THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
CELESTINE TATUNG,	:	
	:	Board Docket No. 24-ND-002
Respondent.	:	Disciplinary Docket Nos. 2018-D326,
	:	2020-D088, and 2021-D118
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 976830)	:	

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

I. PROCEDURAL HISTORY

This matter came before Hearing Committee Number Three on December 11, 2024, for a limited hearing on an Amended Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Jeffrey Dill, Esquire, Chair; Cecilia Carter Monahan, Public Member; and Fara Gold, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Caroll Donayre, Esquire. Respondent, Celestine Tatung, Esquire, was represented by Justin Flint, Esquire. The Attorney Member of this Hearing Committee, Ms. Gold, was unable to appear at the limited hearing due to a scheduling conflict, but she viewed a video recording of the proceeding shortly thereafter. With the parties' consent, she has participated in this decision. *See* Tr. 4; Board Rule 7.12.

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

The Hearing Committee has carefully considered the Petition, 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 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, the Hearing Committee finds that the negotiated sanction of a one-year suspension, with six months stayed in favor of one year of probation with conditions, is justified and recommends 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 him an investigation into allegations of misconduct. Tr. 19[1]; Affidavit ¶ 2.

3. The allegations are that Respondent mishandled three separate immigration matters, including by failing to communicate with his clients, failing to prepare them for hearings, and failing to advance their cases. Petition at 1-2.

[1] "Tr." refers to the transcript of the limited hearing held on December 11, 2024.

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

2018-D326: Tatung/Etta

(1) On December 6, 2014, Acha Rylindis Etta entered the United States through San Ysidro, California, and was detained.

(2) Ms. Etta is a native of Cameroon who fled due to political persecution and wanted to pursue her asylum claim.

(3) On May 11, 2015, Ms. Etta applied for asylum in open court.

(4) On June 25, 2015, Ms. Etta was released on bond and relocated to Lanham, Maryland, where she lived for less than one month.

(5) In July 2015, Ms. Etta moved to Washington, D.C. to live with a relative.

(6) This same month, a friend of Ms. Etta introduced her to Respondent.

(7) At the end of July 2015, Ms. Etta retained Respondent to assist her in her immigration case.

(8) Ms. Etta informed Respondent of her current address in Washington, D.C., phone number, and email address.

(9) Respondent agreed to take her case, request a change of venue, and assist her in her asylum case.

(10) Respondent told Ms. Etta that his fee was $5,000.

(11) Respondent did not provide Ms. Etta with a written statement stating his fee and the scope of the representation.

(12) In August 2015, Ms. Etta paid Respondent $500.

(13) Respondent deposited the funds in his Bank of America operating account ending in 0085. This account held both client and non-client funds.

(14) In August 2015, Respondent requested a change of venue in Ms. Etta's case to the Baltimore Immigration Court. Respondent knew that Ms. Etta was

living in Washington, D.C. but stated in the change of venue form that her permanent address was in Lanham, MD and signed the form on behalf of Ms. Etta, without seeking or obtaining her consent.

(15) Because Ms. Etta lived in Washington, D.C., her case should have been transferred to the Arlington Immigration Court.[2]

(16) In September 2015, Ms. Etta paid Respondent $500. These funds were deposited in the Bank of America operating account ending in 0085.

(17) On September 7, 2015, Respondent filed Ms. Etta's asylum application.

(18) On November 8, 2016, the Baltimore Immigration Court issued a hearing notice for Ms. Etta, scheduling her for a master hearing on October 17, 2017. The hearing notice indicates that the notice was sent to Respondent, as the "Alien's Attorney/Representative."

(19) Ms. Etta never received notice of the hearing from Respondent or the court.

(20) In January 2017, Ms. Etta contacted Respondent to assist her with her employment authorization. Respondent met with Ms. Etta to discuss the employment authorization applications but failed to advise her about the upcoming hearing.

(21) Respondent filed employment authorizations on two separate occasions prior to the hearing in which he used Ms. Etta's Washington, D.C. address.

(22) On August 21, 2017, the court rescheduled the hearing from October 17, 2017, to October 24, 2017. The court again sent the hearing notice only to Respondent.

(23) Respondent did not notify Ms. Etta of the hearing date. Respondent did not call her about the hearing or email or mail her a copy of the hearing notice.

