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

In the Matter of:	:	
	:	
QUINNE HARRIS-LINDSEY,	:	
	:	
Respondent.	:	
	:	Bar Docket No. 384-02
A Member of the Bar of the District of	:	
Columbia Court of Appeals	:	
(Bar Membership No. 451238)	:	
Date of Admission: June 3, 1996	:	

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

I. PROCEDURAL HISTORY

This matter came before an *ad hoc* Hearing Committee on July 7, 2009, for a limited hearing on a petition for negotiated discipline (Corrected Petition for Negotiated Discipline, hereinafter the "Petition").[1] The members of the Hearing Committee are Mary Lou Soller, Esquire, Ms. Laura Schuldt, and Angela J. Davis, Esquire. The Office of Bar Counsel was represented by Assistant Bar Counsel Traci M. Tait. The Respondent, Quinne Harris-Lindsey, was represented by Abraham C. Blitzer, Esquire.

The Hearing Committee has carefully considered the Petition filed by Bar Counsel, the accompanying affidavit filed by Respondent (hereinafter the "Affidavit"), and the representations made by Respondent and Bar Counsel during the limited hearing. The Hearing

[1] On June 30, 2009, Bar Counsel filed a consent motion to amend the original Petition for Negotiated Discipline with a Petition that corrected typographical and citation errors in the original and redacted confidential information. The Hearing Committee accepts the Corrected Petition for filing in place of the original, with an additional redaction in the last line of page three, which removes confidential material that appears to have been mistakenly included in the Corrected Petition.

Committee also has fully considered the aggravating and mitigating factors listed in the Petition and the Affidavit and the relevant precedent. Finally, the Chair of the Hearing Committee has reviewed Bar Counsel's investigative files and records *in camera*, met with Bar Counsel *ex parte*, and has shared the results of her *in camera* review and *ex parte* meeting with the other Hearing Committee members.[2]

Based on its review, the Hearing Committee recommends that the Court accept the Petition and impose upon Respondent:

(1) A one-year suspension, with six months stayed;

(2) A one-year period of probation, to begin at the commencement of the period of suspension, with two conditions:[3]

(a) Respondent complete a general continuing legal education course and provide proof of attendance to Bar Counsel, and

(b) If Respondent decides to enter private practice, that she first consult with the D.C. Bar's Practice Management Advisory Service and that she waive any confidentiality regarding the substance of such consultation.

Respondent is not required to demonstrate fitness before reinstatement to practice.

---

2 *See* Confidential Appendix to the Report and Recommendation of the *Ad Hoc* Hearing Committee.

3 The full conditions of the negotiated discipline sanction are set forth in the Affidavit. Affidavit at ¶ 12. That document lists attendance at a continuing legal education course as a condition separate from probation, and lists only consultation with the D.C. Bar's Practice Management Advisory Service as a condition of probation. However, Bar Counsel references "*conditions*" of probation. Petition at 15. Thus, it appears that both of these requirements are intended to be conditions of probation.

In addition, neither the Petition nor the Affidavit specify when the probation is to begin. In most cases, probation begins during a stayed period of suspension. At the limited hearing, however, Assistant Bar Counsel stated that it was Bar Counsel's understanding that probation would be "concurrent" and begin "at the time that the sanction begins," which the Hearing Committee understands as when the initial six-month period of suspension is imposed. Tr. at 9.

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. Affidavit at ¶ 1; Tr.[4] at 19-20.

3. The allegations that form the basis of Bar Counsel's investigation were brought to Bar Counsel's attention by an Associate Judge of the Superior Court for the District of Columbia. In sum, the allegations were that Respondent misappropriated funds by taking funds without court authorization in the course of her representation of a family member who was the mother of a minor child who had entrusted funds, in violation of D.C. Rules of Professional Conduct 1.15(a) (negligent misappropriation, failure to maintain complete records of entrusted funds), as well as Rules 1.1(a) and (b) (failure to represent client competently and with the requisite competence, skill and care), Rules 1.3(a) and (c) (neglect, failure to act with reasonable promptness), Rule 1.5(f) (unreasonable fee), and Rule 8.4(d) (conduct that seriously interferes with the administration of justice), and in violation of D.C. Bar R. XI, §19(f) (failure to maintain complete records of funds belonging to another). Petition at ¶ 22; Tr. at 5-8.

