

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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



FILED

May 10 2022 2:16pm

Board on Professional Responsibility

In the Matter of:	:	
	:	
TINA D. GREENE,	:	
	:	Board Docket No. 20-ND-007
Respondent.	:	Disciplinary Docket No. 2020-D034
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 991933)	:	

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

I. PROCEDURAL HISTORY

This matter came before an Ad Hoc Hearing Committee on November 17, 2021, for a limited hearing on a Petition for Negotiated Discipline (the "Petition"). The Office of Disciplinary Counsel was represented by Deputy Disciplinary Counsel Julia Porter. Respondent, Tina Greene, appeared *pro se*.

The Hearing Committee has carefully considered the Petition for Negotiated Discipline signed by the parties, the supporting affidavit submitted by Respondent (the "Affidavit"), and the parties' representations during the limited hearing. The Hearing Committee also has fully considered the Chair's *in camera* review of Disciplinary Counsel's files and records and *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, we approve the Petition, find the negotiated discipline of a sixty-day suspension, fully stayed in favor of one year

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\* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website ([www.dcattorneydiscipline.org](http://www.dcattorneydiscipline.org)) to view any subsequent decisions in this case.

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, after full and careful consideration, finds that:

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

2. Respondent is aware that there is currently pending against her an investigation into allegations of misconduct. Tr. 19<sup>1</sup>; Affidavit 1 2.

3. The allegations that were brought to the attention of Disciplinary Counsel were made by Respondent's former client, Jamie Bishop, who alleged that Respondent failed to provide her client with a fee agreement, charged her an unreasonable fee, and disclosed client confidences and secrets. Petition at 1-2.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 19; Affidavit 1 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 September 10, 2010, and assigned Bar number 991933. Respondent is also licensed to practice law in Maryland.

(2) In September 2015, Jamie Bishop filed a complaint against her employer, the Department of Health and Human Services, alleging discrimination. Ms. Bishop initially had counsel but by early 2016, she was proceeding *pro se* before the EEOC.

(3) In March 2017, Respondent agreed to represent Ms. Bishop in her discrimination matter before the EEOC.

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<sup>1</sup> "Tr." Refers to the transcript of the limited hearing held on November 17, 2021.

(4) Respondent did not tell Ms. Bishop what she would charge her for the representation. Respondent never provided Ms. Bishop anything in writing setting forth the basis or rate of the fee, the scope of the representation, and the expenses Ms. Bishop would be responsible to pay.

(5) On March 22, 2017, Respondent entered her appearance as counsel for Ms. Bishop.

(6) In March 2017 and the months that followed, the parties engaged in discovery relating to the discrimination claims.

(7) During this same time, Ms. Bishop continued to pursue a retaliation claim against HHS. On June 30, 2017, HHS issued its report of investigation on the retaliation claim.

(8) On July 3, 2017, Respondent entered her appearance as counsel for Ms. Bishop on her retaliation claim.

(9) The discrimination and retaliation claims were consolidated and the parties sought and were granted an extension of the discovery deadlines previously set by the Administrative Judge (AJ) in the discrimination matter.

(10) On August 28, 2017, counsel for HHS sent Respondent additional discovery requests for information and documents relating to Ms. Bishop's retaliation claims. Respondent emailed Ms. Bishop the discovery requests, and thereafter Ms. Bishop provided additional information and documents to Respondent.

(11) On September 26, 2017, Respondent served discovery requests on HHS relating to the retaliation claim.

(12) The following day, September 27, 2017, counsel for HHS reminded Respondent of the agency's outstanding discovery requests sent on August 28, 2017, and requested responses before Ms. Bishop's deposition, which was scheduled for October 10, 2017.

(13) Counsel for HHS sent Respondent another email on October 3, 2017 requesting Ms. Bishop's responses to the discovery requests and notifying Respondent that the agency would file a motion to compel if the responses were not received.

(14) In the first few days of October 2017, Ms. Bishop sent Respondent additional information and documents responsive to the agency's discovery requests.

