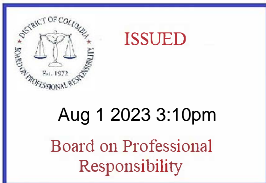

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
AMANDA HAINES,	:	D.C. App. No. 23-BG-637
	:	Board Docket No. 20-BD-041
Respondent.	:	Disciplinary Docket No. 2016-D261
	:	
An Attorney Licensed to Practice Law in New York	:	
	:	
FERNANDO CAMPOAMOR-SANCHEZ,	:	D.C. App. No. 23-BG-637
	:	Board Docket No. 20-BD-041
Respondent.	:	Disciplinary Docket No. 2016-D262
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 451210)	:	

ERRATA TO THE ORDER AND REPORT AND RECOMMENDATION
OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

The Board on Professional Responsibility, through its Executive Attorney, hereby submits this Errata to the tagline in the Order and Report and Recommendation of the Board on Professional Responsibility, filed on July 31, 2023.

- Page 53, the tagline "All members of the Board concur in this Report and Recommendation" corrected to read "All members of the Board concur in this Report and Recommendation, except Ms. Larkin, who did not participate.

The Report, incorporating the corrections noted above, is appended to this Errata.

Respectfully submitted,

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THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

ISSUED
July 31, 2023
Corrected
August 1, 2023

In the Matter of: AMANDA HAINES, Respondent An Attorney Licensed to Practice Law in New York State	Board Docket No. 20-BD-041 Disciplinary Docket No. 2016-D261
FERNANDO CAMPOAMOR-SANCHEZ Respondent Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 451210)	Board Docket No. 20-BD-041 Disciplinary Docket No. 2016-D262

ORDER AND REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

Rule 3.8 of the D.C. Rules of Professional Conduct sets forth the "Special Responsibilities of a Prosecutor." Rule 3.8(e) provides, in pertinent part, that a prosecutor in a criminal case shall not "[i]ntentionally fail to disclose to the defense, upon request and at a time when use by the defense is reasonably feasible, any evidence or information that the prosecutor knows or reasonably should know tends

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

to negate the guilt of the accused or to mitigate the offense . . . ." As the Board has stated:

> [A] violation of Rule 3.8(e) undermines our entire system of criminal justice. Prosecutors are not merely advocates; they are called upon to make sure that criminal trials are fair to the accused and that the machinery of prosecution is credible. At its most severe, a violation of Rule 3.8(e) can mean that an innocent person languishes in prison . . . .

In re Dobbie, Board Docket No. 19-BD-018, at 37-38 (BPR Jan. 13, 2021).

Respondents Haines and Campoamor-Sanchez are charged with the failure to timely disclose exculpatory evidence to defense counsel, in violation of Rule 3.8(e); for this same alleged misconduct, both are also charged with engaging in conduct that seriously interferes with the administration of justice, in violation of Rule 8.4(d). Respondent Haines is also charged with knowingly disclosing confidential government information, in violation of Rule 1.6(a).

We find that Disciplinary Counsel proved by clear and convincing evidence that Respondent Haines violated Rules 1.6(a), 3.8(e), and 8.4(d), and we recommend that she be suspended for sixty days. For the reasons discussed herein, we dismiss all charges against Respondent Campoamor-Sanchez.[1]

II. KEY FINDINGS OF FACT

The Board has reviewed the Hearing Committee's findings of facts and adopts the findings, with some additions and revisions. *See* Board Rule 13.7 ("When

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[1] *See* D.C. Bar R. XI, § 9(f) ("If the Board . . . dismisses the petition, the attorney or Disciplinary Counsel, or both, may file with the Court exceptions to the Board's decision within twenty days from the date of service of a copy thereof.").

making its own findings of fact, the Board shall employ a 'clear and convincing evidence' standard."). The Board finds as follows:

Respondents Amanda Haines and Fernando Campoamor-Sanchez were Assistant United States Attorneys responsible for prosecuting Ingmar Guandique for the murder of a congressional intern, Chandra Levy, who had disappeared in 2001 and whose remains were found in Rock Creek Park a year later. FF 1-4.[2] The trial of Ingmar Guandique took place in October and November 2010. Jt. Stip. 6-8.[3] At that time, Respondent Haines, who began working as an Assistant United States Attorney for the District of Columbia in 1998, was a seasoned trial lawyer.[4] Beginning in about 2007 she began working primarily on unsolved homicide cases involving female victims. FF 3. Respondent Campoamor-Sanchez joined the D.C.

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[2] "FF" refers to the cited Hearing Committee findings of fact.

[3] "Jt. Stip." refers to the stipulations of fact between Disciplinary Counsel and both Respondents.

