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:	:	
	:	
PAMELA A. MCLEAN,	:	
	:	Board Docket No. 20-ND-004
Respondent.	:	Bar Docket No. 2019-D084
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 497891)	:	

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 ("Hearing Committee) on March 15, 2021, for a limited hearing on a Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Stephen D. Juge, Esquire, Chair; William V. Hindle, Public Member; and Heidi Murdy-Michael, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Jelani Lowery, Esquire. Respondent, Pamela A. McLean, Esquire, appeared *pro se*.

The Hearing Committee has carefully considered the Petition for Negotiated Discipline signed by Disciplinary Counsel and Respondent, the supporting affidavit submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent and Disciplinary Counsel. The Hearing

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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.

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. For the reasons set forth below, we approve the Petition, find the negotiated discipline of sixty-day suspension with thirty days stayed in favor of a one-year period of probation with conditions is justified, and recommend that it be imposed by the Court. The parties agreed that during the probation: (1) Respondent shall not engage in misconduct in this or any other jurisdiction and (2) Respondent shall complete twelve hours of CLE courses pre-approved by Disciplinary Counsel. The parties also agree that if the Court approves the negotiated disposition, the Court order should provide that if probation is revoked, Respondent will be required to serve the remaining thirty-day suspension.

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

The Hearing Committee, after full and careful consideration, finds that:

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

2. Respondent is aware that there is currently pending against her an investigation into allegations of misconduct. Tr. 22[1]; Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent violated Rule 1.6(a)(1) (knowingly revealing client confidences and secrets) and Rule 1.7(b)(4) (conflict of interest – lawyer's

[1] "Tr." Refers to the transcript of the limited hearing held on March 15, 2021.

professional judgment adversely affected by lawyer's personal interests). Petition at 6.[2]

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 23; Affidavit ¶ 4. Specifically, Respondent stipulates to the following:

> Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by exam on May 12, 2006, and assigned Bar number 497891.
>
> In late 2017, V.P. was involved in a child custody matter for her son D.P. in the D.C. Superior Court, case number 2013-DRB-3383. T.W., the child's paternal grandmother, had custody at that time. Both T.W. and V.P. sought sole custody of D.P. A trial date was scheduled for January 2, 2018.
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> On November 30, 2017, Respondent began representing V.P. in the child custody matter.
>
> On December 1, 2017, the [G]uardian *ad litem* informed the parties that she would be arguing that it was in D.P.'s best interest to grant sole custody to T.W.
>
> On December 5, 2017, Respondent attended a pre-trial hearing in the matter and entered her appearance. Since she had just recently been retained, Respondent moved for a continuance of the January 2, 2018 trial.
>
> Another pre-trial hearing was scheduled for May 15, 2018, and the trial was scheduled for June 11 and 15, 2018.
>
> In early 2018, V.P. gave birth to a second child. Respondent visited V.P. in the hospital. During the visit Respondent witnessed a verbal altercation between V.P. and the newborn's father. Respondent

[2] The Petition did not include page numbers, but we have assigned each page the appropriate number for purposes of citation to the record.

became concerned because V.P. did not have certain items including a crib and stroller for the baby.

After April 3, 2018, Respondent attempted to communicate with V.P., but V.P. did not return her calls and messages.

During a telephone call on May 3, 2018, Respondent spoke with the Guardian *ad litem* in the case and disclosed that: she had not heard from V.P. in over a month; she had visited V.P. in the hospital where she had given birth to a new child and witnessed an argument between V.P. and the baby's father who told her V.P.'s boyfriend was a drug dealer; after V.P. was released from the hospital, she did not have provisions for the baby, including a place for the baby to sleep; V.P.'s friend told her that the new baby was no longer in her custody but in the custody of the baby's father; V.P.'s living arrangements were not adequate accommodations for D.P.; and that she had helped V.P. get a job interview but V.P. declined the interview because she did not like the way someone at the job looked at her.

Respondent told the Guardian *ad litem* that she was worried for the safety of V.P.'s newborn baby and that she did not think V.P. should have sole custody of D.P.

Respondent repeated some her concerns in a May 8, 2018 email to the presiding judge's chambers, and in a separate email to counsel for T.W.

