

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



Board on Professional Responsibility

A Member of the Bar of the
District of Columbia Court of Appeals
(Bar Registration No. 499813)

Disciplinary Docket No. 2019-D130

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on March 24, 2023, for a limited hearing on a Petition for Negotiated Discipline (the “Petition”). The members of the Hearing Committee are Michael E. Tigar, Chair; Lisa M. Harger, Public Member; and John E. McGlothlin, Attorney Member. The Office of Disciplinary Counsel was represented by Deputy Disciplinary Counsel Julia Porter. Respondent, Richard Tappan, appeared at the hearing and was represented by Daniel Schumack.

The Hearing Committee has carefully considered the Petition signed by Disciplinary Counsel, Respondent, and Respondent’s counsel, the supporting affidavit submitted by Respondent (the “Affidavit”), and the representations during the limited hearing made by Respondent, Respondent’s counsel, and Disciplinary Counsel. The Hearing Committee has also considered the Chair’s *in camera* review

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

of Disciplinary Counsel's files and records and his *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, the Hearing Committee finds the negotiated discipline of a one-year suspension with six months stayed in favor of one year of probation 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 finds that:

1. The Petition and Affidavit are full, complete, and in proper order.
2. Respondent is aware that there is currently pending against him a proceeding involving allegations of misconduct. Tr. 20;¹ Affidavit ¶ 2.
3. The allegations that were brought to Disciplinary Counsel's attention are that Respondent violated D.C. Rules of Professional Conduct 1.1(a) and (b) (competence, skill, and care), 1.3(a) and (c) (diligence and zeal), 1.5(a) (unreasonable fee), 1.15(a) (record-keeping), 8.4(c) (at least reckless dishonesty),² and 8.4(d) (serious interference with the administration of justice). Petition at 19-21.

¹ "Tr." refers to the transcript of the limited hearing held on March 24, 2023.

² Disciplinary Counsel has "reserve[d] the right to pursue intentional dishonesty charges" if the Petition is rejected. *See* Petition at 21 n.3. The parties confirmed at the limited hearing that any charges of intentional dishonesty would flow from the facts set forth in the Specification of Charges that was previously filed in this matter, which largely mirror the facts set forth in the Petition. Tr. 28-30. Rule 8.4(c) may be violated through either reckless or intentional dishonesty, *see In re Romansky*, 825 A.2d 311, 315-16 (D.C. 2003), but the distinction may be relevant to the formulation of an appropriate sanction. *See* Tr. 30.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 20-21; Affidavit ¶¶ 4, 6. Specifically, Respondent acknowledges that:

(1) Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on December 10, 2007, and assigned Bar number 499813.

Respondent's Appointment as Guardian and Conservator

(2) On September 30, 2015, Med-Star Georgetown Medical Center, through counsel, filed a petition with the Probate Division of the D.C. Superior Court (Probate Court) alleging that Robert Randall, a resident of Washington, D.C., was incapacitated and needed a guardian and conservator.

(3) On October 16, 2015, the Probate Court held a hearing on whether to appoint a guardian and conservator for Mr. Randall. After the hearing, the Probate Court appointed Respondent as Temporary Guardian for Mr. Randall ("the Ward").

(4) On November 12, 2015, the court found that the Ward was incapacitated, extended the temporary guardianship, and appointed Respondent temporary guardian and conservator of the Ward.

(5) On November 19, 2015, after holding a hearing, the Probate Court reaffirmed that the Ward was incapacitated, and over the Ward's objection, appointed Respondent as his guardian and conservator.

(6) The Probate Court issued letters of guardianship and conservatorship to Respondent on January 14, 2016.

Respondent Failed to Sell Real Property or Pay Fees in Timely Manner

(7) In December 2015, Respondent assisted the Ward in moving to The Residences at Thomas Circle, an assisted living facility in Washington, D.C. In his capacity as the Ward's conservator, Respondent signed the Residency Agreement dated December 3, 2015, and acknowledged that, as the Ward's conservator, he was responsible for paying the Ward's fees and charges with the Ward's funds.

(8) On January 8, 2016, Respondent filed a petition for permission to sell the Ward's real property – a condominium at 1727 Massachusetts Avenue, NW, Washington, D.C. 20036.

(9) On January 27, 2016, the Probate Court denied the petition without prejudice to Respondent's filing an appraisal for the real property and posting a bond sufficient to protect the appraised value of the Ward's real and personal property.