[4] Respondent Haines is admitted to practice in New York. She is subject to the disciplinary authority of the Board and Court pursuant to D.C. Bar Rule XI, § 1(a). This provision states:

> All members of the District of Columbia Bar, all persons appearing or participating pro hac vice in any proceeding in accordance with Rule 49(c)(1) of the General Rules of this Court, all persons licensed by this Court Special Legal Consultants under Rule 46(c)(4), all new and visiting clinical professors providing services pursuant to Rule 48(c)(4), and all persons who have been suspended or disbarred by this Court are subject to the disciplinary jurisdiction of this Court and its Board on Professional Responsibility . . . .

U.S. Attorney's Office in 2004 and was assigned to its homicide section in September 2007.[5] FF 4.

At the center of this disciplinary case is a three-page letter, dated February 23, 2009, that federal inmate Miguel Zaldivar had sent to law enforcement (the "Zaldivar letter"). FF 6-7. This letter detailed information about the Levy case provided to Zaldivar by another federal inmate, Armando Morales. Morales provided this information to Zaldivar for the specific purpose of inclusion in the letter to law enforcement. At the time this letter was written, Morales and Zaldivar were incarcerated in the same facility, and Morales considered Zaldivar to be his "mentor." FF 7-8, 59. Morales ultimately served as a key prosecution witness in the trial of Ingmar Guandique for the murder of Chandra Levy. *See, e.g.*, FF 49, 61, 65.

The first page of the Zaldivar letter provided background information about Armando Morales, including, among other things, that Morales: (i) had seen Levy's case on CNN; (ii) knew who killed Chandra Levy; (iii) was a founder of the Fresno Bulldogs, a notorious gang closely associated with the "Mexican Mafia"; (iv) was a drop-out from the gang; (v) had "debriefed to law enforcement about his gang involvement"; and (vi) was willing to help law enforcement with the Levy case. FF 7; *see also* DCX 6 at 88.[6]

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[5] Respondent Campoamor-Sanchez, assigned Bar number 451210, was admitted to the D.C. Bar on June 3, 1996.

[6] "DCX" refers to Disciplinary Counsel's exhibits.

The second and third pages of the Zaldivar letter contained text, written in the form of a narrative by Morales, in which Zaldivar "hope[d] . . . to capture the essence" of what Morales knew about the murder as Morales had told it to Zaldivar. DCX 5 at 49. The narrative recited that, while Ingmar Guandique and Morales shared a cell three years earlier in 2006, Guandique told Morales he had attacked Chandra Levy and was afraid he would be charged with her murder. *Id.* at 49-50.

Respondents received the Zaldivar letter on March 24, 2009 and reviewed it shortly after receipt. FF 6. When Respondents received the Zaldivar letter there was a long-standing but still open grand jury investigation into the Levy case. Tr. 1025:21-1026:13 (Campoamor-Sanchez). Respondents verified that Morales and Guandique had been in prison together in 2006, and Respondent Campoamor-Sanchez arranged to bring Morales to the District of Columbia to be interviewed and to testify before the grand jury. Tr. 1028:8-1029:5; 1041:13-1042:5. (Campoamor-Sanchez). Before the grand jury on April 20, 2009, Respondent Campoamor-Sanchez asked Morales, "So why is it that you're telling us now [i.e., in April 2009] when Guandique told you back in 2006 [that he had attacked Chandra Levy]?" DCX 6 at 87-88.

In response, Morales claimed that he had experienced a kind of conversion well after Guandique confessed to him. At the time of the confession, Morales testified he "didn't try to do things right." FF 13. He testified that he had later participated in a prison skills program that "chang[ed his] value system" and, as a result, he was "trying to become a better man, a better person." *Id.* at 88.

Morales asserted that, after hearing reports about Guandique on CNN, Zaldivar – whom Morales had told "about Chandra [Levy] and that dude Guandique" (*id.*) – asked him, "Do you want to do something about it?". *Id.* at 89. Morales testified that, in response to Zaldivar's question, he "got nervous" because he had "never done that before . . . never done nothing like that" and did not trust the police. *Id.* at 89; *see also* Tr. 1062:10-15, 1272:3-17 (Campoamor-Sanchez).

Respondent Campoamor-Sanchez offered the entire Zaldivar letter – all three pages – as a grand jury exhibit, marking it with a red exhibit sticker; but he did not ask Morales about the statement on the first page of the letter that Morales had previously "debriefed to law enforcement about his gang involvement." FF 15. *See generally* Tr. 1066:7-1077:4 (Campoamor-Sanchez). Therefore, the grand jury transcript did not include the fact that, according to the Zaldivar letter, Morales had debriefed to law enforcement before coming forward in the Levy investigation. FF 15. During his grand jury testimony, Morales reviewed all three pages of the Zaldivar letter and, with the exception of a clarification concerning the content of his alleged conversations with Guandique, confirmed the accuracy of the information contained in the letter that Zaldivar had authored. DCX 6 at 91-95.

