported co-inventors of a single invention, nor did he explain what those conflicts might be. Respondent did not obtain informed consent from Dr. McCoy and Mr. Patel to the joint representation at the outset of the representation or any time thereafter.

(7) As early as October 2011, Respondent became aware that Dr. McCoy was concerned about whether Mr. Patel had contributed to the invention. Respondent gave advice to Dr. McCoy regarding inventorship but he did not inform Mr. Patel of his communications with Dr. McCoy regarding inventorship.

(8) Despite the fact that Respondent was aware that there was an issue with inventorship, Respondent did not raise this issue with Mr. Patel, did not recommend that either Dr. McCoy or Mr. Patel retain new counsel, and did not withdraw from his joint representation of Dr. McCoy and Mr. Patel.

(9) On May 9, 2012, Respondent and Dr. McCoy participated in an examination interview for the ‘157 Application. Respondent stated during the course of the investigation that after the examiner interview it had become clear to him that Dr. McCoy was the sole inventor.

(10) In January 2013, a dispute arose between Dr. McCoy and Mr. Patel. Dr. McCoy claimed that Mr. Patel made no contribution to the invention and alleged that Dr. McCoy was the sole inventor.

(11) In February 2013, Respondent hired a third-party patent attorney, Mr. Wray, to investigate and render an opinion on inventorship. However, Respondent did not advise Mr. Patel of this, did not recommend that Mr. Patel seek new counsel, and did not withdraw from the representation of both Dr. McCoy and Mr. Patel.

(12) On March 8, 2013, Dr. McCoy sent an email to Mr. Patel informing Mr. Patel that he was seeking the advice of Mr. Wray based on the recommendation of the Respondent.

(13) On March 13, 2013, Mr. Patel responded to Dr. McCoy's email, also copying Respondent, and requested copies of all correspondence sent to Mr. Wray, including the scope of work Mr. Wray was to perform.

(14) Neither Dr. McCoy nor Respondent responded to Mr. Patel's request.

(15) On April 8, 2013, Mr. Wray rendered a "Report and Opinion on Inventorship," concluding that Mr. Patel was not the inventor of any features of the invention and should be removed as co-inventor from the patent application.

(16) Shortly thereafter, in April 2013, Dr. McCoy and Respondent discussed how to remove Mr. Patel's name as an inventor on the '157 Application if he did not agree to voluntarily do so.

(17) On May 1, 2013, Dr. McCoy sent an email to Respondent and Mr. Wray, discussing the plan to abandon the '157 Application in favor of a continuation application naming Dr. McCoy as the sole inventor. Dr. McCoy did not copy Mr. Patel on this email.

(18) Respondent did not consult with his client, Mr. Patel, or advise Mr. Patel that he was going to file a petition to abandon the '157 Application on Dr. McCoy's behalf. Nor did Respondent tell Mr. Patel that he was going to file a continuation patent application that would list Dr. McCoy as the sole inventor.

(19) Later on May 1, 2013, Respondent sent Mr. Patel and Dr. McCoy an e-mail whereby he proposed that the clients agree to a binding mediation or arbitration on the inventorship issue. He suggested that the parties allow him to engage with the arbitration or mediation association in advance of the proceedings to assure that the mediator/arbitrator was skilled in intellectual property matters. Dr. McCoy immediately accepted Respondent's proposal. Mr. Patel did not agree to participate.

(20) Accordingly, on or around May 3, 2013, upon instructions from Dr. McCoy, Respondent filed a petition expressly abandoning the patent application and filed a continuation patent application naming

Dr. McCoy as the sole inventor. Respondent did not advise Mr. Patel of either filing.

(21) Respondent did not withdraw as counsel for either client on May 3, 2013.

(22) On May 6, 2013, Mr. Patel, unaware that the '157 Application had been expressly abandoned by Respondent, emailed Respondent regarding the filings of papers with the USPTO in the '157 Application and reiterating his willingness to continue to work towards a resolution of the inventorship issue.

(23) On May 8, 2013, Mr. Patel emailed Respondent stating "[n]otwithstanding the Power of Attorney I previously signed, you may no longer file anything with the (US)PTO or any other parties related to the patent purporting to be on my behalf, without my prior written authorization."

(24) That same day, Mr. Patel terminated Respondent's representation. However, Respondent continued to represent Dr. McCoy in the new patent application.

(25) The abandonment petition was accepted, and the patent application was abandoned on May 10, 2013.

(26) On May 10, 2013, Mr. Patel, who had hired a new attorney, filed a petition withdrawing the abandonment and also filed a new patent application for the invention naming both he and Dr. McCoy as co-inventors. Mr. Patel's petition was denied and his patent application was dismissed.