(10) On February 10, 2016, Respondent filed a renewed petition for permission to sell the Ward's property. That same day, Respondent filed an Inventory of the Ward's assets in which he valued the condominium at \$332,760 (based on internet market estimates), and the Ward's personal property at \$136,726.72.

(11) On February 22, 2016, the Probate Court denied Respondent's second petition, without prejudice to Respondent's posting a bond of \$497,500.

(12) On March 24, 2016, after posting the required bond, Respondent filed a third petition for permission to sell the Ward's real property. In the third petition, Respondent repeated his claims in the earlier petitions that the condominium should be sold because it "continues to accrue condo fees and fall [sic] into disrepair while serving no financial value to the Ward." Respondent went on to say that: "It makes financial sense to sell the property and use the proceeds to benefit the Ward and pay for his stay at Thomas Circle."

(13) On April 5, 2016, the Probate Court granted the third petition. As explained below, Respondent did not sell the condominium until March 22, 2019.

(14) In April 2016, after spending more than \$4,000 of the Ward's funds to clean and repair the [condominium], Respondent listed it for sale. Within two weeks, a buyer agreed to pay \$260,000 in cash for the condominium. Prior to the closing, the settlement agent informed Respondent that the condominium was held in the name of "The Robert L. Randall Living Trust" ("RLT"). The RLT named the Ward as the sole trustee and provided that if the Ward became disabled, Shelton Binstock would become the successor trustee and if Mr. Binstock was unwilling or unable to serve, James Secrist would become the successor trustee[.] The sale of the condominium did not go forward in April 2016.

(15) Also in April 2016, the condominium association filed a notice of foreclosure and lien against the condominium for \$23,681.73 – \$20,082.35 in unpaid assessments, \$840 in late fees, and \$2,759.38 for attorney's fees.

(16) In February 2017, Respondent retained and paid, with the Ward's funds, another attorney to file an action in the D.C. Superior Court to have

Respondent appointed as trustee of the Ward's trust. The court dismissed the action in April 2017 for failing to file an acknowledgement of service or proof of service of the summons and the complaint. The same action was reinstated in April 2017, and the court granted the motion to serve by publication. In August 2017, after filing proof of service and publication, the lawyer retained by Respondent filed a motion for default against the successor trustee. On September 25, 2017, the court entered judgment against the successor trustee and appointed Respondent as trustee.

(17) Beginning in May 2017 and continuing through April 2019, Respondent used more than \$125,000 of the Ward's funds to pay contractors to repair or improve the condominium.

(18) During this three-year period, Respondent used the Ward's funds to pay the mortgage and line of credit secured by the condominium, totaling \$1,300 or more per month.

(19) The management company for the condominium building also assessed additional fees on the Ward's condominium for maintenance and HVAC that totaled approximately \$930 per month. Respondent used the Ward's funds to pay the condominium fees. However, because Respondent failed to pay the condominium fees on a timely basis, the management company assessed late fees and attorney's fees, which Respondent later paid with the Ward's funds. On February 14, 2022, the Auditor-Master ordered Respondent to pay \$2,271.64 to the Ward's estate for late fees and legal fees associated with the late payments.

(20) Respondent failed to obtain insurance for the condominium. When the condominium was damaged by water leaking from another condominium in January 2018, the Ward's funds were used to repair the water damage. Respondent said he attempted, without success, to recover the repair cost from the resident of the other condominium, but Respondent did not file suit for recovery.³

(21) Respondent disclosed in his annual accountings filed with the Probate Court the expenditures he made to contractors for repairs or improvements to

³ The Committee makes no finding as to whether Respondent in fact attempted to recover the repair cost, as he claimed. *See In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam) ("A committee's discretion to make findings in this context is limited to ascertaining that '[t]he facts *set forth in the petition or as shown at the hearing* support the admission of misconduct.'" (emphasis in original) (quoting D.C. Bar R. XI, § 12.1(c)(2) (2009))).

the condominium. Respondent did not have documentation for some of the expenditures.

(22) The Registrar of Wills advised the Probate Court of the numerous payments that Respondent made for home repair and improvements, some without sufficient documentation. On July 2, 2018, the Probate Court referred the matter to the Auditor-Master to investigate.