In October 2009, roughly a year before the Guandique trial started, Respondents provided the defense with notice of admissions by Guandique that they might offer at trial. FF 19. That notice did not disclose the names of witnesses and provided only brief summaries of their anticipated testimony. *Id.* In an effort to investigate the witnesses' backgrounds, the defense made repeated attempts to

learn the names of the confession witnesses. FF 20. The defense asked for more time to investigate the confession witnesses because those witnesses were incarcerated in jurisdictions around the country. FF 23. On grounds that there might be danger to the witnesses and that they had no obligation to disclose non-material information that was potentially favorable, Respondents resisted those efforts. FF 20. Respondents represented to Judge Fisher, the trial judge, that there was no need for the court to order them to produce potentially exculpatory information because they had been voluntarily making those disclosures and would continue to do so. FF 21; *see* DCX 15 at 222. In their written opposition to the defense counsel's motion for a pre-trial *Brady* order, Respondents argued that "solely impeaching" information did not need to be disclosed until two weeks before trial, but agreed that if impeachment evidence required investigation, they would produce it in advance or explain why they were unable to do so. FF 22; *see* FCSX 18.[7]

On July 16, 2010, Judge Fisher ordered that no later than two weeks before trial, Respondents were required to produce to defense counsel, with regard to "the confession witnesses who may have been cellmates with Mr. Guandique": (1) impeachable convictions, (2) materially inconsistent statements, and (3) mental issues that would go to capacity. RJX 4 at 22-23;[8] FF 24. Ultimately, because the

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[7] "FCSX" refers to Respondent Campoamor-Sanchez's exhibits.

[8] "RJX" refers to Respondents' joint exhibits.

original trial date was continued for two weeks, this order meant the letter disclosing this information (the "*Giglio* letter"[9]) was due on October 4, 2010. FF 25.

Less than two weeks after Judge Fisher's order regarding the *Giglio* letter – on July 29, 2010 – the Court of Appeals issued its opinion in *Zanders v. United States*, 999 A.2d 149 (D.C. 2010), in which Respondent Haines appeared as trial counsel and as appellate counsel of record. There, in an effort to obtain a new trial, the *Zanders* appellant challenged the government's failure to disclose, *inter alia*, "potentially significant exculpatory information" until two weeks before the scheduled trial date. 999 A.2d at 161, 163. The government had explained to defense counsel that the disclosure was being made "out of an excess of caution," and that its own investigation proved the evidence to be fruitless. *Id.* at 163 (internal quotations omitted). Given that defense counsel did not seek a continuance of the scheduled trial date to conduct further investigation and defense counsel's failure to raise the issue again during trial, the *Zanders* Court concluded that reversal of the conviction was not warranted because the appellant failed to meet his burden of demonstrating that, had the evidence been disclosed earlier, the result of the

[9] As discussed below, *Giglio* information includes evidence – including, but not limited to, prior inconsistent statements – that could be used to impeach the credibility of a government witness because such evidence is considered exculpatory or at least as having the potential to be exculpatory. *See Giglio v. United States*, 405 U.S. 150 (1972).

proceeding would have been different. *Id.* at 164. Nonetheless, that Court took the opportunity to remind the government of its disclosure obligations:

> It should by now be clear that in making judgments about whether to disclose potentially exculpatory information, the guiding principle must be that the critical task of evaluating the usefulness and exculpatory value of the information is a matter primarily for defense counsel, who has a different perspective and interest than the police or prosecutor. *See Pérez v. United States*, 968 A.2d 39, 66 (D.C. 2009) (noting that *Brady* disclosures are "for the purpose of allowing defense counsel an opportunity to investigate the facts of the case and, with the help of the defendant, craft an appropriate defense"). It is not for the prosecutor to decide not to disclose information that is on its face exculpatory based on an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder. Any doubts should be resolved in favor of full disclosure made well before the scheduled trial date, unless there is good reason to do otherwise (such as substantiated grounds to fear witness intimidation or risk to the safety of witnesses), upon request by the defense.

Id. at 163-64.

The Court's admonition in *Zanders* is relevant to our legal and sanctions discussions below.

On September 21, 2010, Respondent Campoamor-Sanchez emailed to Respondent Haines a first, rough draft of the *Giglio* letter concerning the five incarcerated witnesses, including Morales. FF 27. This draft did not include a disclosure concerning Morales' prior debriefing to law enforcement, as described on page one of the Zaldivar letter. On September 22, 2010, Respondent Campoamor-Sanchez emailed Respondent Haines a revised draft of the *Giglio* letter, adding the names of three additional witnesses and a sentence concerning the absence of evidence of Morales' mental health issues. FF 28. This draft, like the previous draft,

did not include a disclosure concerning Morales' debriefing. *Id.* Campoamor-Sanchez's second draft, like his first draft, was unfinished, as evidenced by errors, sentence fragments, notes, and questions remaining in the documents. FF 29.