(15) On October 5, 2017, counsel for HHS sent Respondent the agency's responses to Ms. Bishop's September 26, 2017 discovery requests.

(16) Also on October 5, 2017, counsel for HHS filed a motion to compel that he emailed to Respondent that day.

(17) On October 5, 2017, Respondent sent counsel for HHS the answers from Ms. Bishop to the outstanding requests for information. Respondent, however, failed to provide responsive documents.

(18) Upon receiving the answers, counsel for HHS advised Respondent that they did not include the documents the agency had requested. On October 6, 2017, counsel for HHS told Respondent that it was still waiting for the requested documents and would not withdraw the motion to compel until they were received.

(19) Respondent did not supplement Ms. Bishop's discovery responses. Nor did Respondent file an opposition or otherwise respond to HHS's motion to compel.

(20) Respondent did not tell Ms. Bishop about HHS's motion to compel. Nor did she tell Ms. Bishop that she had failed to respond to it.

(21) On October 10, 2017, counsel for HHS deposed Ms. Bishop. Respondent attended the deposition and asked some "clarify[ing] questions" after counsel for HHS examined Ms. Bishop. The deposition was completed in one and a half hours.

(22) On October 31, 2017, Respondent deposed three HHS employees. The depositions began at 9:30 a.m. and concluded by 3:40 p.m.

(23) In November 2017, Respondent told Ms. Bishop that she would withdraw from the representation.

(24) On December 11, 2017, Respondent filed an uncontested motion to extend discovery an additional 60 days.

(25) On December 13, 2017, Respondent notified counsel for HHS and the AJ that she was withdrawing as Ms. Bishop's counsel.

(26) When Respondent delivered the file to Ms. Bishop in early January 2018, she did not give Ms. Bishop a bill for her services or make a claim for any fees.

(27) Respondent also failed to advise Ms. Bishop of the outstanding motion to compel, or that Respondent had failed to oppose or respond to it.

(28) On February 3, 2018, the AJ issued an order granting HHS's motion to compel. The AJ sent the order to Ms. Bishop and counsel for HHS. Respondent also received a copy of the order, although she was no longer representing Ms. Bishop.

(29) On February 4, 2018, Respondent emailed Ms. Bishop the AJ's order with no explanation. Prior to receiving the AJ's order, Ms. Bishop had no knowledge of HHS's motion to compel or Respondent's failure to respond to it.

(30) In the Spring of 2018, Ms. Bishop retained Gerald Gilliard to represent her in her EEOC matter.

(31) In the summer of 2018, HHS and Ms. Bishop were involved in settlement negotiations. In connection with the negotiations, Mr. Gilliard asked Respondent what her legal fees were.

(32) Respondent provided Ms. Bishop and Mr. Gilliard an invoice for \$187,423.34. She claimed she had worked 724.6 hours on Ms. Bishop's matter and her fees, based on a billing rate of \$255/hour, were \$184,773. The balance of \$2,650.34 consisted of 82.1 hours (at \$21/hour) for a legal assistant who Ms. Bishop had never met, and expenses of \$926.24.

(33) When Respondent was asked to provide support for her invoice, she produced two documents: (1) a spreadsheet of approximately 26 hours of the assistant's time without dates or descriptions of the services the assistant provided; and (2) a spreadsheet of Respondent's alleged time for a six-week period beginning March 21, 2017, and ending April 30, 2017, which she previously had provided to Ms. Bishop. Respondent's bill for the six-week period was \$59,827.50 - \$17,000 more than the alleged time charges for Respondent (164.6 hours at \$255/hour or \$41,973) and her assistant (26.46 hours at \$21/hour or \$555.66).

(34) Between March 21 and April 30, 2017, the only activity in Ms. Bishop's case was finalizing and serving Ms. Bishop's responses to HHS's outstanding

discovery response and receiving HHS's responses to Ms. Bishop's *pro se* discovery requests.