(23) Because Respondent continued to spend the Ward's money for repairs or improvements after July 2018, the Probate Court made additional referrals to the Auditor-Master in May 2019 and December 2019 to investigate Respondent's expenditures related to the condominium, as well as other expenditures for which Respondent failed to provide documentation.

(24) In the interim, on or about March 22, 2019, Respondent sold the Ward's repaired and improved condominium for \$335,000. The sale price was \$25,000 less than what Respondent reported as the value in his second and third accountings filed in February 2018 and March 2019, but more than the offer received in 2016.

Respondent's Late and Incomplete Response to Auditor-Master

(25) The Auditor-Master held several status conferences in connection with the Probate Court referrals, visited the condominium on three occasions before it was sold, and held evidentiary hearings over three days in September and October 2019.

(26) The Auditor-Master asked Respondent to provide information and supporting documents during the investigation. Respondent failed to respond timely or completely which caused the Auditor-Master to postpone and continue hearings.

(27) On October 29, 2019, the Auditor-Master Office issued a report about its investigation that included a discussion of Respondent's possible liability for: (a) payments to Johnson Home Improvement which had failed to perform much of the contracted work; (b) payments to John Montgomery, another contractor, which were not adequately documented; (c) payments to correct water and sewage damages to the Ward's condominium that were not insured and for which there was "no effective recovery efforts"; and (d) expenditures for renovations that were not recovered in the sales price.

(28) The Auditor-Master recommended that the Probate Court accept Respondent's settlement offer to pay the Ward's estate \$30,000 within six months and waive his fees for the time he spent before the Auditor-Master regarding the matter, except that Respondent's accountant was to receive

\$3,000 for his services. In exchange, Respondent would be assigned the rights to sue the home improvement and repair companies he had hired.

(29) The Probate Court approved the settlement on January 13, 2020.

(30) Respondent paid the Ward's estate \$30,000 on or about July 9, 2020.

Respondent Failed to Pay the Living and Care Expenses of the Ward

(31) In December 2015, Respondent signed a Residency Agreement for the Ward to reside in and receive care from The Residences at Thomas Circle. The Residences sent Respondent monthly bills for the Ward.

(32) In or around August 2018, Respondent stopped paying The Residences, notwithstanding that the Ward's estate had funds to cover the Ward's expenses.

(33) By the fall of 2018, The Residences was calling and sending emails to Respondent about the outstanding balance due on the Ward's account.

(34) In early 2019, The Residences retained counsel who sent Respondent a demand letter on March 27, 2019, for the \$83,030 owed for the Ward's residential living and care expenses. Respondent did not respond to the letter and did not pay The Residences.

(35) On April 26, 2019, The Residences, through counsel, filed a Petition for Permission to Participate in the probate case alleging that Respondent had been "seriously delinquent in paying the monthly bills, which is placing the [Ward] in jeopardy."

(36) On May 6, 2019, Respondent moved the Ward to an assisted living facility in Maryland.

(37) On May 15, 2019, Respondent filed a response to The Residences' motion in which he conceded that he had not paid The Residences and claimed the Ward was no longer living there.

(38) On May 16, 2019, The Residences filed a Petition for a Ruling to Show Cause based on Respondent's continued failure to pay for the living and care expenses of the Ward. The Residences asked the Probate Court to refer the matter to the Auditor-Master, enter judgment for the balance due which was then more than \$104,000, and remove Respondent as conservator.

(39) On May 30, 2019, the Probate Court denied the petition, finding that The Residences was not the proper party to bring the action. The Probate Court, however, referred Respondent's actions to the Auditor-Master and directed the Auditor-Master to investigate Respondent's failure to make payments to

The Residences on behalf of the Ward, and his decision to move the Ward out of The Residences.

(40) The Auditor-Master scheduled and held a hearing. The matter was resolved when Respondent paid, with the Ward's funds, \$104,416.98 to The Residences.

Respondent's Late Filings with the Probate Court

(41) Following his appointment as guardian and conservator, Respondent failed to file proof of his bond and his acceptance and consent to the appointments.

(42) On December 15, 2015, the Probate Court sent a notice of summary hearing because of Respondent's failure to make the filings.

(43) Respondent made the required filings in January 2016, and the court cancelled the hearing.

(44) On January 14, 2016, the court issued letters of guardianship and conservatorship and issued schedules of the mandatory filing deadlines for Respondent as guardian and conservator. Pursuant to the court schedules and the Rules of the Probate Court, Respondent was required to file semi-annual guardian reports with the court, the first being due on May 19, 2016, and then every six months thereafter.