4. Respondent has knowingly and voluntarily acknowledged that the material facts and misconduct set forth in the Petition are true. Affidavit ¶ 3; Tr. at 21-24**.** Specifically, Respondent acknowledges and stipulates that:

   a. Respondent is a member of the District of Columbia Bar, having been admitted on June 3, 1996.

---

[4] "Tr." is used to designate the transcript of the limited hearing held on July 7, 2009.

b. Respondent was retained by her first cousin Anglia Fulwood (the client), to serve as her attorney. Ms. Fulwood is the mother of Deonta Fulwood, then a minor, and guardian of the *Estate of Deonta Harold Fulwood*, which had been created to receive the proceeds of an insurance policy of which Deonta Fulwood was the beneficiary.

c. When Ms. Fulwood retained Respondent, Respondent had not been admitted yet as a member of the District of Columbia Bar. Therefore, another attorney moved the Superior Court to admit Respondent *pro hac vice* under his supervision on July 21, 1994. The Superior Court appointed Ms. Fulwood as Deonta Fulwood's guardian on October 6, 1994. After Respondent became a member of the D.C. Bar in 1996, she filed a praecipe on March 3, 1997, noting the withdrawal of the other attorney and informing the Superior Court that Respondent would remain as sole counsel to the guardian, Ms. Fulwood.

d. As counsel for Ms. Fulwood, the guardian, Respondent was retained, *inter alia*, to assist Ms. Fulwood in preparing periodic accountings with the District of Columbia Superior Court, Probate Division and preparing and filing tax returns. On her client's behalf, Respondent did not prepare for filing, in a timely or complete manner, a number of the required accountings that were due during her tenure as Ms. Fulwood's counsel, requiring the court to send Respondent and her client repeated notices and schedule multiple hearings in connection with the missed accounting deadlines. Respondent also failed to prepare for filing the estate's year-

2000 tax return, thereby subjecting the estate to potential tax liabilities due to the missed tax deadline.

e. On or about December 19, 1994, Respondent opened an account at Independence Federal Savings Bank denominated "Deonta Harold Fulwood, minor/Anglia Fulwood, gdn./Quinne Harris Lindsey, Attorney." There were two signatories to the account: Respondent and Anglia Fulwood. The opening balance was $40,760.75, all of which were entrusted funds for the ward.

f. Under D.C. Code § 21-2060(a) and SCR-PD 308, before an attorney is permitted to withdraw fees in connection with services rendered in a guardianship matter, the attorney must submit a petition that includes a detailed accounting of the fees and costs sought to be paid and await approval by the Superior Court. Respondent failed to do so:

    (1) In or around December 1995, with her client's approval, Respondent withdrew funds in the form of a cashier's check in the amount of $1,650, from the estate account as payment for services Respondent states that she rendered. Respondent did not have prior court approval for this or any other amount.

    (2) On or about February 27, 1996, with her client's approval, Respondent withdrew additional funds in the form of a cashier's check in the amount of $1,400, from the estate account as payment for services Respondent states that she rendered. Respondent did not have prior court approval for this or any other amount.

g. On February 10, 1997, Ms. Fulwood withdrew $800 to pay for her son's childcare, school supplies, and a bond securing the estate's assets. Respondent was unaware that, as guardian, Ms. Fulwood was permitted to

make no withdrawals without prior court approval, and so did not advise Ms. Fulwood that prior court approval was necessary for these disbursements.

