

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER FIVE

In the Matter of:	:	
	:	
SHARON STYLES ANDERSON,	:	
	:	
Respondent.	:	Board Docket No. 14-ND-001
	:	Bar Docket Nos. 2013-D136
A Member of the Bar of the	:	2013-D148
District of Columbia Court of Appeals	:	
(Bar Registration No. 412158)	:	

REPORT AND RECOMMENDATION OF HEARING COMMITTEE
NUMBER FIVE APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. Procedural History

This matter came before Hearing Committee Number Five on April 14, 2014, for a limited hearing on an Amended Petition for Negotiated Discipline (the “Petition”). The Office of Bar Counsel was represented by Deputy Bar Counsel Elizabeth A. Herman, Esquire. Respondent, Sharon Styles Anderson, Esquire, appeared *pro se* and was present throughout the hearing.

The Hearing Committee has carefully considered the Amended Petition for Negotiated Discipline signed by Bar Counsel and Respondent, the supporting affidavits signed by Respondent on January 8 and March 14, 2014 (the “Affidavit”),¹ the representations during the limited hearing made by Bar Counsel, and the colloquy with Respondent taken pursuant to Board Rule 17.4. The Hearing Committee also has fully considered its *in camera* review of Bar Counsel’s files and its *ex parte* communications with Deputy Bar Counsel, as authorized under

¹ Respondent filed a new Affidavit to correct a reference to an “Amended Petition” in paragraph 2. The new Affidavit, however, omitted some text in Paragraph 14 regarding circumstances in mitigation. At the limited hearing, Respondent asked that the circumstances in mitigation from both Affidavits be considered. Tr. at 37. Bar Counsel and Respondent subsequently moved to have both Affidavits be considered as part of the record. That motion is granted.

D.C. Bar R. XI, §12.1(c) and Board Rule 17.4(h)). For the reasons set forth below, we approve the Petition, find the negotiated discipline of a public censure is justified and recommend that it be imposed by the Court.

II. Findings pursuant to D.C. Bar R. XI, § 12.1(c) and Board Rule 17.5

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

1. The Petition and Affidavit are full, complete, and in proper order.
2. Respondent is aware that there is currently pending against her an investigation into, or a proceeding involving, allegations of misconduct. Tr. at 20;² Affidavit at ¶ 2.
3. The allegations that were brought to the attention of Bar Counsel stem from two complaints, one from Respondent's former client and one from a victim's rights advocate. Amended Petition at 1.
4. Respondent has knowingly and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. at 21; Affidavit at ¶ 4. Specifically, Respondent acknowledges that:

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on December 4, 1987, and assigned Bar number 412158. At all relevant times, Respondent was not admitted to practice law in Maryland.

COUNT I (Bar Docket No. 2013-D148) (Withers)

2. On or about March 15, 2011, Ms. Wanda Withers met Respondent and retained her to assist her in obtaining a divorce. They agreed that the retainer fee would be a flat fee of \$1,500, to be paid in monthly installments. Ms. Withers paid Respondent \$1,000 of the \$1,500 retainer fee.

3. Because Ms. Withers and her husband both resided in Maryland, it was clear from the start of the representation that this divorce case would have to be filed in Maryland and that the matter involved Maryland law.

² "Tr." is used to designate the transcript of the April 14, 2014 limited hearing.

4. Respondent did not disclose to Ms. Withers that she was not licensed in Maryland. Respondent did not disclose to Ms. Withers that she could not represent her in the divorce matter without local counsel or seeking and obtaining permission of the court to appear.

5. Respondent drafted a separation agreement and sent it to Ms. Withers' husband but he did not sign the agreement.

6. In or about February/March 2012, Ms. Withers met with Respondent again because she had been separated from her husband for one year and she was ready to file for the divorce.

7. Respondent filled out a form divorce petition, had Ms. Withers sign it and filed it in Prince George's County Circuit Court on or about March 2012. The divorce petition did not indicate that Respondent represented Ms. Withers. The way Respondent filled out the form made it appear that Ms. Withers was *pro se*.

8. On or about January 2013, Ms. Withers received notice from the court that it was considering dismissing her case because Mr. Withers had not been properly served. Ms. Withers responded to the court, asked for the summons to be reissued, and sent the summons by certified mail to Mr. Withers. On February 4, 2013, Ms. Withers also terminated the services of Respondent.

COUNT II (Bar Docket No. 2013-D136) (West)

9. On or about October 10, 2012, Respondent appeared with Mr. Lamar West, her client, at the District Court for Prince George's County, Maryland. Mr. West was scheduled to appear before the court on a final hearing for a civil protection order filed by his wife, Ms. West, in captioned Case Number 0502SPO38772012.