(35) Respondent did not intend to charge or collect from Ms. Bishop the amount of fees set forth in her invoice. Nor did Respondent seek to charge or collect this amount from HHS.

(36) When Ms. Bishop and Mr. Gilliard advised counsel for HHS and the AJ of Respondent's legal fees, the AJ and counsel for HHS said there had to be a mistake. After they were told that it was not a mistake, they opined that the amount of fees sought was an attempt to defraud the agency.<sup>2</sup>

(37) In April 2019, Mr. Gilliard, as counsel for Ms. Bishop, filed a request for fee arbitration of Respondent's fee with the D.C. Bar's Attorney-Client Arbitration Board.

(38) After receiving the ACAB request, Respondent told Mr. Gilliard that she had forgiven the debt. However, when Mr. Gilliard asked for written confirmation that no fee was due, Respondent failed to provide it.

(39) In the summer of 2019, HHS agreed to settle Ms. Bishop's claims. The settlement included payments for the legal fees of Mr. Gilliard and Ms. Bishop's initial counsel, but not Respondent.

(40) Respondent did not withdraw her requests for fees and the ACAB arbitration remained pending.

(41) In January 2020, Ms. Bishop filed a disciplinary complaint against Respondent.

(42) On February 10, 2020, Disciplinary Counsel sent Respondent a letter enclosing a copy of Ms. Bishop's complaint and asked her to respond to the allegations. Disciplinary Counsel also enclosed a subpoena directing Respondent to provide a copy of Ms. Bishop's client file and any bills, invoices, time sheets, and documents related to the representation.

(43) On March 1, 2020, Respondent emailed Mr. Gilliard proposing a "resolution." Respondent offered a "dismissal" of any claims for fees for the work she did for Ms. Bishop and asked that "ANY AND ALL proceedings through arbitration and actions via the disciplinary board be abandoned."

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<sup>2</sup> This allegation is addressed in the Confidential Appendix, *infra*.

(44) Mr. Gilliard did not respond to Respondent. Instead, he contacted the D.C Bar ethics hotline and thereafter reported Respondent's offer to Disciplinary Counsel.

(45) In September 2020, Respondent agreed to forgive any fees that Ms. Bishop might owe for the representation.

Petition at 2-9.

5. Respondent is agreeing to the disposition because Respondent believes that she cannot successfully defend against disciplinary proceedings based on the stipulated misconduct. Tr. 18; Affidavit 1 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition for Negotiated Discipline. Tr. 22-23; Affidavit 1 7. Those promises and inducements are that Disciplinary Counsel will not pursue any charges arising out of the conduct described in the Petition other than the Rule violations set forth therein, or any other sanction other than the one set forth therein. Petition at 10. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 22-23.

7. Respondent is aware of her right to confer with counsel and is proceeding *pro se*. Tr. 15-16; Affidavit 1 1.

8. Respondent has freely and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 23; Affidavit 1 4, 6.

9. Respondent is not being subjected to coercion or duress. Tr. 23; Affidavit 1 6.

10. Respondent is competent and was not under the influence of any substance or medication that would affect her ability to make informed decisions at the limited hearing. Tr. 16.

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

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

Tr. 15, 25-28; Affidavit 11 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a sixty-day suspension, with all sixty days stayed in favor of a one-year period of probation. During the period of probation, Respondent shall (1) not engage in any misconduct in this or any other jurisdiction; and (2) attend the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond



courses and the Ethics and Trust Accounts CLE. Petition at 10; Tr. 22. Respondent understands that, if she is suspended as a result of a violation of the terms of probation, she must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for her suspension to be deemed effective for purposes of reinstatement. Tr. 27-28.

13. The parties agree that there are two aggravating factors in this case: (1) the amount of fees that Respondent claimed given the nature of the work she performed during the nine months she represented Ms. Bishop, and (2) the lack of time records or other support for the amounts that Respondent charged. Petition at 12.