That same day, on September 22, 2010, Respondent Haines, as lead counsel, assumed responsibility for finalizing and sending the *Giglio* letter to defense counsel. FF 30. Respondent Haines revised the draft *Giglio* letter by including the disclosures already contained in the previous draft but added a statement that Morales had received no benefit in exchange for testifying. In its final form, the letter did not disclose the statement in the Zaldivar letter that Morales had a prior debriefing with law enforcement. FF 31. Respondent Haines alone determined the final content of this *Giglio* letter. FF 33.

The final *Giglio* letter was sent to defense counsel on October 4, 2010, the date consistent with the requirement of Judge Fisher's July 16, 2010 order. FF 31. Defense counsel learned Morales' name for the first time when they received the letter. FF 34. In the twelve days that elapsed between the second draft that Respondent Campoamor-Sanchez sent to Respondent Haines and the final version of the letter sent to defense counsel, Respondent Campoamor-Sanchez had no further responsibility for the letter. He did not discuss the timing of the letter with Respondent Haines, nor make edits to it, nor review nor approve any edits to it. He did not see the final version of the *Giglio* letter until more than one year following the trial. FF 33. Though he testified at the hearing in this matter that he does not believe he would have included a disclosure concerning Morales' prior debriefing

in the letter, he had no direct knowledge that Respondent Haines failed to disclose that information in the *Giglio* letter. FF 32.

On October 5, 2010, the very next day after she sent the *Giglio* letter to the defense – and thirteen days before trial – Respondent Haines met with Morales, for the first time, to prepare his trial testimony. She brought an outline of questions to ask him, including whether he had testified before. FF 38. She asked Morales "Well, have you ever done this before? Have you ever worked with the government or cooperated or done anything like this before?" Tr. 1513:17-20 (Haines). When Morales said, "No," she "confronted" him about the fact – stated on the first page of the Zaldivar letter – of his debriefing to law enforcement. Tr. 1513:14-1514:3, 1691:2-10 (Haines). In response, Morales explained to Respondent Haines, in sum, that the debriefing described on page one of the Zaldivar letter was "not the same thing," "was nothing." Tr. 1514:5-6 (Haines). He explained that he had debriefed in Atlanta with a California local police department's gang unit about his own activities and refused to tell them about the criminal activity of other people. She then asked him to explain how he felt about testifying. In response, he told her that "[b]eing a snitch, testifying is a death sentence" and that he was afraid of the repercussions of doing so but was trying to become a better man. Tr. 1513-17 (Haines); *see* FF 71. Before meeting with Morales on October 5, 2010, Respondent Haines had read the transcript of his grand jury testimony and had read the Zaldivar

letter.[10] Tr. 1503:13-15 (Haines). The outline of questions Respondent Haines used at the October 5, 2010 trial prep session was essentially an outline of the questions she intended to ask – and of the testimony she intended to elicit – at trial, and that outline tracked Morales' grand jury testimony: "I had actually prepared the questions I was going to ask him at trial based on his grand jury testimony. So I was literally tracking his say [sic] grand jury testimony question by question." Tr. 1504:21-1505:3 (Haines); *see also* Tr. 1513:6-7, Tr. 1692:10-14 (Haines). At this time before the trial, therefore, Respondent Haines intended the trial testimony of Armando Morales to include his conversion – or "changed value system" – narrative as an explanation for why he delayed for almost three years in coming forward about Ingmar Guandique's alleged confession to him, a narrative that was, in fact and as discussed below, elicited and relied on by the prosecution at trial. *See* Tr. 1273:11-14 (Campoamor-Sanchez); Tr. 1516:2-9, 1680:1-8 (Haines).

Following this initial meeting with Morales, Respondent Haines worked with members of the U.S. Attorney's Office staff to verify when Morales was in Atlanta and to determine whether there was evidence that contradicted his claim that he had not previously requested or received a cooperation benefit in exchange for his cooperation with law enforcement. Tr. 1522:3-1527:5 (Haines).

Respondent Haines met with Morales before trial a second time, on October 30, 2010, and obtained additional information about his prior debriefing with law

[10] Respondent Haines received the Zaldivar letter by email on March 24, 2009. DCX 5 at 47.

enforcement. FF 39; Tr. 1565:9-17 (Haines). In sum, during these meetings, Morales claimed to Respondent Haines that he had received no benefit from that earlier debriefing, had debriefed truthfully in a matter unrelated to the Levy case, had debriefed solely about his own activities, and had not implicated others in the debriefing session. FF 42.

Notwithstanding any later, separate explanatory statements provided by Morales to Respondent Haines in their trial prep sessions about the supposed circumstances of the debrief to law enforcement referenced in the Zaldivar letter, nothing in the Zaldivar letter itself said the prior Morales debriefing was limited to his own activities (Tr. 1672:10-13 (Haines)); nothing in the letter said he refused to implicate others (Tr. 1673:8-12 (Haines)); nothing in the letter said he did not ask for or receive benefits (Tr. 1673:13-15 (Haines)); and nothing in the letter said he debriefed truthfully. *See* DCX 5 at 48-50.