(24) On October 24, 2017, Respondent's wife and employee, Mrs. Tatung, appeared at the Baltimore Immigration Court, but without Ms. Etta who had no notice of the hearing.

[2] Certain stipulations have been edited for clarity purposes only.

(25) A few hours before the hearing, Respondent called Ms. Etta who told him that she was in the hospital.

(26) As a result of her failure to appear, the court removed Ms. Etta in absentia.

(27) On August 20, 2018, Ms. Etta filed a disciplinary complaint against Respondent.

(28) When Disciplinary Counsel asked Respondent to produce records accounting for the legal fees he received from Ms. Etta, Respondent did not produce any records.

(29) Respondent's conduct violated the following District of Columbia Rules of Professional Conduct and 8 C.F.R. § 1003.102 grounds of discipline:

a. Rules 1.1(a) and 1.1(b) and/or 8 C.F.R. §1003.102(o) in that Respondent failed to provide competent representation to a client;

b. Rule 1.3(a) and/or 8 C.F.R. § 1003.102(q) in that Respondent failed to represent his client with zeal and diligence within bounds of the law;

c. Rule 1.4(a) and (b) and/or 8 C.F.R. § 1003.102(r) in that Respondent failed to keep his client informed, failed to promptly comply with reasonable requests for information, and failed to explain matters to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation;

d. Rule 1.5(b) in that Respondent did not communicate to his client in writing the basis or rate of the fee and the scope of the representation before or within a reasonable time after commencing the representation;

e. Rule 1.15(a) and (e) in that Respondent failed to maintain complete financial records, failed to hold advances of unearned fees and unincurred costs that were in his possession in connection with a representation separate from his own funds, failed to obtain informed consent from his client to a different arrangement, and thereby engaged in commingling; and

f. Rule 1.15(b) in that Respondent failed to maintain an account with an "approved depository" for entrusted funds.

(30) On February 17, 2019, Ndi Temah's family member, Ms. Philomena, retained Respondent to assist Mr. Temah with his asylum claim.

(31) Respondent prepared a retainer agreement for the asylum representation and set the fee at $5,500.

(32) Respondent requested payment via Cash App.

(33) On March 5, 2019, Respondent filed an I-589 asylum petition at the merits hearing.

(34) Prior to the March 5, 2019 hearing, Respondent had only one telephone conversation with Mr. Temah, Respondent's client. Respondent did not meet with Mr. Temah in person or discuss in detail the contents of the asylum application before filing it.

(35) A merits hearing was scheduled for April 10, 2019.

(36) The night before the hearing, during the evening of April 9, 2019, Respondent had his first and only in-person meeting with Mr. Temah. Ms. Philomena also paid Respondent an additional $500 at the meeting.

(37) Respondent deposited the funds into his Wells Fargo operating account ending in 9339. This account held both client and non-client funds.

(38) Mr. Temah did not feel prepared for the April 10, 2019 hearing, and he also had not been feeling well. Mr. Temah therefore asked Respondent to continue the hearing, explaining to Respondent that he did not feel that they had communicated enough to go forward.

(39) Respondent advised Mr. Temah that if the hearing were postponed, Mr. Temah would have to pay an additional legal fee to Respondent.

(40) The April 10, 2019 hearing was continued to May 21, 2019, because of an imminent snowstorm.

(41) Respondent did not communicate with Mr. Temah either by phone or in person about his case until Mr. Temah saw him at the next hearing on May 21, 2019.

(42) On May 14, 2019, Ms. Philomena paid Respondent $1,000.

(43) On May 23, 2019, Ms. Philomena paid Respondent $500.

(44) Respondent deposited both payments into the Wells Fargo operating account ending in 9339.

(45) On June 21, 2019, the Immigration Judge denied Mr. Temah's asylum claim in a written decision.

(46) Respondent appealed on behalf of Mr. Temah.

(47) On November 19, 2019, the Board of Immigration Appeals (BIA) affirmed the Immigration Judge's findings and dismissed the appeal.

(48) Mr. Temah retained successor counsel to file a Motion to Reopen based on ineffective assistance of counsel.

(49) On April 2, 2020, Mr. Temah filed a disciplinary complaint against Respondent through successor counsel because of Respondent's lack of communication and preparation prior to the immigration hearing.

(50) When Disciplinary Counsel asked Respondent to produce records accounting for the legal fees Respondent received from Mr. Temah and his family, Respondent did not produce such records.