(45) Respondent did not file his first, third, seventh, and ninth guardian reports by the due date. The Probate Court sent delinquency notices to Respondent in connection with his first and third reports.

(46) As conservator, Respondent was required to file a conservatorship plan and a complete inventory of the Ward's assets within 60 days of his appointment, or by January 18, 2016. He also was required to file annual accounts and reports within 30 days of the anniversary of the date of his appointment or by December 19th.

(47) The Probate Court sent out a delinquency notice and then scheduled a summary hearing when Respondent failed to file the Inventory on time. After the summary hearing was scheduled, Respondent sought an extension to file the Inventory (which was by then already a month overdue). Respondent filed the inventory on February 10, 2016.

(48) Respondent filed only one annual accounting on time.

(49) Respondent filed motions for extensions to file his second and third accountings, which the Probate Court granted. However, Respondent did not file the third accounting by the extended deadline causing the Probate Court

to schedule a summary hearing. After receiving the order scheduling the summary hearing, Respondent filed the third account.

(50) The audit division and the Auditor-Master issued requirement letters for each of Respondent's accountings.

(51) In many instances, Respondent failed to provide the information and documents requested in the requirement letters by the requested deadline.

(52) In some instances, Respondent failed to provide the required documentation because he did not have complete records of the expenditures that he said he had made on behalf of the Ward, including numerous expenses associated with repairs or improvements to the Ward's condominium.

Respondent's Fee Petitions

(53) Between January 2016 and January 2020, Respondent filed five petitions with the Probate Court seeking fees and reimbursement for his expenses as guardian and conservator.

(54) Respondent filed his first petition for fees and expenses on January 31, 2016, seeking \$7,370 in fees, and \$49.35 in expenses.

(55) The Probate Court granted the request on January 31, 2016, but mistakenly ordered that Respondent should be paid from the Guardianship Fund.

(56) On February 16, 2016, the Probate Court issued an amended order again approving Respondent's fees of \$7,370 and expenses of \$49.35 but directing that the payment be from the Ward's funds.

(57) Respondent paid himself \$7,370 from the Ward's funds on February 25, 2016.

(58) The Guardianship Fund paid Respondent \$7,419.35 by wire transfer in or after February 2016. Consistent with Probate Court practices, the wire transfer would not have indicated the case associated with the payment.⁴

(59) On September 11, 2017, the court's auditor wrote Respondent alerting him to the double payment and advised him that he would need to file a motion to reimburse the Guardianship Fund. Respondent attempted to hand-deliver payment to the Clerk of the Probate Court, but was told that the Clerk could

⁴ The Committee notes that the omission of identifying information on the wire transfer permits an inference that Respondent did not act culpably in receiving these funds. And, as noted in ¶¶59-61, he reimbursed the Guardianship Fund when the error was called to his attention.

not accept payment without a new court order. On November 1, 2017, Respondent filed a motion to reimburse the Guardianship Fund.

(60) On February 7, 2018, the court vacated its January 31, 2016 order and ordered Respondent to reimburse the Guardianship Fund \$7,370 and \$49.35 within 20 days.

(61) Respondent reimbursed the Guardianship Fund \$7,419.35 on February 28, 2018.

(62) In the interim, Respondent filed his second and third fee petitions in June 2017 and February 2018, and he filed his fourth and fifth petitions in May 2019 and January 2020, respectively. In these petitions, Respondent sought an additional \$149,499 in fees.

(63) With one exception, Respondent billed two or more hours to prepare his semi-annual guardianship report, which consisted of completing a fill-in or pre-printed form. The reports that Respondent were [sic] virtually identical, except for the dates that Respondent listed for visiting the Ward. For example, in nine of the ten reports that he filed (the tenth being after the Ward died), Respondent gave the exact same response to the question whether the Ward had a current health care directive. Respondent put an “X” in the box for “No” and said “I will work with the Ward on drafting one.” In ruling on his last fee petition, the Probate Court limited his compensation to one hour for each report, noting that his reports were “almost identical” to his earlier reports.