h. After paying herself fees in February 1996, Respondent had a conversation with an employee in the office of the Probate Division of the Superior Court and learned that she needed prior court approval to do so. As a result of that conversation, on or about March 21, 1997, in the Second Accounting of estate assets that Respondent filed on Ms. Fulwood's behalf, Respondent reported to the Superior Court that:

> Counsel erroneous[ly] withdrew attorney['s] fees without the Court's prior approval on 12/27/95 and 2/27/96. Counsel was unaware that said fees required Court approval. Upon being advised that Court approval was required, Counsel re-imbursed [sic] the Estate account the sum stated above. (*See also Schedule L. Money Market Fund* [ ]) *QHL.*

i. Respondent informed the Superior Court in the Second Accounting that she had reimbursed the estate the attorney's fees that she withdrew. In furtherance of that action, on or about March 21, 1997, Respondent opened a second account at Independence Federal Savings Bank, a money market fund account denominated "Deonta Harold Fulwood, minor/Anglia Fulwood, gdn./Quinne Harris Lindsey, Atty." There were two signatories to this account: Respondent and Anglia Fulwood. The opening balance for the money market account was $3,069.46. Although Respondent opened the second account on March 21, 1997, the check that she used to open the second account was dishonored. The second account was funded three weeks later, on April 17, 1997, with the funds provided by Respondent.

j. In a Petition for Expenditures filed on March 3, 1998, Ms. Fulwood disclosed the $800 disbursement she had made in February 1997 to cover her son's expenses. In the pleading prepared by Respondent, Ms. Fulwood sought ratification of this and other expenditures incurred on behalf of the ward. By order filed on March 11, 1998, the presiding judge ratified the expenditures as "fair and reasonable," but admonished the guardian "not to expend estate assets without prior court authorization." The Superior Court mailed Respondent a copy of its order admonishing Ms. Fulwood not to disburse estate assets without prior court authorization.

k. On October 1, 1999, with Ms. Fulwood's consent, Respondent drew a check in the amount of $2,250 from estate funds, without securing prior court approval. The check was signed by Respondent and her client. In Respondent's Sixth Accounting, she listed the disbursement as a cost associated with administering the estate, and characterized the payment as an assignment of the guardian's commission to Respondent for services Respondent had rendered over the preceding five years. Respondent stated to Bar Counsel that she did not appreciate that it was impermissible to pay her fees from the estate without the Superior Court's prior approval because she believed administrative expenses and commissions did not require court approval, and she believed the assignment of her client's commissions as her fees to be such legitimate expenses.

l. Two years later, on October 24, 2001, the Superior Court issued an order directing Respondent to redeposit within 30 days, the $2,250 in estate funds that she had disbursed to herself. The court further directed Respondent to appear at a hearing on November 19, 2001, to show cause why she should not be referred to Bar Counsel for taking fees without prior court approval.

m. At the November 19, 2001 show cause hearing, the presiding judge extended Respondent's deadline to redeposit the $2,250 until December 7, 2001. The judge further directed Respondent to file by November 26, 2001, a Memorandum of Explanation regarding the estate funds she had taken.

n. On November 26, 2001, Respondent filed her Memorandum of Explanation with the Superior Court but did not redeposit the estate funds because she did not have them. Respondent also filed a "Request for Compensation for Service (Ratification)." In both documents, Respondent asked the Superior Court to ratify the fees she had taken and to approve an additional $225 in fees for her work on behalf of the estate, requesting a total of $2,475. Respondent asserted in her Memorandum of Explanation that she was unfamiliar with the requirement to obtain court approval because she "erroneously made the distinction between administrative expenses and expenditures:"

> [Personnel at the probate division] informed me that my understanding with respect to administrative expenses and attorney[']s fee was erroneous and suggested that the money be deposited into the account.

o. On or about June 19, 2002, the Superior Court issued an order denying Respondent's motion to ratify the funds she had taken and referred the matter to Bar Counsel for investigation.[5]

p. On July 10, 2002, the minor's mother and guardian, Ms. Fulwood, requested that Respondent be removed as her counsel. The Superior Court denied her motion on the ground that Ms. Fulwood had retained Respondent and it was within her sole authority to release Respondent as her counsel. Ms. Fulwood discharged Respondent, but Respondent did not file any notice or praecipe with the Superior Court notifying the Superior Court that it should no longer send her notices concerning the case.