(51) Respondent's conduct violated the following District of Columbia Rules of Professional Conduct and 8 C.F.R. § 1003.102 grounds of discipline:

a. Rule 1.1(a), and/or 8 C.F.R. § 1003.102(o) in that Respondent failed to prepare his client for the upcoming hearing;

b. Rule 1.3(a) and/or 8 C.F.R. §1003.102(q) in that Respondent failed to represent his client with zeal and diligence within bounds of the law;

c. Rule 1.4(a) and (b) and/or 8 C.F.R. §1003.102(r) in that Respondent failed to keep his client informed and failed to explain matters to the extent reasonably necessary to permit his client to make informed decisions regarding the representation;

d. Rule 1.15(a) in that Respondent failed to maintain complete financial records; and

e. Rule 1.15(b) in that Respondent failed to maintain an account with an "approved depository" for entrusted funds.

(52) Mathurin Atud is a native and citizen of Cameroon who entered the United States on June 19, 2018, and requested asylum at the border.

(53) On August 7, 2018, the U.S. Department of Homeland Security (DHS) commenced removal proceedings against Mr. Atud and sought his removal.

(54) While Mr. Atud was detained in an immigration detention center in Aurora, Colorado, he met Respondent.

(55) On September 10, 2018, Mr. Atud filed an asylum application *pro se* while he was still in detention. Mr. Atud was released from custody and his case was transferred to the Immigration Court in Utah where he lived with his sister, Noelia Atud.

(56) Mr. Atud's sister retained Respondent to represent Mr. Atud in his asylum case.

(57) Respondent set the legal fee at $5,500 to represent Mr. Atud.

(58) Respondent did not provide Mr. Atud or his sister with a written statement setting out the basis or rate of this fee or the scope of the representation.

(59) Respondent requested payment via Cash App.

(60) On October 18, 2018, Mr. Atud's sister paid Respondent $1,000 to begin work on Mr. Atud's asylum case.

(61) Respondent deposited the funds into his Wells Fargo operating account ending in 9339.

(62) On November 12, 2018, Respondent entered his appearance as counsel for Mr. Atud.

(63) On November 13, 2018, Ms. Atud paid Respondent an additional $3,000. Respondent deposited the funds in his Wells Fargo operating account ending in 9339.

(64) On November 14, 2018, Respondent filed an Emergency Motion for Telephonic Appearance.

(65) On November 21, 2018, Respondent appeared telephonically to represent Mr. Atud. The court scheduled the asylum hearing for December 17, 2018.

(66) On December 11 and 14, 2018, Ms. Atud made additional payments to Respondent of $1,000 and $500. Respondent deposited the funds into the same Wells Fargo operating account.

(67) Respondent did not prepare or communicate with Mr. Atud prior to the December 17, 2018, asylum hearing.

(68) Respondent failed to request an interpreter for Mr. Atud to testify at the asylum hearing.

(69) On December 18, 2018, the Immigration Judge issued its decision, denied Mr. Atud's asylum claim, and ordered his removal.

(70) In January 2019, Mr. Atud retained Respondent to appeal the denial of his asylum case.

(71) On January 16, 2019, Respondent entered his appearance and filed an appeal to the Immigration Judge's decision with the BIA.

(72) On January 16, 2019, Respondent set the legal fee for the appeal at $3,000.

(73) On February 5, 2019, Ms. Atud paid Respondent $500.

(74) On March 8, 2019, Ms. Atud paid Respondent $500.

(75) Respondent deposited both payments into the Wells Fargo operating account ending in 9339.

(76) Soon thereafter, Mr. Atud told his sister to discharge Respondent because he did not trust that Respondent was actively working on his case.

(77) When Disciplinary Counsel asked Respondent to produce records accounting for the legal fees that Respondent received on behalf of Mr. Atud, Respondent did not produce such records.

