THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

FILED
Jul 6 2022 1:54pm
Board on Professional Responsibility

In the Matter of:	:	
	:	
LYNN M. BURKE,	:	
	:	Board Docket No. 21-ND-007
Respondent.	:	Disciplinary Docket Nos. 2014-
	:	D303, 2017-D266, 2018-D102,
A Member of the Bar of the	:	2018-D325
District of Columbia Court of Appeals	:	
(Bar Registration No. 1006423)	:	

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 March 25, 2022, for a limited hearing on a Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Stephen Juge, Esquire (Chair), LaVerne Fletcher (public member), and John Szabo, Esquire (attorney member). The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Caroll Donayre Somoza. Respondent Lynn Burke was represented by Ronald Douglas, Esquire.

The Hearing Committee has carefully considered the Petition for Negotiated Discipline 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 Counsel. The Hearing Committee also has fully considered

* 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 written statements submitted by the complainants, the Chair's *in camera* review of Disciplinary Counsel's files and records and *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, and those set forth in the Confidential Appendix,[1] we approve the Petition, find the negotiated discipline of a 180-day suspension, with ninety days stayed, with 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 her an investigation involving allegations of misconduct. Tr. 23[2]; Affidavit , 2.

3. In the first matter, Disciplinary Counsel became aware that Respondent's letterhead did not list any jurisdictional limitations on her ability to practice law and did not state that she was not licensed to practice law in North Carolina - the state where she has her office. Disciplinary Counsel received a complaint from Jesse and Sharon Battle and their son, David R. Stewart, who

[1] Board Rule 17.6 provides:

> If the Hearing Committee's recommendation relies in whole or in part on confidential material disclosed during the Hearing Committee's in camera review of Disciplinary Counsel's investigative file or ex parte meeting with Disciplinary Counsel pursuant to Section 12.1(c) of Rule XI and Rule 17.4(h), any reference to such confidential material in the Hearing Committee's report shall be included in a confidential supplemental report filed with the Court, captioned "Under Seal" and served only on Disciplinary Counsel.

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

retained Respondent in a criminal matter. Mr. Stewart and his parents alleged that Respondent mishandled the criminal case, failed to keep them informed, and did not provide them with answers to their questions. Respondent failed to provide the clients with a retainer agreement and misrepresented her ability to practice law in North Carolina. In the second matter, Disciplinary Counsel received a complaint from Cynthia Baah, whom Respondent represented in an immigration matter. Respondent failed to provide the client with a retainer agreement. In the third matter, Disciplinary Counsel received a complaint from Pedro Osorio-Aparicio. He retained Respondent to represent his minor daughter and minor niece in their immigration matters. Respondent failed to provide them with a retainer agreement, failed to hold funds belonging to the clients separate from her own funds, thus engaging in commingling, failed to deposit entrusted funds in a D.C. IOLTA account, failed to keep disputed funds in an IOL TA account, and failed to refund advances of fees and expenses that had not been earned or incurred. In the fourth matter, Disciplinary Counsel received a complaint from Cesar Alvarenga-Gomez, whom Respondent represented in his criminal case in Maryland. Respondent has never been licensed to practice law in Maryland.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 24; 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 March 9, 2012, and assigned Bar Number 1006423.

Count I - Disciplinary Docket No. 2014-D303

(2) Respondent lives and practices law in North Carolina but is not a member of the North Carolina Bar. Respondent is a solo practitioner and maintains that her practice is limited to federal immigration law.

(3) Respondent's letterhead did not list any jurisdictional limitations and did not state that she was not licensed to practice law in North Carolina.

(4) In November 2014, the North Carolina State Bar sent Respondent a Letter of Caution dated November 4, 2014, about engaging in the unauthorized practice of law.

(5) On May 4, 2016, the Office of Disciplinary Counsel asked Respondent about the lack of jurisdictional limitation information on her letterhead. On June 30, 2016, Respondent wrote that she had updated her letterhead to include "licensed to practice law in Washington, DC - the Fourth Circuit Court of Appeals - Not licensed to Practice North Carolina Law."

(6) Respondent, however, did not update her letterhead. As of January 2020, Respondent continued to use letterhead with a North Carolina address that did not include information about the limitations in her practice.

(7) Respondent's website (www.lynnburkelaw.com) indicated that her practice was limited to immigration and post-conviction relief (state appeals), but she did not disclose that she was not licensed in North Carolina or that she was unable to practice before the North Carolina state courts.

Respondent's Representation of the Battles and Their Son

(8) On or about October 11, 2013, Jesse and Sharon Battle asked Respondent if their son, Mr. David R. Stewart, was eligible to seek relief under *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (*en banc*), which modified how state criminal convictions are to be considered under the federal sentencing guidelines. Mr. and Mrs. Battle wanted to determine whether Mr. Stewart was eligible for relief from the Federal Career Criminal Sentencing Enhancement under *Simmons.*

(9) Initially, Respondent told Mr. and Mrs. Battle that she could not represent their son because she did not think Mr. Stewart qualified under *Simmons.*

(10) Respondent then contacted Mr. and Mrs. Battle on November 2, 2013, and said that, after discussing Mr. Stewart's case with her colleague, Respondent now believed that their son did have a good chance under *Simmons*.

(11) In November 2013, the Battles retained Respondent to represent their son who was sentenced to 30 years in federal prison for a federal robbery charge. Respondent was to prepare and file a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct Mr. Stewart's sentence.