(27) Around September 2014, Respondent withdrew as counsel for Dr. McCoy.

(28) USPTO undertook an investigation as to the inventorship issue and determined that Dr. McCoy was the sole inventor.

(29) Dr. McCoy's patent application was ultimately granted.

Petition at 2-6.

5. Respondent is agreeing to the negotiated disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 19-20; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Tr. 25; Affidavit ¶ 7. The promise contained in the Petition is that Disciplinary Counsel will not pursue any additional charges or sanctions beyond what is covered in the Petition. Petition at 7.

7. Respondent was aware of his right to confer with counsel and chose to proceed *pro se*. Tr. 15; 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. 25; Affidavit ¶¶ 4, 6.

9. Respondent affirmed that he was not subjected to coercion or duress when entering the negotiated disposition. Tr. 25; Affidavit ¶ 6.

10. Respondent is competent and was not under the influence of any substance or medication that would affect his participation at the limited hearing. Tr. 15-16.

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 if Respondent is unable to afford 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. 15, 18-19, 27-29; Affidavit ¶¶ 9-12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a thirty (30)-day suspension stayed in favor of six (6) months of probation with the conditions that Respondent (1) not commit misconduct in this or any other jurisdiction; and (2) complete four (4) hours of ethics-related CLE courses, pre-approved by Disciplinary Counsel, and submit proof of attendance within thirty (30) days of such attendance. If Disciplinary Counsel has probable cause to believe that Respondent has violated the terms of his 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 thirty days of suspension. Petition at 7-8; Tr. 24. Respondent further understands that if his probation is revoked, he must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for his suspension to be deemed effective for purposes of reinstatement. Tr. 29-30.

13. The Hearing Committee has taken into consideration the following agreed-upon circumstances in mitigation, set forth in the Petition: (1) Respondent proactively attempted to facilitate an agreement between Dr. McCoy and Mr. Patel to submit to binding arbitration/mediation on the issue of inventorship; (2) Respondent has no prior disciplinary history in over fifty-one (51) years of practice; (3) Respondent has cooperated with Disciplinary Counsel; (4) Respondent has expressed remorse; (5) there was no actual prejudice, because the USPTO dismissed Mr. Patel's re-filed patent application upon investigating and finding that Dr. McCoy was the sole inventor; and (6) the USPTO, where Respondent has his principal place of practice, gave Respondent a public reprimand. Petition at 8-9; Tr. 25-27.

15. Disciplinary Counsel notified both Dr. McCoy and Mr. Patel of the limited hearing but neither appeared at the hearing. Tr. 12-13. On May 15, 2019, Mr. Patel submitted a written statement to Disciplinary Counsel, in which he objects to the negotiated disposition and states that he believes the agreed-upon sanction is not severe enough. Dr. McCoy did not submit a written statement. Tr. 12-13.

III. DISCUSSION

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. 21-25. Respondent understands

the implications and consequences of entering into this negotiated discipline. Tr. 15, 18-19, 27-29.

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 there are no other promises or inducements that have been made to him. Tr. 25; 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 concludes that they support the admission(s) 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. Tr. 19-20; Affidavit ¶ 5.

The Petition states that Respondent violated Rule of Professional Conduct 1.4(b), which provides that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The evidence supports Respondent's admission that he violated Rule 1.4(b). The stipulated facts state that Respondent did not advise Dr. McCoy and Mr. Patel of a potential conflict. Petition ¶ 6. As the conflict developed, Respondent failed to notify Mr. Patel that Dr. McCoy believed he was the sole inventor, and Respondent did not advise Mr. Patel when he hired Mr. Wray to investigate Dr. McCoy's allegation. Petition ¶¶ 7-14. Moreover, Respondent did

not consult with Mr. Patel before filing a petition to abandon the '157 Application on Dr. McCoy's behalf and a continuation patent application listing Dr. McCoy as the sole inventor, and he did not notify Mr. Patel when he filed those documents. Petition ¶¶ 18, 20. The Petition further states that Respondent violated Rule of Professional Conduct 1.5(b), which provides that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation." The evidence supports Respondent's admission that he violated Rule 1.5(b) in that the stipulated facts state that Respondent did not enter into a written fee agreement with the clients. Tr. 11; Petition ¶ 4.