(64) In his fourth fee petition, Respondent sought fees for himself and his staff for more than 50 hours reported as spent on preparing the annual conservatorship account. The Probate Court found that the time Respondent charged was “excessive” because “requests for compensation for preparing an account from other attorneys typically range from 1.0 to 4.0 hours.” The court allowed payment for ten hours only, noting that the account that Respondent had filed was “deficient and ultimately referred to the Auditor-Master for investigation.”

(65) On eleven occasions between 2016 and 2019, Respondent billed between one and two hours for his round-trip travel time between his office at 1629 K Street, N.W., and The Residences or the Ward’s condominium, both of which were one-half mile from his office. There were, however, numerous instances in which Respondent did not bill for his travel time to the Ward’s residence.

(66) In 2018, Respondent’s case manager Marina Boboc visited the Ward 16 times between February 27, 2018, and November 5, 2018. Respondent billed separately for Ms. Boboc’s visits and her travel time. According to the fee

petition and supporting billing statement that Respondent filed with the Probate Court, Ms. Boboc visited the Ward for an hour or more and Respondent also charged an additional hour, usually more, for her travel time at her full hourly rate. Before submitting this petition, the Probate Court already had put Respondent on notice that travel time could not be billed at the full hourly rate. The Probate Court reduced the hourly rate that Respondent charged for Ms. Boboc's time from \$125/hour to \$45/hour and reduced her fees an additional 20% because Respondent had not included the starting and ending location of her trips.

(67) The Probate Court denied or reduced the compensation that Respondent sought for other services, including the time attributed to an associate for preparing a motion that was never filed, numerous hours that his staff spent scanning and organizing documents, and the "excessive" time Respondent spent to prepare a one-page response.

Other Expenses Paid with the Ward's Assets, the Ward's Death,
and Respondent's Final Accounting

(68) In each of the five accountings that he filed, Respondent listed monthly electronic payments from the Ward's account to (a) Chase Credit Card (approximately \$55 to \$80/month); (b) Discover Card (approximately \$105 to \$115/month); and (c) Bankcard Mastercard (approximately \$25 to \$50/month).

(69) In response to Disciplinary Counsel's inquiries, Respondent could not provide information as to the principal amounts the Ward owed the credit card companies, the nature of the charges, and the amount of interest paid each month for the unpaid balances.

(70) Respondent contended he had "attempted without success" to stop the automatic payments but had no documentation reflecting his reported "attempt[s]." ⁵

(71) In each of the five accountings that he filed, Respondent listed electronic payments from the Ward's funds to Verizon of approximately \$80 to \$100 every month.

(72) Respondent contended that he also attempted without success to stop the payments to Verizon for services that Respondent admitted the Ward no

⁵ The Committee makes no finding as to whether Respondent in fact attempted to stop automatic payments. *See supra* note 3.

longer received after moving to The Residences in December 2015.⁶ The only documentation that Respondent had of his reported attempts to stop the electronic payments was a letter to Verizon dated October 11, 2016.

(73) Respondent did not file income tax returns for the Ward until the fall of 2019. Between September and November 2019, Respondent filed or caused to be filed federal tax returns for the Ward for years 2015, 2016, 2017, and 2018. An accountant whom Respondent paid with the Ward's funds assisted Respondent in preparing the tax returns.

(74) Using the same accountant, Respondent filed or caused to be filed federal returns for the Ward for 2019 in July 2020, and for 2020 in January 2022.

(75) The federal tax return for 2017 (which was filed in November 2019) reflected that the Ward had income from pensions and annuities of \$398,101. Most of the income, *i.e.*, \$365,040 of the \$398,101, was attributable to Respondent's withdrawing \$365,400 from the Ward's IRA account with Charles Schwab on or about March 1, 2017.

(76) In the 2017 return, Respondent reported that the Ward had medical and dental expenses of \$442,771. The accountings that Respondent filed with the Probate Court reflected that Respondent had used \$98,949.47 of the Ward's funds to pay The Residences in 2017, and an additional \$14,814.54 to pay Life Matters, LLC, and made payments totaling \$787.08 for what Respondent described as medical expenses – a total of \$114,551.09. Respondent's counsel asserts that all such payments would have been deductible as medical expenses per IRS Publication 502.

(77) In 2022, Disciplinary Counsel questioned Respondent about the variance between the 2017 medical expense deduction and what had been reported in the accountings filed with the Probate Court. Respondent was unable to explain the variance and by that time did not have any supporting financial records beyond what had been filed with the Probate Court.