(12) Respondent told Mr. and Mrs. Battle that her fee was $1,500. Respondent did not provide the Battles with a written fee agreement for the representation. Mr. and Mrs. Battle paid the fee in installments over the course of several months.

(13) On or about November 12, 2013, Mr. Battle asked Respondent if she was licensed in the United Stated District Court for the Middle District of North Carolina. Respondent responded that she was licensed in the Fourth Circuit Court of Appeals and in the District of Columbia, and she further stated that because she is licensed in the District of Columbia, she can do all federal appeal work. Respondent misrepresented that she could file pleadings in the United States District Court for the Middle District of North Carolina, when she could not, at least without court permission which she did not have at the time.

(14) On December 7, 2013, Respondent stated to Mr. and Mrs. Battle that because their son was detained in South Carolina, she would visit him in January 2014.

(15) On December 9, 2013, Respondent stated to the Battles that the *Simmons* motion was almost finished, and she would send it to them for their review. Respondent also stated that she would send their son a copy of her brief for his review.

(16) Respondent did not complete the motion in December 2013.

(17) On January 30, 2014, Mr. Battle asked Respondent if she had visited his son, Mr. Stewart. Respondent stated that she would do so the following week.

(18) Respondent did not visit Mr. Stewart as she had promised Mr. and Mrs. Battle.

(19) On April 24, 2014, Mrs. Battle asked Respondent if the motion had been filed. Respondent stated that she would be filing it on the following Monday, April 29, 2014. Respondent did not file it on that day.

(20) On May 8, 2014, Respondent told Mr. and Mrs. Battle that she was working on a new strategy in the case. Respondent told Mr. and Mrs. Battle that she would attempt to have the state court in Durham County, North Carolina correct an alleged error that was made on Mr. Stewart's worksheet, which had been used to enhance Mr. Stewart's sentence, by filing a Motion for Appropriate Relief (MAR). Respondent made these representations to the Battles when she could not practice law before the North Carolina state court pursuant to N.C. Gen. Stat. §84-4.1, which prohibits North Carolina residents from being admitted to North Carolina state courts by *pro hac vice* admission.

(21) Respondent drafted a MAR and provided it to the District Attorney who prosecuted Mr. Stewart's underlying case. Respondent advised the Battles that after she spoke to the District Attorney, she was abandoning this strategy and pursuing an appeal based on ineffective assistance of counsel.

(22) On May 15, 2014, Mrs. Battle asked Respondent how long it would take her to prepare the motion. Respondent responded, by text message, "I cannot give that to you because I don't know myself. The deadline is August 3, but it will not take that long. Furthermore, what is the rush your son still got to do the 10 year [sic]. He not getting out anytime soon. I do not want to piss anyone off either so when I know, you will know. If your son worrying you then tell him to chill for real. I have to write another motion which I had not anticipated. Have a good day."

(23) On July 1, 2014, Mr. Battle sent Respondent an email asking her whether she could represent her son if she was not licensed in the United States District Court for the Middle District of North Carolina.

(24) Respondent responded to the email and stated that she could be admitted *pro hac vice,* if necessary. Respondent never sought admission to the United States District Court for the Middle District of North Carolina.

(25). On July 21, 2014, Mr. Battle sent Respondent an email stating that Mr. Stewart had not heard from Respondent. Respondent replied the following day, stating that she continued to work on the § 2255 motion to vacate and would send a final copy to Mr. Stewart and the Battles.

(26) On July 30, 2014, Respondent emailed Mr. Battle and stated that she would be visiting Mr. Stewart on Friday August 2, 2014. Respondent further stated that she would have the client sign the motion *pro se* because the courts "give a lot more latitude to *pro se* litigants." Mr. and Mrs. Battle responded that they did not want their son signing his own motion. They emphasized that Respondent was the attorney and that she should sign and file the motion on his behalf.

(27) On August 2, 2014, Respondent provided Mr. and Mrs. Battle with a copy of the motion.

(28) On August 1, 2014, Respondent arrived at the Federal Correctional Institution and had a staff member take the documents to Mr. Stewart for his signature. She did not discuss the contents or her strategy with Mr. Stewart. Mr. Stewart signed the § 2255 motion and it was returned to Respondent.

(29) On August 4, 2014, Respondent filed the § 2255 motion without her signature (and crossing out the signature line for the attorney of record) and bearing only Mr. Stewart's signature as movant in the United States District Court for the Middle District of North Carolina. Respondent did not speak with Mr. Stewart about her strategy that he proceed *pro se.*

(30) On September 9, 2014, Mr. and Mrs. Battle filed a complaint with the Office of Disciplinary Counsel, alleging that Respondent misrepresented to them that she was able to practice in North Carolina courts, failed to visit Mr. Stewart as she promised, failed to maintain regular communication, and failed to file the federal motion to vacate with her own signature.

(31) On October 14, 2014, Respondent responded to the complaint. She admitted agreeing to write and file the motion on behalf of Mr. Stewart. She also admitted not having a fee agreement for the representation. Respondent stated that she explained to the Battles that she was not licensed in North Carolina but could appear *pro hac vice* in state court with the supervision of a North Carolina attorney. In fact, she could not.