(78) Respondent's conduct violated the following District of Columbia Rules of Professional Conduct and 8 C.F.R. § 1003.102 grounds of discipline:

a. Rules 1.1(a) and 1.1(b) and/or 8 C.F.R. § 1003.102(o) in that Respondent failed to provide competent representation to his client;

b. Rule 1.4(a) and (b) and/or 8 C.F.R. § 1003.102(r) in that Respondent failed to keep his client informed, failed to promptly comply with reasonable requests for information, and failed to explain matters to the extent reasonably necessary to permit his client to make informed decisions regarding the representation;

c. Rule 1.5(b) in that Respondent did not communicate to his client in writing the basis or rate of the fee and the scope of the representation before or within a reasonable time after commencing the representation;

d. Rule 1.15(a) and (e) in that Respondent failed to maintain complete financial records, failed to hold advances of unearned fees and unincurred costs that were in his possession in connection with a representation separate from his own funds, failed to obtain informed consent from his client to a different arrangement and thereby engaged in commingling; and

e. Rule 1.15(b) in that Respondent failed to maintain an account with an "approved depository" for entrusted funds.

Petition at 3-15.

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

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Affidavit ¶ 7. Those promises are that Disciplinary Counsel will not pursue any charges or sanction other than what is set forth in the Petition. Petition at 15. Respondent confirmed during the limited hearing that there

have been no other promises or inducements made other than those set forth in the Petition. Tr. 27.

7. Respondent has conferred with his counsel. Tr. 12; Affidavit ¶ 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. 20-25, 27; Affidavit ¶¶ 4, 6.

9. Respondent is not being subjected to coercion or duress. Tr. 27; 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. 13.

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

a) he has the right to consult with counsel prior to entering this negotiated disposition;

b) he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;

c) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;

d) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;

e) the negotiated disposition, if approved, may affect his present and future ability to practice law;

f) the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and

> g) any sworn statement made 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. 15-18; Affidavit ¶¶ 9-10, 12.

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

> (1) Respondent must take three hours of pre-approved continuing legal education related to the maintenance of trust accounts, record keeping, and/or safekeeping client property. Respondent must take three hours of pre-approved continuing legal education in Immigration Law. Respondent must certify and provide documentary proof that he has met these requirements to the Office of Disciplinary Counsel within six months of the date of the Court's final order [approving the Petition.]
>
> (2) Respondent will refund all the fees he received from the three clients and will do so during his one-year suspension. If he fails to make restitution, his suspension will continue until he does so.

Petition at 15-16; Tr. 25-26.

During the limited hearing, Disciplinary Counsel clarified that the one-year term of probation will begin following Respondent's six-month served suspension and that Respondent will have one year from the Court's order approving the Petition to make restitution. Tr. 26. If Respondent violates either of the conditions of probation, Disciplinary Counsel will seek to revoke his probation and require Respondent to serve the stayed six-month suspension with reinstatement conditioned on his payment of refunds. Tr. 26. Respondent agreed with that explanation. Tr. 26-27. Because restitution is a condition of probation with which Respondent has one year to comply, the Hearing Committee understands that Respondent may resume

the practice of law six months after his suspension begins, even if he has not paid restitution, unless his probation has been revoked.

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. 30; Affidavit ¶ 13.

13. The parties have stipulated to the following circumstances in aggravation, which the Hearing Committee has taken into consideration:

> Respondent has prior discipline. On August 15, 2023, the Supreme Court of Maryland issued Respondent a reprimand for a violation of Rule 1.15 (safekeeping property) of the District of Columbia Rules of Professional Conduct and Federal Immigration Rules of Professional Conduct of Practitioners, 8 C.F.R. § 1003.102(n) (conduct prejudicial to the administration of justice), (q)(1) and (2) (diligence), and (r)(1)-(3) (communication). The reprimand involved a matter different from the three matters discussed in this petition.

Petition at 18; Tr. 29.

14. The parties have stipulated to the following circumstances in mitigation, which the Hearing Committee has taken into consideration: Respondent "(1) acknowledges his misconduct; (2) has cooperated with Disciplinary Counsel; (3) has expressed remorse; and (4) has agreed to make restitution to the clients." Petition at 18; Tr. 28. During the limited hearing, Respondent also cited in mitigation of sanction his more than 10 years of experience in immigration law, his four U.S. citizen children who depend on him, his association with a large Cameroonian community, his law-abiding record, and his belief that he will come out of this experience a better attorney. Tr. 28-29.

15. The complainants were notified of the limited hearing but did not appear and did not provide any written comment. Tr. 9-10.

III. DISCUSSION

The Hearing Committee recommends approval of a petition for negotiated discipline, having found that:

> (1) The respondent 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) (stating that the Hearing Committee "shall recommend to the Court approval of a petition for negotiated disposition if it finds" that the foregoing criteria have been met).