q. By letter dated September 16, 2002, the Office of Bar Counsel wrote Respondent requesting her response to the Superior Court's order denying her request for ratification and referring the matter for disciplinary investigation. Bar Counsel also requested that Respondent provide any and all documents relating to her representation of her cousin, Ms. Fulwood.

r. In response to Bar Counsel's inquiry, Respondent asserted that she had not been aware of the Superior Court's June 19, 2002 order denying her request for ratification until she received the disciplinary complaint that enclosed it. Respondent failed to submit her complete file, asserting that a number of the relevant documents had been lost in an office move. The records that

[5] The Superior Court order cited to D.C. Code § 21-143 and SCR-PD 225(e). However, for estates opened after September 30, 1989, those provisions were superseded by D.C. Code § 21-2060(a) and SCR-PD 308.

Respondent provided did not reflect contemporaneous recordkeeping of disbursements from estate funds.

s. The Superior Court has never authorized or ratified any of the payments Respondent made to herself from estate assets.

t. Once Respondent obtained the funds, she reimbursed the estate $2,250 on December 8, 2003. Respondent did not receive any compensation in connection with her representation of the guardian, Ms. Fulwood.

u. During the time that she represented Ms. Fulwood, despite the Superior Court's issuance of several notices of delinquent filings, the accountings that Respondent filed were ultimately approved.

Petition at ¶¶ 1-21.

5. Respondent is agreeing to the disposition because she believes she cannot successfully defend against discipline based on the stipulated misconduct. Tr. at 23-24; Affidavit at ¶ 4.

6. Bar Counsel has not made any promises to Respondent other than what is contained in the Petition for Negotiated Discipline. Petition at 8; Affidavit at ¶ 6. Those promises and inducements are that Bar Counsel agrees not to pursue any additional charges arising out of the conduct in the matter described above and not to seek any sanction other than the one negotiated with Respondent.[6] Petition at ¶ 8. During the limited hearing, Respondent

[6] Before Bar Counsel and Respondent negotiated the discipline in this matter, Bar Counsel filed a Specification of Charges in which it alleged that Respondent violated Rule 1.15(a) by intentionally or recklessly misappropriating funds and that she violated Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Tr. at 26-28. In the Petition, Bar Counsel explained that after further investigation, the Office of Bar Counsel had determined that it did not have a factual basis for these charges and that it would not proceed with them. Petition at 8-15. At the limited hearing, Bar Counsel made clear that if the Hearing Committee did not accept the negotiated discipline, Bar Counsel would file a new Specification of Charges which would include neither the allegations of intentional or reckless misappropriation nor dishonesty Tr. at 26-29. Thus, Bar Counsel's decision

has confirmed that there have not been any other promises or inducements by anyone, other than those set forth in the Petition. Tr. at 25-26, 29-30.

7. Respondent has conferred with her counsel. Tr. at 16; Affidavit at ¶¶ 2, 5.

8. Respondent's decision to enter into the negotiated discipline is freely and voluntarily made. Tr. at 31; Affidavit at ¶5.

9. Respondent is not being subjected to coercion or duress. *Id.*

10. Respondent is competent. Tr. at 16.

11. Respondent is fully aware of the implications of the disposition being entered into, including, but not limited to, the following:

(a) Respondent will waive her right to cross-examine adverse witnesses and to compel witnesses to appear on her behalf;

(b) Respondent will waive her right to have Bar Counsel prove each and every charge by clear and convincing evidence;

(c) Respondent will waive her right to file exceptions to reports and recommendations filed with the Board and with the Court;

(d) The negotiated disposition, if approved, may affect Respondent's present and future ability to practice law;

(e) The negotiated disposition, if approved, may affect Respondent's bar membership in other jurisdictions; and

(f) Any sworn statement by Respondent in her affidavit may be used to impeach her testimony if there is a subsequent hearing on the merits.