On May 15, 2018, Respondent appeared at the pre-hearing conference, but V.P. did not. Counsel for T.W. moved for default judgment based on V.P.'s failure to appear and the inability of numerous parties to contact her. When the court asked for her position, Respondent stated that she could not object to the default judgment "out of the abundance of concern for the minor child." Respondent said she was "in a bind" and that she was not sure whether V.P. was angry with her and whether she still spoke on V.P.'s behalf.

The court entered a default judgment against V.P., that would be lifted if she appeared at the trial.

Respondent also asked the court what could be done about her concern for V.P.'s infant child. The court informed her that the infant

child was not before the court in that case and told Respondent to consult with the Guardian *ad litem* about what could be done.

On June 11, 2018, Respondent appeared for trial. Respondent still had not spoken with V.P. and therefore expected that V.P. would not show up and a default proceeding would ensue. However, V.P. did appear at the trial.

At the beginning of the hearing [on the day of trial], Respondent told the court that V.P. had been unreachable for two months and because she had not spoken with V.P., she was not prepared to go forward with the trial. She also told the court that based on her own personal observations of what she had seen in the last several months she was not in a position to endorse what V.P. was seeking.

The court took a brief recess to allow Respondent to speak with V.P. and determine whether she wanted to proceed with Respondent as counsel. During that conversation V.P. informed Respondent that she wanted to move for a continuance and find a new attorney.

After consulting with V.P., Respondent moved to withdraw from the case and to continue the trial to allow V.P. to find another attorney to represent her.

Counsel for T.W. objected to the continuance, and the court denied Respondent's motion and went forward with the trial – requiring Respondent to represent V.P.

During the trial, Respondent cross examined T.W. and presented the testimony of V.P. Respondent argued that, despite her personal challenges, V.P. should be awarded joint legal and physical custody of D.P. with T.W.

However, Respondent did not argue that V.P. should have sole custody of D.P., even though that is what her client wanted.

On August 7, 2018, the court entered an order awarded sole custody of D.P. to T.W.

Respondent's conduct violated the following District of Columbia Rules of Professional Conduct:

(a) Rule 1.6(a)(1), in that Respondent revealed confidences and secrets of her client;

(b) Rule 1.7(b)(4), in that Respondent represented a client while her professional judgment on behalf of the client was adversely affected by her personal interests.

Petition at 2-6.

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

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Affidavit ¶ 7. Those promises are that Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in the Petition or any sanction other than that provided for in the Petition. Petition at 6-7. Respondent confirmed during the limited hearing that there have been no promises or inducements other than those set forth in the Petition. Tr. 28.

7. Respondent is aware of her right to confer with counsel and is proceeding *pro se*. Tr. 18; Affidavit ¶ 1.

8. Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition for Negotiated Discipline and agreed to the sanction set forth therein. Tr. 27-28; Affidavit ¶ 4.

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

10. Respondent is competent and was not under the influence of any substance or medication that would affect her ability to make informed decisions at the limited hearing. Tr. 18-19.

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, 36-39; Affidavit ¶¶ 1, 9-12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a sixty-day suspension with thirty days stayed in favor of a one-year period of probation. Petition at 7; Tr. 27-28.

a) Respondent further understands that she must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for her suspension to be deemed effective for purposes of reinstatement. Tr. 39.

b) Respondent understands that conditions of this negotiated disposition are that if it is approved, (1) the Court order shall include a condition that if probation is revoked, she will be required to serve the remaining thirty-day suspension, and (2) during the one-year probation period, she will not engage in any misconduct in this or any other jurisdiction and will complete twelve hours of CLE courses pre-approved by Disciplinary Counsel. Tr. 27-28.

13. Disciplinary Counsel asserted at the limited hearing that no aggravating factors exist. Tr. 35.

14. The parties agree to the following circumstances in mitigation, which the Hearing Committee has taken into consideration: Respondent violated the Rules because she was concerned about the safety of minor children, she has no prior disciplinary history, she has cooperated with Disciplinary Counsel, and she has expressed remorse. Petition at 9.

15. The complainant was notified of the limited hearing but did not appear and did not provide any written comment. Tr. 15-16.

III. DISCUSSION

The Hearing Committee shall approve an agreed negotiated discipline if it finds:

> a) that the attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein;
>
> 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).

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* Paragraphs 8-9, *supra*. Respondent understands the implications and consequences of entering into this negotiated discipline. *See* Paragraph 11, *supra.*

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* Paragraph 6, *supra*.