14. In mitigation of sanction, the parties agree and stipulate that Respondent: (1) acknowledges her misconduct; (2) has cooperated with Disciplinary Counsel; (3) has expressed remorse; (4) has no prior discipline (or disciplinary complaints); and (5) has forgiven any fees that Ms. Bishop may owe for the representation. *Id.*; Tr. 23-24. Respondent gave a statement during the limited hearing, seeking to provide additional context for her misconduct. Tr. 29-34.

15. The complainant was notified of the limited hearing but did not appear and did not provide any written comment. Tr. 11-12.

### III. DISCUSSION

The Hearing Committee shall recommend approval of a 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) that the agreed sanction is justified.

D.C. Bar R. XI, § 12.1(c); *see also* Board Rule 17.5(a)(i)-(iii).

A. Respondent Has Knowingly and Voluntarily Acknowledged the Facts and Misconduct and Agreed to the Stipulated Sanction.

The Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein. Respondent, after being placed under oath, admitted the stipulated facts and charges set forth in the Petition, and denied that she is under duress or has been coerced into entering into this disposition. *See supra* 11 8-9. Respondent understands the implications and consequences of entering into this negotiated discipline. *See supra* 1 11.

Respondent has acknowledged that any and all promises that have been made to her by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the Petition and that there are no other promises or inducements that have been made to her. *See supra* 1 6.

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

The Hearing Committee has carefully reviewed the facts set forth in the Petition and established during the hearing, and we conclude that they support the admissions of misconduct and the agreed-upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because she believes that she could not successfully defend against the misconduct described in the Petition. *See* 1 5.

With regard to the second factor, the Petition states that Respondent violated Rule of Professional Conduct 1.3(a), in that she failed to represent Ms. Bishop diligently. The evidence supports Respondent's admission that she violated Rule 1.3(a) because she failed to (i) provide documents responsive to HHS's discovery requests and (ii) file an opposition or otherwise respond to HHS's motion to compel. *See* 1 4, at (19).

The Petition further states that Respondent violated Rule of Professional Conduct 1.4(a), in that she failed to keep her client reasonably informed about the status of the matter. The evidence supports Respondent's admission that she violated Rule 1.4(a) because she failed to (i) tell her client about the motion to compel and her failure to respond to it, and (ii) advise her client of the hours she was spending on the employment matter and the fees that she would charge based on her time. *See* 1 4, at (4), (20).

The Petition further states that Respondent violated Rule of Professional Conduct 1.5(a), in that she charged an unreasonable fee. The evidence supports Respondent's admission that she violated Rule 1.5(a) when she submitted an invoice

for \$187,423.34, reflecting 724.6 hours of time worked by Respondent plus 82.1 hours of time by a legal assistant, which Respondent was unable to support with contemporaneous time records. *See* 1 4, at (32)-(33).

The Petition further states that Respondent violated Rule of Professional Conduct 1.5(b), in that Respondent failed to provide her client a writing setting forth the basis or rate of her fee, the scope of the representation, and the expenses for which the client would be responsible. The evidence supports Respondent's admission that she violated Rule 1.5(b) because the parties have stipulated that Respondent did not tell Ms. Bishop what she would charge her for the representation, and Respondent never provided Ms. Bishop anything in writing setting forth the basis or rate of the fee, the scope of the representation, and the expenses Ms. Bishop would be responsible to pay. *See* 1 4, at (4).

Finally, the Petition states that Respondent violated Rule of Professional Conduct 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice. The evidence supports Respondent's admission that she violated Rule 8.4(d) because she sought to condition the forgiveness of any fees that might be owed to the client's withdrawal of her disciplinary complaint. *See* 1 4, at (43).