Affidavit at ¶¶ 8-11; Tr. at 18-19, 34-36, 41.

12. Respondent and Bar Counsel have agreed that the sanction in this matter should be a one-year suspension, with six months stayed, and a one-year period of probation, to begin at

---

not to proceed with these charges was not among the promises made by Bar Counsel as part of the negotiated discipline. *Id.* at 27-30.

the commencement of the period of suspension. Petition at 15; Affidavit at ¶ 12; Tr. at 9, 11, 24, 37-38.

13. Respondent further understand that she must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) before her suspension will be deemed effective for purposes of reinstatement. Tr. at 11-12, 37.

14. In addition, Respondent understands and agrees to two conditions of probation:

(a) She must complete a general continuing legal education course and provide Bar Counsel with proof of attendance at that course; and

(b) If she decides to enter private practice, she must first consult with the D.C. Bar's Practice Management Advisory Service and waive confidentiality regarding the substance of the consultation.

Petition at 15; Affidavit at ¶ 12; Tr. at 11, 24-25, 37-38.

15. The Petition includes one circumstance in aggravation, which the Hearing Committee has taken into consideration. Specifically, Bar Counsel asserted that Respondent's client suffered prejudice because she was subjected to court orders to show cause and admonishments because of Respondent's failure to assist her in filing required documents timely or efficiently. Petition at 15; Tr. at 41-42. Respondent does not dispute this fact, but Respondent's counsel argued that the prejudice to Respondent's client was encompassed within the violations and Respondent's admissions to the violations. He argued that this was not an extra aggravating factor, but actually formed the basis for some of the Rule violations, including failure to act promptly, failure to act diligently, and conduct that interfered with the administration of justice. Tr. at 42. Bar Counsel agreed with this argument. *Id.*

16. Respondent and Bar Counsel have provided the following circumstances in mitigation, which the Hearing Committee has taken into consideration:

(a) Respondent has acknowledged her misconduct;

(b) Respondent has accepted full responsibility for her misconduct;

(c) Respondent has reimbursed the estate;

(d) Respondent did not receive any financial benefit from her misconduct;

(e) Respondent did not, and does not, engage in private practice. Her representation in this matter was undertaken only to assist a relative who asked her to do so;

(f) Respondent has cooperated fully with Bar Counsel;

(g) Respondent does not have any history of discipline; and

(h) Respondent has not had any disciplinary complaints subsequent to her actions in this matter.

Petition at 16; Affidavit at ¶ 14; *see also* Tr. at 31-32.

17. Respondent's counsel also argued that because Respondent's failure to repay the funds she withdrew from the estate was caused by her lack of resources, this was also a factor in mitigation. Tr. at 32-33. Bar Counsel did not dispute this. *Id.* at 33.

18. The complainant was notified of the limited hearing but did not appear and did not provide any written submission. Tr. at 12-13, 40.

19. The Petition included a statement of relevant precedent to support the parties' position that the agreed-upon sanction is justified. The statement of precedent submitted by the parties is that a six-month suspension is the "norm" for a negligent misappropriation of funds. *See In re Herbst*, 931 A.2d 1016, 1017 (D.C. 2007) (per curiam); Petition at 15. Although the negotiated sanction is for a one-year period, it includes the provision that six months of that suspension be stayed and it does not include a requirement that Respondent demonstrate fitness before being reinstated. Petition at 15.

III. DISCUSSION

The Hearing Committee shall approve the petition for 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

(c) the agreed-upon sanction is justified.

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

With regard to the first factor, this Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and has agreed to the sanction therein. After being placed under oath, Respondent 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. Tr. at 31. Respondent understands the implications and consequences of entering into this negotiated discipline and believes that it is in her best interests to do so. Affidavit at ¶¶ 7-13; Tr. at 31.