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 was agreeing to the disposition as a result of duress or coercion. *See supra* Section II, ¶¶ 8-9. Respondent understood the implications and consequences of entering into this negotiated discipline. *See supra* Section II, ¶ 11.

Respondent 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 no other promises or inducements have been made to him. *See supra* Section II, ¶ 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 it supports Respondent's admission of misconduct and the agreed-upon sanction. Moreover, Respondent agreed to this negotiated sanction because he believes that he could not successfully defend against the misconduct described in the Petition. *See supra* Section II, ¶ 5.

The Petition states that Respondent violated certain D.C. Rules of Professional Conduct "and/or" the corresponding Rules governing practitioners in immigration courts (8 C.F.R. § 1003.102). Pursuant to D.C. Rule 8.5(b)(1), for "conduct in connection with a matter pending before a tribunal," the applicable disciplinary rules are "the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise." Here, all of Respondent's misconduct occurred in connection with matters pending before immigration courts; thus, where D.C. rules are listed and immigration court rules are listed in the alternative, the Committee finds that the immigration court rules were violated. Where there is no applicable rule under 8 C.F.R. § 1003.102, the D.C. Rules apply pursuant to D.C.

Rule 8.5(b)(2)(ii).[3] *See In re Osemene*, Board Docket No. 18-BD-105, at 34-36 (BPR May 31, 2022) (citing *Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances*, 73 Fed. Reg. 76914, 76915 (Dec. 18, 2008)), *recommendation adopted after no exceptions filed*, 277 A.3d 1271 (D.C. 2022) (per curiam).

First, the Petition states that Respondent violated D.C. Rule 1.1(a) and (b) and/or 8 C.F.R. § 1003.102(o), in that he failed to provide competent representation to his clients.[4] The stipulations support Respondent's admission that he violated 8 C.F.R. § 1003.102(o) (applicable under D.C. Rule 8.5(b)(1)) in all three matters. In the first matter involving Ms. Etta (the Etta matter), Respondent filed a motion for change of venue inconsistent with the client's residence and without client consent. He was aware of the client's correct address in Washington, D.C., as he filed employment authorizations with the D.C. address. In the second matter involving Mr. Temah (the Temah matter), Respondent failed to prepare his client for scheduled

[3] D.C. Rule of Professional Conduct 8.5(b)(2)(ii) provides that "If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct." Respondent's address on record with the Bar is in Maryland, but he is only licensed in the District of Columbia and Minnesota. Given the close proximity of Respondent's office to the District of Columbia, and the lack of any reference to Minnesota in the Specification of Charges, we apply the D.C. Rules to any conduct that does not fall within the scope of 8 C.F.R. § 1003.102.

[4] In the matter involving Mr. Temah, the parties agree that Respondent violated D.C. Rule 1.1(a) and/or 8 C.F.R. § 1003.102(o), but not D.C. Rule 1.1(b).

hearings. In the third matter, involving Mr. Atud (the Atud matter), Respondent both failed to properly prepare for a scheduled hearing and to request an interpreter for the hearing.

Second, the Petition states that Respondent violated D.C. Rule 1.3(a) and/or 8 C.F.R. § 1003.102(q), in that he failed to represent his clients with zeal and diligence within the bounds of the law. The stipulations support Respondent's admission that he violated 8 C.F.R. § 1003.102(q) (applicable under D.C. Rule 8.5(b)(1)) in the Etta and Temah matters because of the facts previously cited.

Third, the Petition states that Respondent violated D.C. Rules 1.4(a) and (b) and/or 8 C.F.R. § 1003.102(r), in that he failed to keep his clients reasonably informed, failed to promptly comply with reasonable requests for information, and failed to explain matters to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation. The stipulations support Respondent's admission that he violated 8 C.F.R. § 1003.102(r) (applicable under D.C. Rule 8.5(b)(1)) in all three matters. In the Etta matter, Respondent failed to notify the client of scheduled hearings and seek consent for a change of venue. In the Temah matter, Respondent filed an asylum claim without discussing the details with the client and did not request a continuance when the client expressed doubts about being adequately prepared. In the Atud matter, Respondent failed to prepare the client for his asylum hearing or otherwise adequately communicate with him.

Fourth, the Petition states that Respondent violated D.C. Rule 1.5(b), in that he failed to communicate to his clients in writing the basis or rate of the fee and the

scope of the representation before or within a reasonable time after commencing the representation. The stipulations support Respondent's admission that he violated D.C. Rule 1.5(b) in the Etta and Atud matters because he failed to provide written fee agreements.