(32) On November 6, 2014, the Office of Disciplinary Counsel received a copy of a Letter of Caution issued by the North Carolina State Bar Authorized Practice Committee to Respondent finding that she engaged in the unauthorized practice of law in Mr. Stewart's matter. The North Carolina State Bar Authorized Practice Committee found that Respondent violated N.C. Gen. Stat. §§ 84-2.1, 4, 5 and § 84-4.1, when she: "(1) held out to two

North Carolina residents and their son as able to provide their son with legal assistance and representation in North Carolina, (2) held out as having an office in North Carolina, (3) charged North Carolina residents $1,500 for legal services, (4) sent letters to the residents and their son expounding upon North Carolina law, and (5) indicated that you could and would file a Motion for Appropriate Relief in a North Carolina state court." The North Carolina State Bar further advised Respondent that a North Carolina resident may not be admitted to North Carolina state courts *pro hac vice* pursuant to § 84-4.1.

(33) In response to a further inquiry, Respondent admitted that she was mistaken in her statement to the Battles that she could appear *pro hac vice* in their son's case.

(34) On September 8, 2016, the United States Attorney filed a motion to place Mr. Stewart's matter in abeyance pending decisions by the Fourth Circuit in *United States v. Hassan Sharif Ali* (4th Cir. Docket No. 15-4433), *United States v. Joseph Simms* (4th Cir. Docket No. 15-4640), and *In re Chong Chen* (4th Cir. Docket No. 16-0577).

(35) On September 27, 2016, the United District Court for the Middle District of North Carolina granted the motion to place Mr. Stewart's matter in abeyance.

(36) On January 7, 2021, Mr. Stewart's conviction was vacated, and the case was remanded to the district court for further proceedings consistent with the court's decision.

(37) Respondent's conduct set forth above violated the following provisions of the D.C. Rules of Professional Conduct and/or the North Carolina Rules of Professional Conduct, to the extent they may apply:

a. Rule 1.4(a), in that she failed to keep her clients reasonably informed about the status of a matter and promptly comply with reasonable requests for information;

b. Rule 1.4(b), in that she failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;

c. Rule 1.5(b), in that she failed to communicate to the client, in writing, the scope of the representation and the basis or rate of her fee when she did not regularly represent this client;

d. Rule 5.5(a), in that she engaged in the unauthorized practice of law in North Carolina;

e. Rules 7.1(a) and 7.5(a), in that her letterhead and website contained misleading communication and did not disclose that she was not licensed to practice law in North Carolina; and

f. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, and/ or misrepresentation.

Count II - Disciplinary Docket No. 2017-D266

(38) On or about October 20, 2015, Cynthia Baah retained Respondent to represent her in an immigration matter.

(39) Respondent undertook the work but did not provide Ms. Baah with a written fee agreement or other writing setting forth the basis or rate of her fees.

(40) Respondent's conduct set forth above violated the following provisions of the D.C. Rules of Professional Conduct:

a. Rule 1.5(b), in that Respondent failed to communicate to the client, in writing, about the scope of the representation and the basis or rate of her fee when she did not regularly represent the client.

Count III - Disciplinary Docket No. 2018-D102

(41) On June 25, 2014, K.O.F., a minor, and her cousin B.Q.O., a minor, both undocumented immigrants, entered the United States from El Salvador to escape gang violence after witnessing the murder of their female cousin. Both minors were released to Pedro Osorio-Aparicio.

(42) On March 10, 2015, the Children's Legal Program of the U.S. Committee for Refugees and Immigrants, a non-profit organization, referred Mr. Osorio to Respondent for legal representation of his minor daughter, K.O.F., and his minor niece, B.Q.O., both seeking asylum relief from deportation. The Children's Legal Program was established to provide assistance to unaccompanied minor immigrants who are in removal proceedings.

(43) Respondent agreed to represent K.O.F and, later, B.Q.O., on a *pro bono* basis in their immigration cases.

(44) Respondent recommended that both K.O.F. and B.Q.O. apply for relief of removal to El Salvador under the Special Immigrant Juvenile Petition ("SIJP").

(45) Respondent informed Mr. Osorio that, in order for K.O.F. to apply for relief under SIJP, a North Carolina court would have to establish jurisdiction over K.O.F. and make a factual determination that she was eligible under the statute to submit the petition.

(46) On July 1, 2015, Respondent referred Mr. Osorio to a North Carolina licensed attorney who, on Mr. Osorio's behalf, filed for sole custody of his daughter, K.O.F., in the Durham County District Court.

(47) On July 19, 2015, Mr. Osorio, with the aid of North Carolina counsel, filed for sole custody of B.Q.O. in the Durham County District Court, as both of her parents resided in El Salvador.

(48) On May 27, 2016, the Durham County District Court granted Mr. Osorio sole custody of K.O.F. and deemed her eligible to petition for relief under SIJP.

(49) On June 20, 2016, Respondent filed K.O.F.'s I-360 SIJP with U.S. Citizenship and Immigration Services ("USCIS").

(50) On August 29, 2016, USCIS approved K.O.F.'s I-360 SIJP.

(51) On November 18, 2016, the court granted Mr. Osorio sole custody of B.Q.O. and deemed her eligible to petition for relief under SIJP.

(52) On November 21, 2016, the same date as the Master Calendar hearing scheduled in Immigration Court in Charlotte, North Carolina in B.Q.O.'s matter, Respondent filed a motion to submit documents for SIJP relief, which was granted. On November 25, 2016, Respondent filed B.Q.O's I-360 SIJP with USCIS.

(53) On February 9, 2017, USCIS approved B.Q.O.'s I-360 SIJP.

Adjustment of Status Representation (Flat Fee [R]epresentation)

(54) On September 22, 2016, Mr. Osorio retained Respondent to file for adjustment of status for K.O.F. and to complete an I-485 application for lawful permanent residence and an I-765 application for employment authorization. Mr. Osorio paid Respondent, in cash, a flat fee of $1,000, and an additional

fee of $1,070 for the USCIS filing fee, for a total of $2,070. Respondent provided Mr. Osorio with receipts indicating the $1,000 fee for Respondent's legal services and the scope of the representation and the amount paid for the USCIS filing fee.