C. The Agreed-Upon Sanction Is Justified.

The third and most complicated factor the Hearing Committee must consider is whether the sanction agreed upon is justified. *See* D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(iii) (explaining that hearing committees should consider "the record as

a whole, including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel's evidence, any circumstances in aggravation and mitigation (including respondent's cooperation with Disciplinary Counsel and acceptance of responsibility), and relevant precedent"); *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam) (providing that a negotiated sanction may not be "unduly lenient"). Based on the record as a whole, including the stipulated circumstances in 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 our review of relevant precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient, for the following reasons:

The stipulated facts, as described above, support Respondent's admissions that she violated Rule 1.3(a) (diligence and zeal); Rule 1.4(a) (communication); Rule 1.5(a) (unreasonable fee); Rule 1.5(b) (writing regarding basis of fee and scope of representation); and Rule 8.4(d) (conduct that seriously interfered with the administration of justice).

The proposed sanction is justified in light of sanctions imposed for cases involving similar misconduct in contested cases. A failure to provide a written fee agreement, standing alone, would typically warrant only an informal admonition. *See, e.g., In re Terrell*, Bar Docket No. 2015-D237 (Letter of Informal Admonition July 8, 2016); *In re Connelly*, Bar Docket No. 2015-D286 (Letter of Informal Admonition Oct. 12, 2016). Similarly, an isolated instance of neglect and a failure

to communicate would normally result in a non-suspensory sanction. *See, e.g., In re Bryant*, Bar Docket No. 2013-D241 (Letter of Informal Admonition Jan. 3, 2014); *In re Schlemmer*, 870 A.2d 76 (D.C. 2005) (public reprimand); *see also In re Chapman*, 962 A.2d 922 (D.C. 2009) (sixty-day suspension, thirty days stayed; lawyer's dishonesty in disciplinary process a significant aggravating factor). Sanctions for unreasonable fees range from a non-suspensory sanction to a lengthy suspension, although the cases in which the Court has imposed a suspensory sanction involve additional misconduct including dishonesty. *See, e.g., In re Baird*, Bar Docket No. 571-02 (BPR, Nov. 10, 2004) (ordering an Informal Admonition); *In re Shaw*, 775 A.2d 1123 (D.C. 2001) (public censure for charging excessive or unreasonable fee; misconduct also included failure to notify an interested party of receipt of funds in violation of Rule 1.15(b)); *In re Bernstein*, 774 A.2d 309 (D.C. 2001) (nine-month suspension for charging an unreasonable fee in workers' compensation case, commingling, and dishonesty); *In re Martin*, 67 A.3d 1032 (D.C. 2013) (eighteen-month suspension with reinstatement subject to disgorgement of fees that ACAB found should be refunded; misconduct included not only charging and collecting excessive fees, but commingling, dishonesty, and conduct seriously interfering with the administration of justice by extracting agreement from the client/complainant to withdraw his disciplinary complaint). The range of sanctions for violations of Rule 8.4(d) range from informal admonitions to lengthy suspensions depending on the nature of the misconduct.

Based on the foregoing, and the circumstances in aggravation, the Hearing Committee concludes that a brief period of suspension is warranted. However, the Hearing Committee concludes that staying the period of suspension in favor of a period of probation with conditions is not unduly lenient given the significant mitigating factors in this case, including that Respondent: (1) acknowledges her misconduct; (2) has cooperated with Disciplinary Counsel; (3) has expressed remorse; (4) has no prior discipline (or disciplinary complaints); and (5) has forgiven any fees that Ms. Bishop may owe for the representation. The Hearing Committee believes that the probationary conditions imposed will help ensure that Respondent does not engage in similar misconduct in the future and that the public is adequately protected.

#### 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 and in the Confidential Appendix, *infra*, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court impose a sixty-day suspension, with all sixty days stayed in favor of a one-year period of probation, and require that, during the period of probation, Respondent shall (1) not engage in any misconduct in this or any other jurisdiction; and (2) attend the D.C. Bar Practice Management Advisory Service's Basic Training & Beyond courses and the Ethics and Trust Accounts CLE.

AD HOC HEARING COMMITTEE

*Benjamin M. Lee*

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Benjamin M. Lee, Esquire  
Chair

*Judy Deason*

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Ms. Judy Deason  
Public Member

*Lisa T. Greenlees*

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Lisa Greenlees, Esquire  
Attorney Member