As Respondent Haines testified at the hearing in this matter in connection with her second pre-trial prep session with Morales, in asking Morales again at this session about the debriefing described in the Zaldivar letter, she did so because she was considering whether she would need "to take the sting out" of this issue by asking about it on direct examination at trial. FF 40. At this time, according to Respondent Haines:

> I don't think I had decided one way or the other whether I was going to ask or not, but by the time he testified at trial I did not ask him because it was just my judgment call at the time. There was no reason to take the sting out of anything, so I didn't ask him any of these questions.

Tr. 1569:10-16.

As of the date of this second trial prep session, Respondent Haines had not disclosed the Zaldivar letter, or the fact of the debriefing described therein, to the defense. FF 40. In testimony before the Hearing Committee, Respondent indicated that she believed she could – and in fact did – rely on Morales' explanation to her at their trial prep sessions to evaluate what the word "debrief" in the Zaldivar letter meant. When asked by the Hearing Committee Chair what she understood the term "debriefing" to mean at the time of the trial, she answered: "I think to me debriefing could mean a lot of various things and so you just really found out from eliciting it what they were talking about." Tr. 1806:2-5 (Haines). Her counsel asked her at the hearing whether she "believed[d] that Mr. Morales testified [at the *Guandique* trial] in a way that was inconsistent with what you or any member of the prosecution team had previously known?". Tr. 1782:7-10. Respondent Haines answered:

> No, sir. Because he told us he had not come forward, he had not been a snitch. He still had this thug mentality that you shouldn't tell, shouldn't testify, shouldn't cooperate.
>
> He gave them information only about himself, they went their way and he continued to live his incarcerated, institutionalized existence.

Tr. 1782:11-18 (Haines).

The trial of Ingmar Guandique took place in October and November 2010. Jt. Stip. 6-8. When Armando Morales testified as a witness for the prosecution at this trial, he offered a similar narrative to the one he had previously provided to the grand jury to explain his delay from 2006 to 2009 in coming forward about

Guandique's alleged confession to him.[11] When Respondent Haines questioned him during the prosecution's case, Morales claimed to the jury that he "wasn't thinking like that" in 2006, and that he "didn't have it in [him] to tell at that time." DCX 15 at 269-270. He testified that after he transferred to a medium security prison, he entered a skills program that "drastically" changed his mind set by teaching him how to "make better . . . choices." *Id.* at 270-72; *see also* Tr. 1272:3-12 (Campoamor-Sanchez). In effect, Morales claimed the skills program liberated him, made him a better citizen, and freed him belatedly to report Guandique's confession. He said a Christmas visit with his family in 2008 also gave him the confidence to cooperate (DCX 15 at 272-73) but that he needed help from his mentor (Zaldivar) to do so because he did not know how to come forward to law enforcement. *Id.* at 273, 275-76. And on redirect examination, when Respondent Haines returned to the subject and asked Morales to explain again why he had not informed on Guandique sooner, Morales reiterated that he "still had a thug mentality, you know, [he] still subscribed to them false philosophies of you don't tell." *Id.* at 345.

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[11] Consistent with the approach she evidenced in her pre-trial preparation of Morales (*see* discussion above at 11-12), at trial Respondent Haines "elict[ed] the story as [Morales] had told it in the grand jury, more or less tracking that." Tr. 1757:16-18 (Haines). That story at trial relied on and included – as it did at the grand jury and as it did when Respondent Haines met with Morales pre-trial – the "changed value system," or sinner to saint, explanation for why Morales delayed for almost three years in coming forward about Ingmar Guandique's alleged confession to him.

According to Respondent Campoamor-Sanchez, Morales testified so "well" and "credibly" at the Guandique trial that the prosecution team determined they would call none of the other potential, alleged "confession" witnesses on their trial witness list. Tr. 1394:9-1395:13.

In their closing and rebuttal arguments at Guandique's trial, Respondents relied heavily on this same conversion narrative to frame and explain the testimony of Morales, who they were sponsoring as the witness to an alleged confession by Guandique to the murder of Chandra Levy. In closing argument, Respondent Haines contended that Morales was a person whom "the system has actually affected," she asked the jury to believe that "prison has worked for just one person"; that he "had a change of heart and is just trying to do the right thing"; that he was "just trying to do something good"; and that he had no "ulterior motive." DCX 17 at 396-97. In rebuttal argument, Respondent Campoamor-Sanchez reiterated that Morales "had a redemption" and that "he's actually going to start making different decisions about his life and about what he needs to do and about being a real man." *Id.* at 461.