Fifth, the Petition states that Respondent violated D.C. Rules 1.15(a) and (e), in that he failed to maintain complete financial records, failed to hold advances of unearned fees and unincurred costs that were in his possession in connection with the representations separate from his own funds, and failed to obtain informed consent from the client to a different arrangement, thereby engaging in commingling of funds. The stipulations support Respondent's admission that he violated D.C. Rule 1.15(a) in all three matters because Respondent admitted to failing to maintain financial records related to the handling of these matters. The stipulations also support Respondent's admission to violating D.C. Rules 1.15(a) and (e) in the Etta and Atud matters because Respondent admitted to failing to maintain a client trust account and depositing unearned fees into the Bank of America and Wells Fargo operating accounts that also contained non-client funds.

Finally, the Petition states that Respondent violated D.C. Rule 1.15(b), in that he failed to maintain an account with an approved depository for entrusted funds. The stipulations support Respondent's admission that he violated D.C. Rule 1.15(b) in all three matters because he admitted he failed to maintain a client trust account.

C. The Agreed-Upon Sanction Is Justified.

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 the Committee's review of relevant precedent, the Hearing Committee concludes that the agreed-upon sanction is justified and not unduly lenient. *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").

The Committee's task is to determine whether the proposed negotiated sanction is justified under the circumstances of this matter, not whether it is as consistent as possible with sanctions imposed in contested matters involving comparable misconduct. *See In re Beane*, Bar Docket Nos. 340-07, *et al.*, at 7-10 (BPR Dec. 22, 2009) ("*Beane I*") (noting that the agreed upon sanction in negotiated discipline is not necessarily equivalent to the sanction that would be imposed after a contested proceeding), *recommendation adopted*, No. 09-BG-862 (D.C. Jan. 21, 2010). Yet sanctions in negotiated discipline cases should not be "completely

unmoored" from the range of sanctions that might otherwise be imposed. *In re Mensah*, 262 A.3d 1100, 1104 (D.C. 2021) (per curiam). The Committee therefore considered the seven factors that the Court of Appeals has prescribed for sanction determinations in contested matters as part of its analysis.[5] *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (providing that the factors to consider in determining the appropriate sanction in a contested matter include (1) the seriousness of the misconduct, (2) the presence of misrepresentation or dishonesty, (3) Respondent's attitude toward the underlying conduct, (4) prior disciplinary violations, (5) aggravating and mitigating circumstances, (6) whether additional provisions of the Rules of Professional Conduct were violated, and (7) prejudice to the client (citing *In re Elgin*, 918 A.2d 362, 276 (D.C. 2007)).

The negotiated sanction comports with all seven factors. Based on the record, Respondent does not appear to have been dishonest regarding the matters as he had taken responsibility for his misconduct, he showed contrition at the limited hearing, he had agreed to make full restitution, ensuring no further financial harm to the clients who are the subjects of this matter, and it appears that he had not violated any other Rules of Professional Conduct (or corresponding rules under the C.F.R.). The Committee has also thoroughly considered aggravating factors in the form of prior discipline,[6] as well as the seriousness of the Respondent's misconduct. With regard

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[5] The Hearing Committee also gave weight and consideration to the cases cited in the Petition at 16-18 concerning similar facts as these matters and the sanctions imposed in those cases.

[6] *See also* Confidential Appendix.

to the latter, it should be noted that there is range of sanctions available for matters involving commingling and a failure to maintain complete financial records of entrusted funds in violation of Rule 1.15(a). *See*, *e.g.*, *In re Thomas-Edwards*, 967 A.2d 178, 179 (D.C. 2009) (per curiam) (public censure for, *inter alia*, commingling and failing to keep complete financial records); *In re Mott*, 886 A.2d 535 (D.C. 2005) (per curiam) (public censure for, *inter alia*, failing to keep complete financial records); *In re Graham*, 795 A.2d 51, 52 (D.C. 2002) (per curiam) (public censure for commingling over several months and failing to promptly disburse entrusted funds); *In re Ukwu*, 712 A.2d 502 (D.C. 1998) (per curiam) (30-day stayed suspension plus training for commingling and failing to maintain records); Order, *In re Klass*, Board Docket No. 13-BD-041, at 1 (BPR Dec. 22, 2014) (reprimand for commingling fee advance with operating funds and failing to maintain complete trust account records). Considering Respondent's conduct in total and all aforementioned factors, the negotiated sanction is appropriate. In reaching its decision, the Hearing Committee also considered, based on its opportunity to observe Respondent and to hear from him during the course of the limited hearing, that Respondent recognizes the wrongfulness of his actions and has expressed remorse.