10. Respondent approached Ms. West before the hearing, did not disclose that she was not a Maryland attorney, and told Ms. West that she represented Mr. West. Respondent discussed a settlement agreement with Ms. West, who was *pro se*, and as a result of that discussion, Ms. West agreed to ask for a dismissal of the protective order.

11. Respondent entered her appearance in the matter without disclosing to the court that she was not a member of the Maryland Bar and without filing a motion to appear *pro hac vice*.

12. The court dismissed the matter upon Ms. West's request.

13. After the civil protection matter concluded, Mr. West was scheduled to appear before the Circuit Court for Prince George's County, Maryland, based upon facts that were relevant to the civil protection order proceeding. Mr. West

was charged with assault on Ms. West. The criminal matter was styled, *Maryland v. West*, Case No. CT121534X.

14. On or about November 30, 2012, Respondent entered her appearance in the criminal case on behalf of Mr. West. Respondent did not inform the court that she was not licensed to practice in Maryland and she did not file a motion to appear *pro hac vice*.

15. Between November 2012 and March 2013, Respondent held herself out as Mr. West's attorney to third parties and the court. Respondent obtained discovery from, and discussed plea offers with the government and appeared in court on Mr. West's behalf. Respondent did not disclose to the government that she was not licensed to practice law in Maryland.

16. On March 8, 2013, Respondent filed a motion for admission *pro hac vice*. The government opposed this motion based upon her unauthorized practice of law and her violation of the ethical rules. In response to the government's opposition, Respondent withdrew her motion to appear *pro hac vice*. The court struck Respondent's appearance and admonished her for attempting to practice law without being admitted *pro hac vice* and without being a member of the Maryland bar.

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

6. Bar Counsel has made no promises to Respondent other than what is contained in the Amended Petition for Negotiated Discipline. Affidavit at 2. Those promises and inducements are that Bar Counsel will not pursue any additional charges arising out of the conduct in the matters described, including violations of Rules of Professional Conduct 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.4(b), 1.16(d), 8.4(c) and 8.4(d). Petition at § III. Respondent has stated during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. at 28.

7. Respondent is aware of her right to confer with counsel and is proceeding *pro se*. Tr. at 14; Affidavit at 1.

8. Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Amended Petition for Negotiated Discipline and agreed to the sanction set forth therein. Tr. at 23; Affidavit at 4.

9. Respondent is not being subjected to coercion or duress. Tr. at 29; Affidavit at 6.

10. Respondent is competent and not under the influence of any substance or medication. Tr. at 15.

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 Bar 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;
- 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. at 14-15, 30-32; Affidavit at ¶¶ 9-10.

12. Respondent and Bar Counsel have agreed that the sanction in this matter should be a public censure. Petition at § IV; Tr. at 23.

13. Bar Counsel has provided a statement demonstrating the following circumstances in aggravation, which the Hearing Committee has taken into consideration: Bar Counsel previously issued two Informal Admonitions to Respondent for misconduct that occurred in 2001 (Bar Docket No. 2001-D424) and 2004 (Bar Docket No. 2005-D246). The misconduct in Bar Docket No. 2005-D246 involves the same type of misconduct at issue here, *i.e.*, the unauthorized practice of law in a jurisdiction where Respondent was not admitted. Petition at 6.

14. The Petition recites the following circumstances in mitigation: Respondent has acknowledged that she engaged in the misconduct described in the Amended Petition for Negotiated Discipline, has taken full responsibility for her actions, and has returned the retainer fee provided by Ms. Withers. Petition at 6-7. Bar Counsel agreed that these are mitigating facts. Tr. at 10.

15. The complainants were notified of the limited hearing but did not appear and did not provide any written comment. Tr. at 11.

16. Bar Counsel and Respondent have submitted a statement of relevant precedent in support of the agreed upon sanction, stating that an informal admonition is ordinarily the sanction for similar minor misconduct, but the fact that Respondent has been sanctioned for similar misconduct in the past warrants a more serious sanction. Petition at 6-7.

III. Discussion

The Hearing Committee shall approve an agreed upon 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) that the agreed upon sanction is justified.

D.C. Bar R. 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. Respondent, after being placed under oath, admitted to 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 28-29. Respondent understands the implications and consequences of entering into this negotiated discipline. Tr. at 30-33.

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. Tr. at 28; Affidavit at 2.

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. Tr. at 23; Affidavit at 5.

With regard to the second factor, the Petition states that Respondent violated D.C. Rule 5.5(a) and Maryland Rules 5.5(a), (b), and (c) (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction). The evidence supports Respondent's admission that she violated Rule 5.5(a) and Maryland Rules 5.5(a), (b), and (c) in that the stipulated facts describe how she practiced law in Maryland, while not licensed to practice in Maryland, and without having been admitted *pro hac vice* with local counsel. Specifically, Respondent completed a form divorce petition for a client who lived in Maryland and represented a client at a civil protection hearing in Maryland without local counsel.