As to how defense counsel handled Morales' testimony at trial, on cross-examination the defense challenged Morales about his failure to report the confession until after CNN disclosed Guandique as the prime suspect (Tr. 125:15-20 (Sonenberg)) and contested his tale of an epiphany. Tr. 127:6-128:14 (Sonenberg); *see* Tr. 322:7-323:5 (Hawilo). In response, however, Morales insisted that he had never testified before or come forward with respect to anyone

other than Guandique. DCX 15 at 318; Tr. 125:4-129:20 (Sonenberg). The defense did not confront Morales over his prior debriefing to law enforcement, referenced in the Zaldivar letter because, as Disciplinary Counsel has established in this matter by clear and convincing evidence and as explained below, defense counsel did not know about it. *See* FF 56.

As the Hearing Committee found, quoting the hearing testimony of one of Guandique's defense attorneys, "Morales was 'devastating as a witness' because he came across basically as someone who 'had a prior criminal record' but had 'never been any sort of law enforcement informant . . . . So, there was no real way to attack his credibility.'" FF 61. Had Morales' prior debriefing been disclosed before trial, defense counsel testified that they would have sought information in the Fresno law enforcement files (through litigation, if necessary), spoken to law enforcement officials there, and sought other witnesses who might have helped undermine Morales' testimony.[12] FF 36.

The Hearing Committee made a number of findings concerning each Respondent's understanding of their obligations under *Brady* and *Giglio*. The Hearing Committee found that, under the disclosure policies of the United States

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[12] Manifestly, there were other potential uses to which defense counsel in the Guandique case could have put the information about Morales' earlier debriefing to law enforcement, had they known about it in a timely manner before trial. Such uses would have included simply having sufficient time – before the daily rigors and pressures of trial began – to evaluate this information and integrate it into their trial preparation efforts and potential cross-examination strategy, just as Respondent Haines took the opportunity and time – pre-trial – to evaluate the information and determine how she would use it (or not) at trial.

Attorney's Office, attorneys are trained to err on the side of providing potentially exculpatory evidence, including potential impeachment evidence, to the defense because it is a Constitutional right for the defense to have access to potentially exculpatory evidence. FF 78. Respondent Campoamor-Sanchez understood that *Giglio* required him to disclose to the defense information that "tends to impeach or call into question the credibility of a witness." FF 79. Respondent Haines believed that it was permissible to make a "determination as to whether it's favorable to the defense and also material" before turning evidence over. FF 80. She viewed impeachment and exculpatory information as subject to different disclosure requirements. *Id.*

There is no dispute that Respondents did not disclose the Zaldivar letter to defense counsel prior to the start of trial. Pages two and three of the letter were produced mid-trial, as *Jencks* material, roughly two nights before Morales testified.[13] FF 46. Although the issue was hotly contested by the parties, the Hearing Committee

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[13] So-called *Jencks* material includes, *inter alia*, "a written statement made by [the] witness and signed or otherwise adopted or approved by him" and "a substantially verbatim recital of an oral statement made by [the] witness and recorded contemporaneously . . . ." 18 U.S.C. § 3500(e)(1)-(2). It must be produced no later than after the witness testifies on direct examination. 18 U.S.C. § 3500(b).

Disciplinary Counsel contends that the first page of the Zaldivar letter was not appropriately considered Morales' *Jencks* material because it does not contain any statements made by Morales. ODC Br. at 8. Respondents testified that their current practice would not have been so limited and that page one would have been included because it was a part of a letter that contains a "substantially verbatim statement." Campoamor-Sanchez Br. at 8 n.4.

found that the first page of the Zaldivar letter – which, again, contained the statement that Morales had previously "debriefed to law enforcement" – was never produced to the defense before the end of the trial. *See* FF 37, 56.

In concluding that the first page of the Zaldivar letter was not ever disclosed to the defense, the Hearing Committee relied on its determination that both defense attorneys testified credibly – "clearly, unhesitatingly and from first-hand knowledge," "unshaken on cross-examination" – that the first page was never given to them. FF 47. The Hearing Committee found that defense counsel did not object to the missing first page of the letter because they "trusted that they were being given the *Jencks* that they were entitled to." FF 50 (emphasis added).[14]

In contrast, only one testifying witness for Respondents – Assistant U.S. Attorney Chris Kavanaugh – had any knowledge of the *Jencks* production. The Committee found that his testimony was "sincere" but "mistaken," that his recollection was "hazy," and that he played no substantive role in the production. FF 51-53. He could not say, with certainty, whether the first page was included in the production. FF 52. Although both Respondents testified that they thought the first page of the letter was contained in the packet, neither had any direct knowledge of that fact. FF 55. The Hearing Committee found that Respondent Haines had assumed responsibility for Morales as a witness at trial and was therefore responsible

[14] The Hearing Committee also found that Respondents had occasionally produced *Jencks* material with entire pages redacted, so a missing page would not have been unusual. FF 50. And, because the format of the two pages that were produced contained Morales' entire narrative, it appeared to be a complete *Jencks* disclosure. *Id.*

for the failure to produce the first page of the letter; the Committee also determined, however, that there was insufficient record evidence to establish that the omission of the first page from the *Jencks* production was intentional. FF 57.[15]

On November 22, 2010, Guandique was found guilty of first-degree murder and on February 11, 2011, he was sentenced to sixty years in prison. FF 69. Morales' testimony was undeniably central to the government obtaining this conviction because he testified that Guandique admitted to him that he had killed Levy. DCX 15 at 265-66; FF 11. Given this testimony, Morales' credibility was crucial to the success of the prosecution. FF 11-12. In turn, his credibility depended on the believability of his explanation (already described above) as to why he had delayed disclosing Guandique's alleged confession for almost three years, revealing it only after he learned that the media had named Guandique as a suspect. FF 12.