(78) Likewise, Respondent had no records beyond what he filed with the Probate Court reflecting payments to The Residences or the other nursing facility where the Ward moved in May 2019 to support the deductions that he claimed on behalf of the Ward for medical and dental expenses in the 2015, 2016, 2018, 2019, and 2020 federal tax returns, which ranged from approximately \$33,000 to \$118,000 per year.

⁶ The Committee makes no finding as to the extent of Respondent's efforts to stop the payments to Verizon. *See supra* note 3.

(79) The Ward died on October 23, 2020. Respondent notified the Probate Court of the Ward's death on November 10, 2020.

(80) Respondent did not file the Fifth and Final accounting until August 25, 2021.

(81) The Auditor-Master sent Respondent several requests for information and issued orders through May 2022 directing Respondent to take certain actions so that the conservatorship could be closed.

Petition at 2-19 (footnotes omitted).

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

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Affidavit ¶ 7. As documented in the Petition, Disciplinary Counsel has agreed not to pursue any other charges or sanction arising out of the conduct described in the Stipulation of Facts and Rule Violations. 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. 25.

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

8. Respondent has freely and voluntarily agreed to the sanction set forth in the Petition. Tr. 31; Affidavit ¶ 6.

9. Respondent is not being subjected to coercion or duress. Tr. 31; Affidavit ¶ 6.

10. Respondent is competent and was not under the influence of any substance or medication that would affect his ability to make informed decisions at the limited hearing. Tr. 12-13.

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

- a) he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;
- b) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;
- c) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;
- d) the negotiated disposition, if approved, may affect his present and future ability to practice law;
- e) the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and
- f) any sworn statement by Respondent in his affidavit or any statements made by Respondent during the proceeding may be used to impeach his testimony if there is a subsequent hearing on the merits.

Tr. 14-18; Affidavit ¶¶ 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be: a one-year suspension, with six months stayed in favor of a one-year term of probation,⁷ with the following requirements:

(1) Respondent must take three hours of pre-approved continuing legal education courses related to the maintenance of trust accounts, record keeping,

⁷ The Petition provides that Respondent will be required to comply with the practice monitor's requirements for twelve consecutive months following the six-month served suspension, and that he must provide Disciplinary Counsel with a signed acknowledgement of compliance within one and a half years of the Court's order approving the Petition. Petition at 22-23. The parties confirmed at the limited hearing that the proposed term of probation is one year. Tr. 24.

and/or safekeeping client property, and Respondent must certify and provide documentary proof that he has met this requirement to the Office of Disciplinary Counsel within six months of the date of the Court's final order.

(2) Before resuming the practice of law, Respondent must meet with Dan Mills, Manager of the Practice Management Advisory Service of the District of Columbia Bar, or a PMAS monitor, and execute a waiver allowing Mr. Mills or the monitor to communicate directly with the Office of Disciplinary Counsel regarding Respondent's compliance. Mr. Mills or the assigned monitor will conduct a full assessment of Respondent's practices, including but not limited to his financial records, client files, engagement letters, and supervision and training of staff. Mr. Mills or the assigned monitor shall take steps to ensure that Respondent is aware of and has taken steps to comply with his obligations, including those under Rule 1.15(a) such as maintaining complete records relating to client funds, and that Respondent complies with all the monitor's recommendations.

(3) Respondent must be in full compliance with the monitor's requirements for a period of twelve consecutive months after the six-month suspension. After the monitor determines that Respondent has been in full compliance for twelve consecutive months, Respondent must sign an acknowledgement that he has complied with the monitor's requirements and file the signed acknowledgement with the Office of Disciplinary Counsel. This must be accomplished no later than one and a half years after the date of the Court's final order.

If Respondent fails to comply with the requirements listed above, he agrees to serve the remaining six months of his one-year suspension. Petition at 21-23; Tr. 23-24.

Respondent further understands that he must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for his suspension to be deemed effective for purposes of reinstatement. Tr. 33-34; Affidavit ¶ 15.

13. The parties have agreed that the Hearing Committee should consider as an aggravating factor that Respondent's actions caused the Ward to incur unnecessary expenses. Petition at 24-25; Tr. 33.