(55) On that same day, Respondent deposited $1,500 of Mr. Osorio's funds into her operating account maintained at Wells Fargo Bank, the account ending in 2505.

(56) The next day, on September 23, 2016, Respondent informed Mr. Osorio that the USCIS filing fees were due to increase in December 2016 and suggested that he file fee waivers for both his daughter and niece. She said would [sic] file an application for adjustment of status and employment authorization for Mr. Osorio's niece as soon as her SIJP was approved.

(57) On September 23, 2016, Respondent made a cash deposit of $800, a portion of which was the remainder of Mr. Osorio's advanced fees and costs, into her operating account. Following these deposits, the balance in Respondent's operating account stood at $12,548.22, and included funds belonging to Respondent that she used to pay for personal expenses.

(58) Respondent's operating account was not a DC IOLTA.

(59) Respondent used her operating account for deposits of entrusted funds as well as business and personal funds.

(60) Respondent made several withdrawals from her operating account for personal expenses, including Starbucks, Taco Bell, McDonald's, Food Lion, and Victoria's Secret.

(61) Respondent failed to obtain the informed consent of Mr. Osorio to treat the fees and expenses he advanced as her own. Respondent failed to communicate verbally or in writing the material risks and consequences of treating the advanced fee and expenses as Respondent's property upon receipt. Respondent also failed to explain the reasonably available alternatives to depositing the advanced fees and expenses in her operating account rather than an IOLTA.

(62) Respondent did not provide Mr. Osorio with a written fee agreement or other writing setting forth the rate or basis of her fee or the scope of the representation for Mr. Osorio's niece's representation.

(63) On April 11, 2017, Respondent submitted I-485 applications for both Mr. Osorio's daughter and niece, along with applications for fee waivers.

(64) On April 28, 2017, USCIS rejected the applications for both Mr. Osorio's daughter and niece as premature as neither minor was eligible for the relief requested at that time.

(65) On June 2, 2017, Respondent filed the I-765 Applications for Employment Authorization for both Mr. Osorio's daughter and niece and sent them with two checks for filing fees of $495 each. However, the applications along with the two checks for $495 were returned as Mr. Osorio's daughter and niece were not eligible for the relief at that time.[3]

(66) Shortly thereafter, Mr. Osorio requested that Respondent refund the $1,070 USCIS filing fee that he had paid her. Respondent refused and indicated that all the funds were fees that she had earned.

(67) In July 2017, Respondent terminated the representation. On July 12, 2017, Respondent filed a Motion to Terminate Proceedings Without Prejudice for Remand to USCIS, and a Motion to Withdraw as Counsel of Record, which the Immigration Court granted.

(68) In August 2017, Mr. Osorio again requested a refund of the filing fees paid to Respondent. Respondent refused to refund the $1,070.

(69) Respondent violated the following D.C. Rules of Professional Conduct and/or North Carolina Rules of Professional Conduct:

a. Rule 1.5(b) in that she failed to communicate to the client in writing the scope of the representation and the rate or basis of the fee;

b. Rule 1.15(a), in that she failed to hold property belonging to her client separate from her own property and commingled them in her operating account;

c. Rule 1.15(b), in that she failed to deposit entrusted funds into a DC IOLTA;

[3] The parties have stipulated that Mr. Osorio paid Respondent $1,070 for USCIS filing fees and that the actual filing fees were $495 per applicant ($990 total). The parties submitted no stipulation that explains the difference between what the client paid and the actual amount of the filing fees. However, resolution of this issue is not material to any issue before this Hearing Committee.

d. Rule 1.15(d), in that she failed to keep separate disputed funds and hold it in an IOLTA until such time that the dispute was resolved; and

e. Rule 1.16(d), in that she failed to take timely steps to the extent reasonably practicable to protect her clients' interests by refunding advance fees or expenses that had not been earned or incurred.

Count IV - Disciplinary Docket No. 2018-D325

(70) On September 22, 2014, Caser Alvarenga-Gomez pled guilty to conspiracy to commit robbery in the Circuit Court for Montgomery Country, Maryland in the matter styled *State v. Cesar E. Alvarenga-Gomez,* Case No. 124948C. Mr. Alvarenga-Gomez was sentenced to five years imprisonment with all[] but 90 days suspended.

(71) United States Immigration and Custom Enforcement (ICE) considered Mr. Alvarenga-Gomez's conviction to be an aggravated felony and initiated removal proceedings against him in the United States Department of Justice Executive Office for Immigration Review Immigration Court.

(72) In April 2017, Mr. Alvarenga-Gomez retained Respondent to represent him in his pending immigration proceedings. Respondent agreed to represent him *pro bono.*

(73) As a part of her representation, Respondent sought to challenge Mr. Alvarenga-Gomez's conviction in the Circuit Court for Montgomery County, Maryland.

(74) Respondent has never been licensed to practice law in Maryland.

(75) In the summer of 2017, Respondent contacted Mr. Alvarenga-Gomez's original immigration attorney, Jay S. Marks, Esquire, a Maryland attorney, and asked him to file a Motion for Special Admission of Out-of-State Attorney *pro hac vice* on her behalf pursuant to Maryland Rule 19-214. Mr. Marks agreed and requested that Respondent draft the motion and send it to him for review and filing. Respondent drafted the motion but failed to forward it to Mr. Marks. Neither Mr. Marks nor any other Maryland attorney ever filed a Motion for Special Admission of Out-of-State Attorney on Respondent's behalf.