The Petition further states that Respondent violated Rule of Professional Conduct 1.7(b)(1), which provides that, without obtaining informed consent, "a lawyer shall not represent a client with respect to a matter if . . . [t]hat matter involves a specific party or parties and a position to be taken by that client in that matter is adverse to a position taken or to be taken by another client in the same matter even though that client is unrepresented or represented by a different lawyer." The evidence supports Respondent's admission that he violated Rule 1.7(b)(1) in that the stipulated facts demonstrate that a conflict arose between Dr. McCoy and Mr. Patel when Dr. McCoy alleged that he was the sole inventor and a dispute arose between the clients regarding Mr. Patel's contribution to the invention. Petition ¶¶ 7-10.

Respondent did not obtain informed consent from Dr. McCoy and Mr. Patel to jointly represent them. Petition ¶ 6.

The Petition further states that Respondent violated Rule of Professional Conduct 1.9, which provides that "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent." The evidence supports Respondent's admission that he violated Rule 1.9 in that the stipulated facts demonstrate that Respondent continued to represent Dr. McCoy after Mr. Patel terminated the representation, without obtaining Mr. Patel's informed consent, despite his previous joint representation in the same matter, in which Dr. McCoy and Mr. Patel developed materially adverse interests. Petition ¶¶ 7-10, 23-24, 30(d).

Finally, the Petition states that Respondent violated Rule of Professional Conduct 1.16(a)(1), which provides that "a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if . . . [t]he representation will result in violation of the Rules of Professional Conduct or other law." The evidence supports Respondent's admission that he violated Rule 1.16(a)(1) in that the stipulated facts state that after the conflict arose regarding whether Dr. McCoy was the sole inventor, Respondent hired a third-party patent attorney to investigate and render an opinion on inventorship, but Respondent did not withdraw from the representation. Petition ¶¶ 7-11.

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 our review of relevant precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient, for the following reasons:

Respondent's representation of Dr. McCoy and Mr. Patel was flawed from the beginning—he did not enter into a written fee agreement and failed to inform the clients that a conflict could arise out of the joint representation. Even after learning that a conflict existed, Respondent continued the representation while failing to inform either of the clients of the conflict and failing to communicate with Mr. Patel. When Mr. Patel terminated the representation, Respondent continued to represent Dr. McCoy without obtaining informed consent.

Although this conduct clearly violated the Rules discussed above, there are circumstances justifying a stay of the thirty (30)-day suspension in favor of probation. The mitigating factors are telling—this is the only instance of misconduct in fifty-one (51) years of practice, and Respondent attempted to rectify the situation by trying to get the clients to agree to arbitration or mediation of their dispute.

Respondent's Rule violations arise out of a single representation and there is no evidence of a pattern of misconduct. Moreover, Respondent credibly testified at the limited hearing that he understood the consequences of his actions. The Hearing Committee considered Mr. Patel's letter regarding the Respondent's misconduct. While the Hearing Committee does not take lightly Mr. Patel's allegations regarding the ethical violations and prejudicial impact on his filing, taking into consideration all factors, the sanction is justified, and not unduly lenient. Finally, the sanction appears to be in the range of cases involving comparable misconduct. *See, e.g.*, *In re Long*, 902 A.2d 1168, 1169-1172, 1169 n.2 (D.C. 2006) (per curiam) (thirty-day suspension, stayed in favor of thirty days of probation, for drafting a will at the direction of a beneficiary, lack of competence, and failure to provide a written fee agreement, in violation of Rules 1.1(a) and (b), 1.5(b), and 1.7(b)(2) and (c), where the respondent was not motivated by personal gain)); *In re Cohen*, 847 A.2d 1162, 1163-65, 1167 (D.C. 2004) (thirty-day suspension for representing two clients with conflicting interests in a trademark application, in addition to failure to communicate, failure to adequately supervise others, and failure to surrender client property upon withdrawal, in violation of Rules 1.4(a), 1.7(b), 1.16(d), 5.1(a), and 5.1(c)(2)); *In re Klusaritz*, Bar Docket No. 2010-D001 (ODC Letter of Informal Admonition Oct. 25, 2012) (informal admonition for jointly representing a company and one of its employees who was setting up a competing business, without notifying the company, in violation of Rules 1.4(b) and 1.7(b) and (c)).

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 thirty (30)-day suspension fully stayed in favor of six (6) months of probation with the conditions that Respondent (1) not commit misconduct in this or any other jurisdiction; and (2) complete four (4) hours of ethics-related CLE courses, pre-approved by Disciplinary Counsel, and submit proof of attendance within thirty (30) days of such attendance.

AD HOC HEARING COMMITTEE

Amy E. Garber, Esquire
Chair

Dr. Robin J. Bell
Public Member

Gwen S. Green, Esquire
Attorney Member