Respondent has acknowledged that any and all promises that have been made to her by Bar 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. Affidavit at ¶ 6; Tr. at 25-26, 29-30.

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 she could not successfully defend against the misconduct described in the Petition. Tr. at 23-24; Affidavit at ¶ 4.

With regard to the second factor, the Petition states that Respondent violated Rule of Professional Conduct 1.15(a) based on her negligent misappropriation of funds from a guardianship estate without prior court authorization and failure to maintain complete records of those funds for five years after termination of her representation. The stipulated facts and the Hearing Committee Chair's *ex parte* review of Bar Counsel's file support Respondent's admission that the misappropriation was negligent and that Bar Counsel could not prove that it was intentional or reckless. Petition at ¶¶ 6A, 6B, 11, 15, 18; Tr. at 5-7, 23.

With regard to the second factor, the Petition states that Respondent violated D.C. Bar Rule XI, § 19(f). The evidence supports Respondent's admission that she violated this Rule in that the stipulated facts describe that Respondent failed to maintain complete records of the entrusted funds she handled and failed to maintain complete records of these funds for five years after final distribution of these funds. Petition at ¶ 18; Tr. at 7.

With regard to the second factor, the Petition states that Respondent violated Rule of Professional Conduct 8.4(d). The evidence supports Respondent's admission that she violated this Rule in that the stipulated facts describe that Respondent seriously interfered with the administration of justice. Petition at ¶¶ 4, 6A, 6B, 10-16; Tr. at 7, 23.

With regard to the second factor, the Petition states that Respondent violated Rules of Professional Conduct 1.1(a) and (b). The evidence supports Respondent's admission that she violated this Rule in that the stipulated facts describe that Respondent failed to represent her client competently and with adequate skill and care. Petition at ¶¶ 4, 6A, 6B, 7, 8, 10, 11, 14; Tr. at 7, 23.

With regard to the second factor, the Petition states that Respondent violated Rule of Professional Conduct 1.3(a). The evidence supports Respondent's admission that she violated

this Rule in that the stipulated facts describe that Respondent failed to represent her client zealously and diligently within the bounds of the law. *Id.*

With regard to the second factor, the Petition states that Respondent violated Rule of Professional Conduct 1.3(c). The evidence supports Respondent's admission that she violated this Rule in that the stipulated facts describe that Respondent failed to act with reasonable promptness in representing her client. Petition at ¶ 4; Tr. at 8, 23.

With regard to the second factor, the Petition states that Respondent violated Rule of Professional Conduct 1.5(f). The evidence supports Respondent's admission that she violated this Rule in that the stipulated facts describe that Respondent collected an unreasonable fee. Petition at ¶¶ 6A, 6B, 11; Tr. at 8, 23.

The third and most complicated factor the Hearing Committee must consider is whether the sanction agreed upon is justified.

Upon consideration of the entire record in this matter, including the circumstances in aggravation and mitigation and the relevant precedent, we conclude that the agreed upon negotiated discipline is justified.

As described in the relevant precedent section in the petition, "a six-month suspension is the norm for attorneys who have negligently misappropriated client funds." *In re Herbst,* 931 A.2d at 1017. In this instance, additional Rule violations were also involved, but the gravamen of the allegations is the negligent misappropriation. Both Bar Counsel and Respondent submit that a one-year suspension, with six months stayed, and a period of one-year probation with conditions is consistent with sanctions for negligent misappropriation and the case law.

Although, at first, Bar Counsel believed that there was a factual basis for charging Respondent with reckless or intentional misappropriation of funds, Bar Counsel has now

determined that such a charge is baseless. Bar Counsel determined that Respondent had never practiced before the Probate Division before this representation and that she undertook this representation only because her cousin wanted her to do so. Petition at 8-10. Bar Counsel and Respondent agree that Respondent misunderstood the requirements of the relevant rules and statutes, but attempted to determine the proper course of conduct for withdrawal of funds by asking the court's administrative personnel. *Id.* at 9-10. Bar Counsel now believes both that Respondent's conduct was based on her lack of experience and unfamiliarity with the relevant rules of the court and that Respondent honestly believed that she had the authority to withdraw the funds from the estate when she took them. Petition at 10. The Hearing Committee finds it significant that Bar Counsel reached this conclusion and accepts that Respondent had a truly held but inaccurate understanding that she was entitled to withdraw the funds without prior court approval. Petition at 11-12.