(76) On July 7, 2017, Respondent filed a Petition for Writ of Actual Innocence ("[Innocence] Petition") in the Circuit Court for Montgomery County,

Maryland on behalf of Mr. Alvarenga-Gomez and requested that the Court schedule[] a hearing on the matter. Respondent was the only lawyer that signed the [Innocence] [P]etition.

(77) The State filed an Answer to the [Innocence] Petition, and on October 13, 2017, Respondent filed a response to the State's motion to deny the [Innocence] Petition and requested a hearing on the matter. Respondent was the only lawyer that signed the pleading.

(78) On November 15, 2017, the Circuit Court denied the [Innocence] [P]etition without hearing.

(79) On September 24, 2018, the Attorney Grievance Commission of Maryland issued a Commission reprimand to Respondent for engaging in professional misconduct related to her representation of Mr. Alvarenga-Gomez when she violated the following Maryland Attorneys' Rules of Professional Conduct: Rule 19-301.3 (Diligence); Rule 19-305.5 (Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law); and 19-308.4(a) (Misconduct). Respondent stipulated to the Maryland violations.

(80) Respondent's conduct set forth above violated the following provisions of the D.C. Rules of Professional Conduct:

a. Rule 5.5, in that she engaged in the unauthorized practice of law.

(81) Respondent's conduct set forth above violated the following provisions of the Maryland Attorney[s'] Rules of Professional Conduct:

a. Rules 19-305.5(a) & (b), in that she engaged in the unauthorized practice of law in Maryland.

Petition at 3-21.

5. Respondent is agreeing to the disposition because Respondent believes that she cannot successfully defend against disciplinary proceedings based on the stipulated misconduct. Tr. 22-23; Affidavit ¸ 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition for Negotiated Discipline. Affidavit ¸ 7. Those

promises and inducements are that Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II of the Petition for Negotiated Discipline other than the charges set forth in Section II of the Petition for Negotiated Discipline, or any sanction other than the sanctions set forth in Section IV of the Petition for Negotiated Discipline. Petition at 21. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 32-33; *see* Petition at 21.

7. Respondent has conferred with her counsel. Tr. 16; 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. 23-32; Affidavit ,, 4-6.

9. Respondent is not being subjected to coercion or duress. Tr. 33; 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. 16-17.

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. 18-21; Affidavit ,, 1, 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a 180-day suspension with ninety days stayed, provided that Respondent meets the following conditions:

(1) Respondent shall attend the American Immigration Lawyers' Association (AILA) annual conference and 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;

(2) 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, 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

(3) Respondent must not engage in any misconduct in this or any other jurisdiction within a year from her reinstatement. If Disciplinary Counsel has probable cause to believe that Respondent has engaged in any misconduct, Disciplinary Counsel may seek that Respondent be required to serve the remaining 90 days of the suspension previously stayed herein.

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. 36; Petition at 21-22; Affidavit ¸ 13.

13. The parties agree and stipulate that there are no factors in aggravation of sanction. Tr. 35.

14. In mitigation of sanction, the parties agree and stipulate that Respondent (i) has no prior discipline, (ii) has taken full responsibility for her misconduct and has demonstrated remorse, (iii) has fully cooperated with Disciplinary Counsel and provided written responses and client records, and (iv) has returned the unearned fees to the client, Mr. Osorio. Petition at 27; Tr. 33-35.

15. The complainants were notified of the limited hearing and submitted written comments to this Hearing Committee but did not appear. Tr. 38-39.

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); *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* 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 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* 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 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* Paragraph 5.

Count I

The Petition states that Respondent violated D.C. Rule of Professional Conduct and/or the North Carolina Rule of Professional Conduct 1.4(a), in that she failed to keep her clients reasonably informed about the status of a matter and promptly comply with reasonable requests for information. The evidence supports Respondent's admission that she violated Rule 1.4(a) because on numerous occasions Respondent did not keep her clients updated on developments in the case nor the state of Respondent's progress on her work on her clients' behalf.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct and/or the North Carolina Rule of Professional Conduct 1.4(b), in that she failed to 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 she violated Rule 1.4(b) because she failed to explain her change in strategy in the case to have the client sign the petition for relief *pro se* and the implications of that change, which prevented the client from being able to

make an informed decision about whether to sign the petition himself *pro se* rather than having it signed by Respondent as counsel.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct and/or the North Carolina Rule of Professional Conduct Rule 1.5(b) in that she failed to communicate to the client, in writing, the scope of the representation and the basis or rate of her fee when she did not regularly represent this client. The evidence supports Respondent's admission that she violated Rule 1.5(b) because there is no record evidence that Respondent provided her client with a written retainer agreement or other form of writing setting forth the scope of representation or fee rate or basis, and Respondent does not contest that she failed to provide such an agreement to her client.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct and/or the North Carolina Rule of Professional Conduct 5.5(a) in that she engaged in the unauthorized practice of law in North Carolina. The evidence supports Respondent's admission that she violated Rule 5.5(a) because Respondent provided legal advice to clients in North Carolina and represented that she would attempt to have the state court in Durham County, North Carolina, correct an alleged error made on Mr. Stewart's worksheet, which had been used to enhance his sentence, although she could not practice before the North Carolina state courts.