14. The parties have agreed that the Hearing Committee should consider as mitigating factors that Respondent entered into a settlement with the Auditor-Master and paid \$30,000 to the Ward's estate; that he has no prior discipline; and that he has taken responsibility for his misconduct. Petition at 25; Tr. 31-32. Respondent asserts in his affidavit that the Hearing Committee should consider as a mitigating factor that he provided Disciplinary Counsel with information about his record of pro bono and low-bono services rendered in the Probate Division to persons with disabilities and persons of modest means; however, Disciplinary Counsel could not confirm or deny the truth of that statement. Affidavit ¶ 16(d); Tr. 32-33.

15. The complainant was notified of the limited hearing but did not appear and did not provide any written comment. Tr. 6-8.

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)(1)-(3); *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 he is under duress or has been coerced into entering into this disposition. *See supra* Paragraphs 8-9. Respondent understands the implications and consequences of entering into this negotiated discipline. *See supra* Paragraph 11.

Respondent has acknowledged that any and all promises that have been made to him by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the Petition and that there are no other promises or inducements that have been made to him. *See supra* Paragraph 6.

B. The Stipulated Facts Support the Admissions of Misconduct and the Agreed-Upon Sanction.

The Hearing Committee has carefully reviewed the facts set forth in the Petition and established during the hearing and concludes that they support the admissions of misconduct and the agreed-upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because he believes that he could not successfully defend against the misconduct described in the Petition. *See supra* Paragraph 5.

With regard to the second factor, the Petition states that Respondent violated D.C. Rules of Professional Conduct 1.1(a) and (b), in that he failed to provide competent representation and/or failed to serve the Ward and the Probate Court with the skill and care commensurate with that generally afforded to wards and the court by other lawyers in similar matters. The evidence supports Respondent's admission that he violated Rules 1.1(a) and (b) in that the stipulated facts describe repeated failures to file required forms and to make timely payments in administering the Ward's estate, failure to oversee provision of services to the Ward's property, and failure to meet Probate Court filing requirements.

The Petition further states that Respondent violated D.C. Rules of Professional Conduct 1.3(a) and (c), in that he failed to serve the Ward zealously and diligently within the bounds of the law, and he failed to act with reasonable promptness. The evidence supports Respondent's admission that he violated Rules 1.3(a) and (c) in that the stipulated facts describe a pattern of failure to attend to maintenance of the Ward's property, failure to file required reports, and failure to

supervise provision of services necessary to maintain and administer the Ward's property.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.5(a), in that he charged an unreasonable fee. The evidence supports Respondent's admission that he violated Rule 1.5(a) in that the stipulated facts describe repeated instances of fee overcharges and claims for compensation.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.15(a), in that he did not maintain complete records of the funds he was entrusted and expended. The evidence supports Respondent's admission that he violated Rule 1.15(a) in that the stipulated facts describe failures to account for time and expenses by filing required reports, and failure to maintain complete and accurate records of expenditures.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 8.4(c), in that he engaged in conduct that constituted at least reckless dishonesty. The evidence supports Respondent's admission that he violated Rule 8.4(c) in that the stipulated facts describe a pattern of overcharges for legal services, and failures to account for expenditures made from the Ward's estate, including the substantial variance between the medical and dental expenses listed in the 2017 federal tax return and in his accountings.

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 8.4(d), in that he engaged in conduct that seriously interfered with the administration of justice. The evidence supports Respondent's admission that he

violated Rule 8.4(d) in that the stipulated facts describe his failure to file timely and complete reports, failure to file tax returns timely, and failure to provide supporting documentation with filed reports. All of this conduct required the Probate Court and its Auditor-Master and related entities and personnel to expend significant time in seeking to monitor Respondent's conduct and to obtain compliance with filing and accounting requirements. The District of Columbia guardianship system has significant responsibilities. When it must expend time and resources to seek and compel compliance with a guardian's duties, due to the guardian's failure to act with the requisite care, competence and skill, the government's ability to administer that system is hampered.⁸ *See, e.g., In re Vohra*, 68 A.3d 766, 783 (D.C. 2013) (causing unnecessary expenditure of time and resources by the government and, later, the Office of Disciplinary Counsel violated Rule 8.4(d)).