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[15] Respondent Haines takes exception to the Hearing Committee's finding that page one of the Zaldivar letter was not included in the *Jencks* packet, arguing, *inter alia*, that the Hearing Committee improperly credited the defense attorneys, discounted Kavanaugh's testimony, and ignored evidence that it was included in the packet. Haines Br. at 46-50.

As the Court explained in *In re Robbins*, hearing committee findings will be upheld where there is substantial evidence to support them – even where evidence may support a contrary view as well. 192 A.3d 558, 564 (D.C. 2018) (citing *In re Szymkowicz*, 124 A.3d 1078, 1084 (D.C. 2015) (per curiam)). "Substantial evidence means enough evidence for a reasonable mind to find sufficient to support the conclusion reached." *In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam). We find that substantial evidence supports the Hearing Committee's conclusion that page one of the Zaldivar letter was omitted from the *Jencks* packet. We similarly conclude that the record evidence does not demonstrate that the omission was intentional.

During the period in which the trial of Ingmar Guandique took place, Respondent Haines, on November 8 and November 14, 2010, forwarded to her then-boyfriend internal government emails containing confidential and secret information related to the strategy for prosecuting the Guandique case. FF 84; *see also* FF 83. Respondent Haines had no permission to do so. FF 85.

In January 2012, Fresno police contacted the Justice Department seeking to interview Morales. FF 70. Following this event, the government conducted a post-trial investigation and learned that, in 1998, Morales had volunteered to provide the Fresno authorities with information about two murders and had participated in eight to ten interviews with the Fresno Sheriff's Department. FF 71. He had also provided a written statement about his gang activities and his lawyer had sought to negotiate a cooperation agreement for him to provide testimony about murders and a police shooting. *Id.* In 1996, Morales sent a letter to a prosecutor stating that he had worked with law enforcement in the past. *Id.* This information was contrary to his trial testimony and was conveyed to the Guandique trial judge, who ordered disclosure to his defense counsel. FF 71-72. Respondent Campoamor-Sanchez complied with that order in a November 21, 2012, letter in which he noted that information about Morales' debriefing was contained in the Zaldivar letter "previously provided" to the defense. FF 72.

Guandique's attorneys conducted a subsequent search of their files, informed the U.S. Attorney's Office that they did not have a complete copy of the Zaldivar letter, and requested that it be provided to them. FF 73. After receiving the full

letter, Guandique's attorneys – based in part on the information contained on page one of the Zaldivar letter – moved for a new trial, arguing that the letter should have been disclosed pre-trial. FF 74. The court held multiple post-conviction hearings related to issues that were raised in the motion for a new trial. Tr. 895:3-6 (Evangelista); HC Rpt. at 42; *see* FF 74-75.

In May 2015, the government withdrew its opposition to the motion for a new trial. Thus, the trial court did not rule on whether the government's failure to disclose the evidence of the debriefing violated *Brady*. FF 75. In July 2016, Morales was recorded expressing a willingness to commit future violent crimes. Tr. 1364:7-12 (Campoamor-Sanchez); *see* Jt. Stip. 14. The government subsequently moved to dismiss the indictment against Guandique without prejudice. Jt. Stip. 17; Tr. 1363:20-1364:3; *see* FF 76.

III. DISCUSSION[16]

The Board "must accept the Hearing Committee's evidentiary findings, including credibility findings, if they are supported by substantial evidence in the

[16] Disciplinary Counsel asks the Board to reconsider the Hearing Committee's exclusion of DCX 49, an exhibit which it contends was "newly discovered, highly relevant evidence" that would conclusively resolve whether the complete Zaldivar letter was produced to defense counsel. ODC Br. at 14. This 76-page document includes the results of a search of defense counsel's electronic records concerning their receipt of Morales' *Jencks* materials. Disciplinary Counsel offered this evidence during the hearing without advance notice to Respondents' counsel. The Hearing Committee excluded the evidence following Respondents' objection to its admission. We see no reason to reverse the Hearing Committee's appropriate exercise of discretion in excluding the exhibit. *See* Board Rule 7.19 ("Failure to comply with the time limits concerning submission of documentary evidence and

record." *See In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam) (quoting *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam)); *see also In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam) (defining "substantial evidence" as "enough evidence for a reasonable mind to find sufficient to support the conclusion reached"). We review *de novo* its legal conclusions and its determinations of ultimate fact. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194 (Board owes "no deference to the Hearing Committee's determination of 'ultimate facts,' which are really conclusions of law and thus are reviewed de novo").