The Petition further states that Respondent violated D.C. Rules of Professional Conduct and/or the North Carolina Rules of Professional Conduct 7.1(a) and 7.5(a) in that her letterhead and website contained misleading

communications and did not disclose that she was not licensed to practice law in North Carolina. The evidence supports Respondent's admission that she violated Rules 7.1(a) and 7.5(a) because Respondent's website and letterhead did not set forth the above-mentioned limitations**.**

The Petition further states that Respondent violated D.C. Rule of Professional Conduct and/or the North Carolina Rule of Professional Conduct 8.4(c) in that Respondent engaged in conduct involving dishonesty, fraud, deceit, and/or misrepresentation. The evidence supports Respondent's admission that she violated Rule 8.4(c) because Respondent lied to Disciplinary Counsel during its investigation and misrepresented to her clients that she could make filings and or engage in practice before the courts of Durham County or the Middle District of North Carolina.

Count II

The Petition further states that Respondent violated D.C. Rule of Professional Conduct Rule 1.5(b) in that she failed to communicate to the client, in writing, about the scope of the representation and the basis or rate of her fee when she did not regularly represent the client. The evidence supports Respondent's admission that she violated Rule 1.5(b) because there is no record evidence that Respondent provided her client with a written retainer agreement or other form of writing setting forth the scope of representation or fee rate or basis, and Respondent does not contest that she failed to provide such an agreement to her client.

Count III

The Petition further states that Respondent violated D.C. Rule of Professional Conduct and/or North Carolina Rule of Professional Conduct 1.5(b) in that she failed to communicate to the client in writing the scope of the representation and the rate or basis of the fee. The evidence supports Respondent's admission that she violated Rule 1.5(b) because there is no record evidence that Respondent provided her client with a written retainer agreement or other form of writing setting forth the scope of representation or fee rate or basis, and Respondent does not contest that she failed to provide such an agreement to her client.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct and/or North Carolina Rule of Professional Conduct 1.15(a) in that she failed to hold property belonging to her client separate from her own property and commingled them in her operating account. The evidence supports Respondent's admission that she violated Rule 1.15(a) because Respondent deposited client funds into her operating account at a time when the account also held Respondent's own funds.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct and/or North Carolina Rule of Professional Conduct 1.15(b) in that she failed to deposit entrusted funds into a D.C. IOLTA. The evidence supports Respondent's admission that she violated Rule 1.15(b) because the record evidence establishes that Respondent deposited client funds into her operating account. Indeed, there is no record evidence that Respondent possessed a D.C. IOLTA.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct and/or North Carolina Rule of Professional Conduct 1.15(d) in that she failed to keep separate disputed funds and hold them in an IOLTA until such time that the dispute was resolved. The evidence supports Respondent's admission that she violated Rule 1.15(d) because, once Respondent was on notice that Mr. Osorio challenged her right to retain the $1,070, the Rule obligated her to segregate those funds in an IOLTA until the dispute was resolved. Respondent failed to do so and, thus, violated Rule 1.15(d). *See* Rule 1.15, cmt. [7] ("The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed . . . . [But the] disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration.").

The Petition further states that Respondent violated D.C. Rule of Professional Conduct and/or North Carolina Rule of Professional Conduct 1.16(d) in that she failed to take timely steps to the extent reasonably practicable to protect her clients' interests by refunding advance fees or expenses that had not been earned or incurred. The evidence supports Respondent's admission that she violated Rule 1.16(d) because Respondent failed to refund the advance fees and expenses until the investigation of this matter was at an advanced stage and in connection with the conclusion of the Petition as an element of mitigation.

Count IV

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 5.5, in that she engaged in the unauthorized practice of law, and Maryland

Attorneys' Rules of Professional Conduct 19-305.5(a) & (b), in that she engaged in the unauthorized practice of law in Maryland. The evidence supports Respondent's admission that she violated Maryland Rules 19-305.5(a) & (b) because Respondent sought to challenge her client's conviction in the Circuit Court for Montgomery County, Maryland and filed a petition and response to the State's motion to deny such petition in said court, as the only attorney signing such petition and response, although Respondent has never been licensed to practice in Maryland and was not admitted *pro hac vice* before said court by virtue of her failure to file a motion for admission *pro hac vice* before said court which was requested of her by Jay S. Marks, Esquire, a Maryland attorney who was her client's original immigration attorney.

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* 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 admitted violations of the D.C. (and also North Carolina and Maryland, to a lesser extent) Rules of Professional Conduct include: three instances of failure to communicate fee arrangements in writing; failure to keep clients informed and to explain the nature of matters handled; misleading clients about admission to the North Carolina Bar; and more seriously, two instances of the unauthorized practice of law, one instance of commingling and failure to protect and return unearned client funds, and one instance of deceitful misrepresentation about Respondent's inability to practice in North Carolina.

The stipulated facts, as described above, support Respondent's admissions that she violated Rule 1.4(a) (failing to keep clients reasonably informed about the status of a matter and promptly comply with reasonable requests for information), Rule 1.4(b) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), 1.5(b) (failing to communicate to the client, in writing, the scope of the representation and the basis or rate of her fee when she did not regularly represent this client), Rule 5.5(a) (engaging in the unauthorized practice of law), Rule 7.1(a) (making false or misleading communications about the lawyer or the lawyer's services), Rule 7.5(a) (the use of firm name, letterhead, or other professional designations that violate Rule 7.1), Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, and/or

misrepresentation), Rule 1.15(a) (failing to hold property belonging to a client separate from the lawyer's own property and commingling of the property in the lawyer's operating account), Rule 1.15(b) (failing to deposit entrusted funds into a D.C. IOLTA), Rule 1.15(d) (failing to keep separate disputed funds and hold it in an IOLTA until such time that the dispute was resolved), Rule 1.16(d) (failing to take timely steps to the extent reasonably practicable to protect her clients' interests by refunding advance fees or expenses that had not been earned or incurred), and Maryland Attorneys' Rules of Professional Conduct 19-305.5(a) & (b) (unauthorized practice of law).