C. The Agreed-Upon Sanction Is Justified.

The third 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

⁸ For an overview, *see* Intervention Proceedings, <https://www.dccourts.gov/superior-court/probate-division/intervention-proceedings-int-idd> (last visited Apr. 19, 2023).

responsibility), and relevant precedent”); *Johnson*, 984 A.2d at 181 (providing that a negotiated sanction may not be “unduly lenient”). Based on the record as a whole, including the stipulated circumstances in aggravation and mitigation, the Hearing Committee Chair’s *in camera* review of Disciplinary Counsel’s investigative file and *ex parte* discussion with Disciplinary Counsel, and a review of relevant precedent, the Hearing Committee concludes that the agreed-upon sanction is justified and not unduly lenient, for the following reasons:

The agreed-upon sanction appears to fall within the range of discipline imposed for similar misconduct in contested cases and would thus not be unduly lenient. *See, e.g., In re Bailey*, 283 A.3d 1199 (D.C. 2022) (one-year suspension with reinstatement conditioned upon proof of fitness where the respondent charged an unreasonable fee, supported by false invoices, in a matter in which he served as local counsel, failed to communicate with the client, and failed to respond to Disciplinary Counsel’s requests for information, in violation of Rules 1.4(a) and (b), 1.5(a) and (e), and 8.4(c) and (d)); *In re Marks*, 252 A.3d 887 (D.C. 2021) (*per curiam*) (one-year suspension with CLE for the respondent’s misconduct while serving as trustee for a trust he had drafted, including negligent misappropriation, failure to cooperate with the sole beneficiary’s attorney and guardian, making false statements to a court, and failure to protect the beneficiary’s interests by selling real estate, timely filing real estate taxes, forwarding to the guardian the beneficiary’s social security payments to create a special needs trust, or pursuing repayments of loans held by the trust, in violation of Rules 1.1(a), 1.3(a), (b)(1), and (c), 1.15(a)

and (c), and 8.4(c) and (d)); *In re Hargrove*, 155 A.3d 375 (D.C. 2017) (per curiam) (sixty-day suspension with fitness for the respondent's neglect and lack of competence as personal representative of an estate, refusal to turn over the estate's file for over a year after her removal, and failure to pay a judgment and award of attorney's fees to the estate, in violation of Rules 1.1(a) and (b), 1.3(c), 1.16(d), and 8.4(d), aggravated by the respondent's failure to meaningfully participate in the disciplinary proceedings, which resulted in a default judgment); *In re Cole*, 967 A.2d 1264 (D.C. 2009) (thirty-day suspension where the respondent failed to file an asylum application on behalf of a client, ignored the client's inquiries, falsely told the client that the application had been filed, and failed to tell the client that the court had issued voluntary departure and removal orders, in violation of Rules 1.1(a) and (b), 1.3(a), (b)(1), and (c), 1.4(a) and (b), 8.4(c), and 8.4(d), mitigated by the respondent's remorse and efforts to rectify the harm he had caused); *In re Bernstein*, 774 A.2d 309 (D.C. 2001) (nine-month suspension with restitution and CLE for taking a higher fee than the amount awarded by the government, without informing the client, in violation of Rules 1.5(a) and 8.4(c), in addition to violations of Rules 1.15(a) (commingling) and 1.17(a) (sale of law practice), aggravated by prior discipline and lack of remorse); *see also In re Harmon*, Board Docket No. 20-ND-006 (HC Rpt. Oct. 26, 2021) (recommending approval of a petition for negotiated discipline imposing a sixty-day suspension, stayed in favor of one year of probation with conditions, where the respondent neglected and failed to make required filings in three court-appointed probate matters, leading the court to remove her as guardian

and conservator in two matters and refer her to an auditor master in a third, and failed to cooperate with a successor guardian in one of the matters, in violation of Rules 1.1(b), 1.3(a), 1.16(d), and 8.4(d)), *recommendation adopted*, 268 A.3d 849 (D.C. 2022) (per curiam).

Moreover, it is important to note that the misconduct in this case occurred in the context of legal services being provided to a vulnerable individual who, by definition, has special needs that require competent, diligent and zealous legal services. The agreed sanction not only imposes accountability for past violations, but also provides for an ongoing supervision of Respondent's practice to identify and address potential problems. This, the Committee concludes, fulfills an important duty of the disciplinary system — to encourage compliance in a forward-looking way.

IV. CONCLUSION AND RECOMMENDATION

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court impose a one-year suspension with six months stayed in favor of one year of probation with the conditions listed in Section II, Paragraph 12, *supra*.

AD HOC HEARING COMMITTEE



Michael E. Tigar
Chair



Lisa M. Harger
Public Member



John E. McGlothlin
Attorney Member