The third and most complicated factor the Hearing Committee must consider is whether the sanction agreed upon is justified. Neither Bar Counsel, Respondent, nor this Hearing Committee could identify a case of comparable misconduct that resulted in a sanction greater than an informal admonition. Respondent's history of prior misconduct, albeit ten years ago, particularly the matter that involved similar misconduct, warrants a sanction greater than an informal admonition. *See In re Bettis*, 855 A.2d 282, 288 (D.C. 2004).

In mitigation, the parties agree that Respondent has taken full responsibility for her actions and has returned the retainer fee provided by Ms. Withers. Petition at 6-7; Tr. at 10 (Bar Counsel agrees that these are mitigating facts). The Hearing Committee has taken these circumstances into consideration.

Respondent offered additional circumstances in mitigation in her affidavit; namely, that both incidents occurred very shortly after her father passed away, and that her intention was to assist her clients, who were experiencing financial difficulties and did not have the funds to hire Maryland counsel. Affidavit at ¶ 14. The Hearing Committee has not considered these assertions, because they are not the subject of the stipulation of the parties, and the Hearing Committee is not otherwise free to make factual findings that would support their consideration in mitigation of sanction. *See In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (a hearing committee's ability to make factual findings in a negotiated discipline case "is limited to ascertaining that 'the 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)); *see In re Fitzgerald*, Bar Docket No. 2009-D127 at 7-8 (BPR July 29, 2011) (Bar Counsel has an "obligation to set forth in the Petition and explain to the Hearing Committee all relevant facts and circumstances, including any mitigating circumstances relevant to the sanction."),

recommendation approved, Order, D.C. App. No. 11-BG-717 (D.C. Sept. 16, 2011); *see also In re Untalan*, Bar Docket No. 2013-D081 (H.C. March 11, 2014) (rejecting negotiated disposition because the parties did not stipulate to mitigating facts that would have supported the agreed-upon sanction); *In re Murdter*, Bar Docket Nos. 2010-D489, *et al.*, at 9-10, 12 (H.C. Dec. 28, 2012) (same).

Upon consideration of the entire record in this matter including the circumstances in aggravation, the agreed upon mitigation and the relevant precedent, we conclude that the negotiated discipline of a public censure is justified. The standard sanction for practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction, without other misconduct, is an informal admonition—the lowest sanction afforded a finding of misconduct. *See, e.g., In re Vohra*, Bar Docket No. 2003-D163 (B.C. Dec. 27, 2007); *In re Coddou*, Bar Docket No. 2002-D431 (B.C. March 4, 2003). Informal admonitions have also been issued for engaging in the unauthorized practice of law in D.C., while administratively suspended for non-payment of dues. *See, e.g., In re Biel*, Bar Docket No. 2005-D060 (B.C. Dec. 22, 2005); *see also In re Zentz*, 891 A.2d 277, 278 n.2 (D.C. 2006) (“violations of the unauthorized practice rule, without more, normally justify the sanction of at most a public reprimand”) (citing *In re Kennedy*, 542 A.2d 1225 (D.C. 1998)). Because Respondent has previously received two informal admonitions—once for practicing law in West Virginia without being properly admitted—a more serious sanction is justified. *See In re Banks*, 461 A.2d 1038, 1039 (D.C. 1983) (per curiam) (the Hearing Committee’s recommendation that respondent be informally admonished was rejected because the respondent had already received two informal admonitions, one for similar misconduct, and the “more severe sanction” of a public censure was imposed). A public censure is a serious sanction that brings with it a reported finding of ethical

misconduct. *See In re Schlemmer*, 870 A.2d 76, 80 (D.C. 2005) (a public censure is the most serious non-suspensory sanction and orders of public censure are published in the Atlantic Reporter).

IV. Conclusion and Recommendation

It is the conclusion of the Hearing Committee that the discipline negotiated in this matter is justified.³ For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court publicly censure Respondent.

HEARING COMMITTEE NUMBER FIVE

/MJZ/
Michael J. Zoeller
Chair

/SKB/
Sara K. Blumenthal
Public Member

/BLB/
Blanche L. Bruce
Attorney Member

Dated: May 30, 2014

³ The Hearing Committee's recommendation relies in part on confidential material disclosed during the Hearing Committee's *in camera* review of Bar Counsel's investigative file and *ex parte* meeting with Assistant Bar Counsel, pursuant to D.C. Bar R. XI, § 12.1(c) and Board Rule 17.4(h). The Hearing Committee's evaluation of this confidential information is set forth in a Confidential Supplemental Report filed under seal. *See* Board Rule 17.6.