The proposed sanction is justified in light of sanctions imposed for cases involving similar misconduct in contested cases.

The sanctions for violations of Rules 1.4, 1.5(b), and 1.16(d) without other violations or in a single client matter frequently result in informal admonitions. *See In re Fay*, 111 A.3d 1025 (D.C. 2015) (per curiam) (informal admonition where attorney failed to provide a written explanation of the fee agreement or adequately communicate with his client); *In re Bartone*, Disciplinary Docket Nos. 2019-D085 *et al.* (Letter of Informal Admonition May 12, 2021) (attorney failed to communicate with three clients in violation of Rule 1.4(a) when he stopped updating and responding to requests for information, and, in a separate matter, attorney failed to provide a written fee agreement explaining the limited scope of a representation in violation of Rule 1.5(b), which led to confusion and misunderstanding for the client); *In re Wright*, Bar Docket No. 2007-D193 (Letter of Informal Admonition Oct. 29,

2007) (attorney failed to communicate with the client and withdrew from the representation at a point when the client likely could not hire new counsel to handle the matter); *In re Bailey*, Bar Docket No. 2005-D136 (Letter of Informal Admonition Aug. 4, 2007) (attorney failed to communicate with the client and failed to protect the client's interests upon withdrawal); *In re Merritt-Bagwell*, Bar Docket No. 2007-D051 (Letter of Informal Admonition July 31, 2007) (attorney failed to communicate with the client, failed to diligently and zealously represent her client, and failed to withdraw when she could no longer handle the matter); *In re Toppelberg*, Bar Docket No. 2005-D213 (Letter of Informal Admonition Dec. 20, 2006) (attorney failed to communicate with client and delayed returning unearned fees); *In re Howard*, Bar Docket No. 2005-D025 (Letter of Informal Admonition Dec. 27, 2005) (attorney failed to communicate with his client about the status of the matter); *In re Sosnick*, Bar Docket No. 2004-D416 (Letter of Informal Admonition Sept. 1, 2005) (attorney failed to communicate with the client and failed to promptly transfer the client file to successor counsel).

While many cases where an attorney fails to adequately communicate with a client result in informal admonitions, some result in a short period of suspension or other non-suspensory sanction. *See In re Schlemmer*, 870 A.2d 76 (D.C. 2005) (Board reprimand where attorney failed to diligently represent client and failed to communicate with the client, and where attorney had no prior discipline and "extraordinary" pro bono service); *In re Hallmark*, 831 A.2d 366 (D.C. 2003) (ninety-day suspension with proof of fitness prior to reinstatement for violations of

1.4(a), 1.15(d), 1.16(d) and 8.4(d) across five matters where the respondent's conduct during the disciplinary proceedings warranted imposition of a fitness requirement); *In re Baron*, 808 A.2d 497 (D.C. 2002) (per curiam) (thirty-day suspension, stayed in favor of one year of probation in matter where attorney failed to communicate with her client, ignored Court's requests to contact client, and failed to forward case file to client); *In re Boykins*, 748 A.2d 413 (D.C. 2000) (per curiam) (thirty-day suspension stayed in favor of one-year probation where attorney failed to competently represent client or provide written statement of fees); *In re Bland*, 714 A.2d 787 (D.C. 1998) (per curiam) (public censure where attorney failed to competently and diligently represent the client, to act with reasonable promptness communicating with the client, and to protect the client's interests when attempting to withdraw).

Sanctions for commingling client funds with the attorney's funds, in violation of Rule 1.15(a), may range from an informal admonition to a short period of suspension. *See In re Mott*, 886 A.2d 535 (D.C. 2005) (per curiam) (public censure where attorney failed to deposit client funds in a designated escrow account, failed adequately to safeguard client funds, and failed to keep appropriate records); *In re Goldberg*, 721 A.2d 627 (D.C. 1998) (per curiam) (public censure where attorney commingled law firm operating funds within the firm's escrow account); *In re Iglehart*, 759 A.2d 203 (D.C. 2000) (per curiam) (thirty-day suspension where attorney commingled his own funds with settlement proceeds belonging to a client and third party in his trust account and failed to maintain adequate trust account

records); *In re Ross*, 658 A.2d 209 (D.C. 1995) (thirty-day suspension for attorney who deposited settlement check into operating account and failed to promptly pay a medical provider); *In re McDaniel*, Board Docket No. 17-BD-076 (BPR Apr. 5, 2018) (Board reprimand for commingling in violation of Rules 1.15(a) and (e)); *In re Klass*, Board Docket No. 13-BD-041 (BPR Aug. 20, 2014) (Board reprimand for commingling in violation of 1.15(a) and (e) and for failure to maintain proper records); *In re Lopatto*, Bar Docket No. 2005-D035 (Letter of Informal Admonition Jan. 3, 2006) (informal admonition for "technical commingling" of maintaining personal funds in a trust account with no evidence of other improper handling of entrusted funds).