The Hearing Committee also finds it significant that the accounts involved in this matter all required Respondent's client's signature for withdrawals, in addition to Respondent's signature. Thus, Respondent did not have exclusive control of the funds. Petition at 9; *see In re Travers*, 764 A.2d 242, 249 (D.C. 2000).[7] Petitioner's withdrawals were made with the complete and contemporaneous approval of her client, even though not authorized by the court.

Finally, the Hearing Committee finds it significant that Respondent repaid the estate for the funds she withdrew. Petition at 16. Although there was a delay in the repayment, Bar

[7] In *Travers*, the Board found that the respondent did not commit misappropriation because he did not have exclusive control of the estate checking account from which funds were drawn and therefore was not entrusted with the funds. The Court, noting that the case law is "sparse and inconclusive" on whether the attorney must have exclusive control of the funds as opposed to joint control with a representative of the estate, did not reach the question. 764 A.2d at 250.

Counsel determined that this delay was caused by Respondent's lack of funds and not by any other reason.[8] Tr. at 32-33.

We thus recommend that the Court impose the agreed-upon sanction of a one-year suspension with six months stayed and one-year period of probation to begin at the commencement of the period of suspension, with the conditions that she attend a continuing legal education course and that she consult with the D.C. Bar's Practice Management Advisory Service before entering private practice.

---

8 The Hearing Committee finds that this factor distinguishes the instant case from *In re Utley*, 698 A.2d 446 (D.C. 1997). In *Utley*, the respondent withdrew funds from an estate. When confronted and ordered to repay, the respondent nonetheless failed to do so and did not provide any explanation for this failure to repay. Indeed, even after being warned of the consequences of her continued failure to repay the funds, she simply failed to respond. The original withdrawal of the estate funds was determined to be a negligent misappropriation, but the Court found that the extraordinary delay in returning the funds converted the original misappropriation to a misappropriation that was the result of more than simple negligence, thus warranting disbarment. As the Court noted, "an honest mistake ripened into misappropriation because of the unreasonably long delay in repaying a duplicate fee she knew was unauthorized." *Id*. at 449.

Similarly, Respondent's lack of funds distinguishes the instant case from *In re Cloud*, 939 A.2d 653 (D.C. 2008). In *Cloud*, the respondent withdrew settlement funds from his attorney escrow account. Respondent later learned that his withdrawal had been in error, and he agreed to pay the rightful parties the amounts that he had mistakenly withdrawn. Respondent, however, took more than four years to fully repay the funds and only then after formal disciplinary proceedings and a lawsuit had been brought against him. The Court noted that the original withdrawal of the funds did not amount to reckless misappropriation. *Id*. at 661. However, his "knowing and deliberate" failure to repay the funds promptly "even though he had access to funds . . . that would easily have covered the full amount due" did amount to reckless misappropriation. *Id*. at 661-62.

The Hearing Committee does not find that the delay in Respondent's case raises the same concerns the Court addressed in *Utley* and *Cloud.* Respondent did not willfully fail to repay the funds. She asserted that she was unable to reimburse the estate because she did not have the money to do so. She made the repayment when she went back to work and had the money to do so. Tr. at 32-33. Bar Counsel did not dispute these facts. *Id.* at 33.

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.

AD HOC HEARING COMMITTEE

/MLS/
Mary Lou Soller
Chair

/LS/
Laura Schuldt
Public Member

/AJD/
Angela J. Davis
Attorney Member

Dated: August 12, 2009