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* Paragraph 5, *supra*.

With regard to the second factor, the Petition states that Respondent violated Rules of Professional Conduct 1.6(a)(1) (knowingly revealing client confidences and secrets) and 1.7(b)(4) (conflict of interest – lawyer's professional judgment adversely affected by lawyer's personal interests). The evidence supports Respondent's admission that she violated Rule 1.6(a) in that the stipulated facts describe that Respondent revealed client confidences and secrets during her telephone conversation on May 3, 2018 with the Guardian *ad litem* and in emails to judge's chambers and to counsel for T.W. on May 8, 2018. The evidence supports Respondent's admission that she violated Rule 1.7(b)(4) in that the stipulated facts describe that at the pre-hearing conference on May 15, 2018, Respondent could not object to a default judgment against her client "out of an abundance of concern for the minor child," and was "in a bind" and unsure whether she still spoke on her client's behalf, and Respondent asked the court what could be done about her concern for the other infant child of her client. Prior to the beginning of the trial on June 11, 2018, Respondent said that she was not in a position to endorse what her

client was seeking and at trial argued in favor of joint legal and physical custody on behalf of her client, despite knowing that her client wanted sole custody.

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 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:

In the absence of dishonesty or misappropriation, as is the case here, the typical sanction for a conflict of interest where the lawyer's professional judgment was affected by personal interests ranges from an informal admonition to a six-month suspension. *See* Petition at 8-9 (citing, *e.g.*, *In re Robbins*, 192 A.3d 558, 567 (D.C. 2018) (per curiam) (sixty-day suspension for conflict of interest and failure to communicate); *In re Evans*, 902 A.2d 56, 58-59 (D.C. 2006) (per curiam) (six-month suspension with ninety days stayed in favor of probation for conflict of interest, lack of competence, and serious interference with the administration of justice); *In re Butterfield*, 851 A.2d 513, 514 (D.C. 2004) (per curiam) (thirty-day suspension for conflict of interest); *In re Edwards*, Bar Docket No. 2010-D133 (Letter of Informal

Admonition Aug. 31, 2011) (informal admonition for conflict of interest)). In its sanction discussion in *Robbins*, the Court of Appeals noted that "[w]e have on numerous occasions imposed suspensions of sixty days and longer for conflict-of-interest rule violations." 192 A.3d at 567 (citations omitted).

In the absence of dishonesty or misappropriation, the typical sanction for a Rule 1.6 violation ranges from an informal admonition to a short suspension. Petition at 9 (citing, *e.g.*, *In re Koeck*, 178 A.3d 463 (D.C. 2018) (per curiam) (sixty-day suspension with fitness for disclosing client confidences to the press where the respondent declined to participate in the disciplinary proceedings); *In re Wemhoff*, 142 A.3d 573, 573-74 (D.C. 2016) (per curiam) (thirty-day suspension, stayed in favor of a one-year period of probation, for violations of Rules 1.6(a), 3.4(c), and 8.4(d)); *In re Gonzalez*, 773 A.2d 1026, 1032 (D.C. 2001) (informal admonition for revealing client confidences in a motion to withdraw); *In re Hecht*, Bar Docket No. 2010-D307 (Letter of Informal Admonition Dec. 29, 2011) (informal admonition for revealing confidences in a motion and at a court hearing).

The Hearing Committee finds it of particular importance in its assessment of whether the sanction is not unduly lenient that Respondent's conflict of interest arose from her genuine concern for the welfare and well-being of her client's minor children, and not a personal interest or personal gain; that Respondent has no prior history of disciplinary violations and cooperated with the investigation; that Respondent's conduct did not involve more numerous charges or a pattern of misconduct; and that Respondent's violation of Rule 1.6 was not of an extended

nature nor over an extended period of time and accordingly does not justify additional sanction.

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 order that Respondent be suspended for sixty days, with thirty days stayed in favor of a one-year period of probation during which (1) Respondent shall not engage in misconduct in this or any other jurisdiction and (2) Respondent shall complete twelve hours of CLE courses pre-approved by Disciplinary Counsel. If the Court approves the negotiated disposition, the Court order should provide that if the probation is revoked, Respondent will be required to serve the remaining thirty-day suspension. We further recommend that Respondent be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Stephen D. Juge
Chair

William V. Hindle
Public Member

Heidi Murdy-Michael
Attorney Member