Sanctions for violations of Rule 1.16(d) may range from an informal admonition to a lengthy suspensions when combined with other misconduct. *See In re Thai*, 987 A.2d 428 (D.C. 2009) (per curiam) (sixty-day suspension, with thirty days stayed, in favor of probation for one year with continuing legal education and restitution requirements for violations of Rule 1.16(d), along with Rules 1.1(b), 1.3(a), 1.3(c), and 1.4(a)); *In re Evans*, 187 A.3d 554 (D.C. 2018) (per curiam) (thirty-day suspension with conditions stayed in favor of one year of probation for violations of Rule 1.16(d), along with 1.1(a) and (b), 1.3(a) and (c), 1.4(a) and (b), and 8.4(d)); *In re Brown*, Disciplinary Docket No. 2018-D266 (Letter of Informal Admonition Feb. 6, 2020) (informal admonition for a single Rule 1.16(d) violation without dishonesty, fraud, deceit, or misrepresentation).

The unauthorized practice of law and making misleading communications about services ordinarily warrants a non-suspensory sanction such as an informal admonition, a censure, or a reprimand. *See In re Winstead*, 69 A.3d 390 (D.C. 2013) (ordering informal admonition for violations of Rules 7.1(a) and 7.5(a)); *In re Page*, Bar Docket Nos. 2005-D224 and 2007-D060 (Letter of Informal Admonition Jan. 11, 2008) (informal admonition where the respondent violated Rules 7.1(a) and 7.5(a) by utilizing letterhead identifying himself as being licensed to practice law in the District of Columbia at a time when he was administratively suspended for nonpayment of dues); *In re McRae*, Bar Docket No. 2006-D323 (Letter of Informal Admonition Jan. 2, 2008) (informal admonition for violations of Rules 5.5(a), 7.l(a), and 7.5(a)). However, violation of these Rules does sometimes warrant a period of suspension. *See, e.g.*, *In re Lea*, 13 A.3d 770 (D.C. 2011) (per curiam) (180-day suspension for unauthorized practice of law in addition to violations of Rules 7.1, 7.5, 8.4(c), 8.4(d), and D.C. Bar Rule XI, § 2(b)(3), which occurred while the respondent had other disciplinary matter pending before the Court).

A wide range of sanctions has been imposed for violations of Rule 8.4(c), depending on the nature of the violation and the circumstances in which it occurred. The sanctions for violations of Rule 8.4(c) are generally more severe when additional misconduct is established. Ultimately, while sanctions for dishonesty may range from a thirty-day suspension to disbarment, *see In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002) (citing *In re Lopes*, 770 A.2d 561, 570 (D.C. 2001)), relatively brief periods of suspension have been imposed where the dishonesty is not pervasive or

the additional misconduct is not egregious. *See, e.g.*, *In re Chapman*, 962 A.2d 922, 923-27 (D.C. 2009) (per curiam) (sixty-day suspension, with thirty days stayed in favor of a one-year period of probation, with conditions, where the respondent neglected a client matter and was deliberately dishonest to Disciplinary Counsel to cover up the misconduct); *see also, e.g.*, *In re Cole*, 967 A.2d 1264 (D.C. 2009) (thirty-day suspension for neglect of a client matter, failure to communicate, dishonesty to the client about the status of his asylum case, and serious interference with the administration of justice); *In re Outlaw*, 917 A.2d 684 (D.C. 2007) (per curiam) (sixty-day suspension where attorney lied to client about viability of a claim after allowing the statute of limitations to lapse and did not accept responsibility); *In re Owens*, 806 A.2d 1230 (D.C. 2002) (per curiam) (thirty-day suspension for false statements made, including under oath to cover up her violation of a judicial order).

The Hearing Committee concludes after careful review of relevant precedent, and taking appropriately into account the relatively substantial factors in mitigation -- especially the lack of prior disciplinary sanctions and Respondent's clear demonstration of acceptance of responsibility and remorse at the limited hearing -- that the agreed upon sanction falls within the range of precedent for a rather wide range of severity of conduct from less to more serious, and for which sanctions could vary from informal admonition to suspension of 180 days, with or without any portion stayed. The Hearing Committee took note in particular that Respondent expressed no reservations whatsoever in her clear and convincing admissions of each and every violation in respect of each charge in each of the four Counts. We deem

that the more serious violations of commingling and deceitful misrepresentation justify the agreed sanction at the higher end of this range, and that the mitigating factors (especially lack of prior discipline) justify the ninety days stayed, without making the sanction too lenient.

Based on the foregoing, and in the absence of circumstances in aggravation, the Hearing Committee concludes that the 180-day suspension, with ninety days stayed is warranted. Moreover, the Hearing Committee concludes that staying the period of suspension in favor of a period of probation with conditions is not unduly lenient given the significant mitigating factors in this case, including 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 and client records; and (d) Respondent has returned the unearned fees to the client in the third count of this petition. Petition at 27.

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, as well as those in the Confidential Appendix, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court impose a 180-day suspension with ninety days stayed, and require that Respondent (1) attend the American Immigration Lawyers' Association (AILA) annual conference and certify and provide documentary proof that she has this requirement to the Office of

Disciplinary Counsel, within six months of the date of the Court's final order; (2) 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 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 (3) not engage in any misconduct in this or any other jurisdiction within a year from her reinstatement. If Disciplinary Counsel has probable cause to believe that Respondent has engaged in any misconduct, Disciplinary Counsel may seek that Respondent be required to serve the remaining ninety days of the suspension previously stayed herein.

AD HOC HEARING COMMITTEE

Stephen Juge
Chair

LaVerne Fletcher
Public Member

John Szabo
Attorney Member