In addition, the negotiated sanction falls within or close to the range of sanctions that have been imposed for comparable misconduct in contested cases. *See*, *e.g.*, *In re Brown*, 310 A.3d 1036, 1040-41, 1051 (D.C. 2024) (sixty-day suspension with fitness and restitution for lack of competence, neglect, failure to

communicate, charging an unreasonable fee, and failure to return unearned fees, aggravated by prior discipline and failure to acknowledge misconduct); *In re Salgado*, Board Docket No. 16-BD-041, at 29-30, 32-33, 48-50 (BPR Oct. 23, 2018) (recommending thirty-day suspension with fitness requirement for inadequate record-keeping and commingling, where the respondent intentionally kept personal funds in his trust account to avoid misappropriation; though the Board believed that a thirty-day suspension, uncontested by the parties, was lenient by itself, it was satisfied that the fitness requirement would adequately protect the public), *recommendation adopted after no exceptions filed*, 207 A.3d 168 (D.C. 2019) (per curiam); *In re Fox*, 35 A.3d 441 (D.C. 2012) (per curiam) (forty-five day suspension for lack of competence, neglect, and failure to communicate with a client, where the respondent failed to pursue a claim after drafting a complaint); *In re Shannon*, Board Docket No. 09-BD-094, at 1-2, 33, 40 (BPR Nov. 27, 2012) (ninety-day suspension for lack of competence, failure to provide a written fee agreement, improper business transaction with a client, and failure to maintain complete records in connection with the respondent's provision of estate planning services to an elderly client), *recommendation adopted after no exceptions filed*, 70 A.3d 1212 (D.C. 2013) (per curiam); *see also*, *e.g.*, *In re McNeely*, 174 A.3d 865 (D.C. 2017) (approving petition for negotiated discipline and imposing a thirty-day suspension for lack of competence, neglect, failure to communicate, and commingling, arising from the respondent's representation of joint clients in connection with a patent application); *In re Bah*, Bar Docket No. 004-07, at 4-11 (HC Rpt. May 17, 2010) (recommending

approval of petition for negotiated discipline that imposes a thirty-day suspension, stayed in favor of probation with conditions, for neglect of an immigration matter, leading to the dismissal of an appeal, as well as failure to communicate with the client and failure to provide a written fee agreement), *recommendation adopted*, 999 A.2d 21 (D.C. 2010) (per curiam). Although the aforementioned cases resulted in shorter suspensions than that contemplated by the disposition in this case, the Committee finds that the negotiated sanction is nonetheless justified. Respondent engaged in multiple incidents of misconduct in three different immigration cases, aggravated by prior discipline for a similar violation in Maryland.

Having carefully reviewed the agreed-upon facts in this matter, having heard from and questioned Respondent during the hearing, and taking into account the pertinent sanctions caselaw cited above and in the Petition, the Hearing Committee concludes the negotiated sanction is justified.

IV. CONCLUSION AND RECOMMENDATION

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated sanction be approved and that the Court impose a one-year suspension, six months stayed, followed by one year of probation with the following conditions:

(1) within six months of the Court's order approving the Petition, Respondent must certify and provide documentary proof to Disciplinary Counsel that he has taken six hours of pre-approved continuing legal education: three hours related to

the maintenance of trust accounts, record keeping, and/or safekeeping client property, and three hours related to immigration law; and

(2) within one year of the Court's order approving the Petition, Respondent must provide full refunds of all fees he received from all three clients within one year of the effective date of the Court's order of discipline.

If Respondent violates either of the conditions of probation, Disciplinary Counsel will seek to revoke his probation and require Respondent to serve the stayed six-month suspension with reinstatement conditioned on his payment of refunds.

We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

HEARING COMMITTEE NUMBER THREE

Jeffrey Dill

Jeffrey Dill, Esquire
Chair

Cecilia DC Monahan

Cecilia Carter Monahan
Public Member

Fara Gold

Fara Gold, Esquire
Attorney Member