Disciplinary Counsel must establish a violation of the Rules of Professional Conduct by clear and convincing evidence. *See, e.g.*, *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001). Clear and convincing evidence requires a degree of persuasion higher than a mere preponderance of the evidence; it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (citation and internal quotation marks omitted). In *In re Nave*, 197 A.3d 511 (D.C. 2018) (per curiam), the Court

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objections thereto (Rules 7.17 and 7.18) may, at the discretion of the Hearing Committee Chair, preclude introduction of the documents or objections.").

We note that Disciplinary Counsel does not argue that DCX 49 establishes *how* the first page of the Zaldivar letter came to be omitted from the transmission to defense counsel – a question which remains unsettled heretofore but one which is also not material to the issues before the Board. Rather, admission of this exhibit into evidence would serve only to bolster the Hearing Committee's determination that the full letter was never provided to the defense – a finding which the Board has already determined was supported by substantial evidence in the record.

reiterated that "[t]his stringent standard 'expresses a preference for the attorney's interests by allocating more of the risk' of an erroneous conclusion to Disciplinary Counsel." 197 A.3d at 518 (quoting *In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011)).

A. Dismissal of Charges Against Respondent Campoamor-Sanchez

Respondent Campoamor-Sanchez is charged with violations of Rules 3.8(e), and 8.4(d). The Hearing Committee recommended dismissal of these charges because, by the two-week deadline set by Judge Fisher for the prosecution's submission of the *Giglio* letter, Respondent Haines had relieved Respondent Campoamor-Sanchez of all responsibility for Morales as a witness; he no longer had responsibility for the *Giglio* disclosures. Perhaps more importantly, he had no knowledge of the contents of the *Giglio* letter, upon which the Rule violations at issue are based.

Disciplinary Counsel argues that dismissal of the charges against Respondent Campoamor-Sanchez is not appropriate on several grounds. At bottom, it takes issue with the finding that the *Giglio* deadline set by Judge Fisher was the appropriate date by which use of the evidence was reasonably feasible. *See* ODC Br. at 4, 27-30. It argues that the *Giglio* deadline necessarily applied only to "ordinary *Giglio* matters, which required no further investigation, such as prior convictions." ODC Reply at 13. Though it concedes that "placing a precise date on when that obligation 'crystallized' is difficult," it maintains that the date was necessarily before the *Giglio* disclosure deadline because that date would not have provided adequate time to investigate the evidence. ODC Br. at 27-28, 31.

But Disciplinary Counsel has aptly identified the issue. Unlike other jurisdictions which may set precise deadlines for the disclosure of such evidence, the District of Columbia has presumptively elected to rely on the wisdom and experience of its trial judges in making the determination whether evidence has been disclosed in sufficient time to permit its effective use. *See, e.g.*, *Zanders*, 999 A.2d at 24 (recognizing the willingness of the trial judge to continue the trial to permit investigation of potentially exculpatory evidence).

There is no dispute that defense counsel sought earlier disclosure of potentially exculpatory evidence. But, as discussed below, Judge Fisher balanced a number of factors against defense counsel's need for such evidence and set a single firm deadline of two weeks prior to trial for the *Giglio* disclosures. We can only assume that, should defense counsel have needed more time to investigate the evidence of Morales' debriefing – had it been produced by that deadline – Judge Fisher would have considered their request for a delayed trial at that time.

In relying on the *Giglio* disclosure deadline as the relevant date, we have also considered that our Rules cannot serve as a trap for the unwary. They "are rules of reason . . . and presuppose a larger legal context shaping the lawyer's role." D.C. Rules of Prof'l Conduct, Scope [1]- [2].[17]

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[17] The Board's determination that two weeks before trial was the date by which defense could have reasonably made use of the information on Morales' debriefing is limited to the facts of this case. The Board is not here determining for any other case or set of facts the required disclosure date for information falling within the scope of Rule 3.8(e).

Additionally, Disciplinary Counsel argues that Respondent Campoamor-Sanchez remained obligated to disclose the debriefing even after Respondent Haines assumed responsibility for making the disclosure. *See* ODC Br. at 32-35; ODC Reply Br. at 17-18. It points to the absence of language in Rule 3.8(e) limiting the responsibility to disclose evidence that tends to negate the guilt of the accused to the member of the prosecutorial team responsible for composing the final version of the disclosure. ODC Reply at 17-18. In response, Respondent Campoamor-Sanchez emphasizes the necessity of the division of labor in "a complex trial that involved over 20,000 pages of discovery and approximately 40 witnesses" and he contends that he had been "marginalized" by Respondent Haines by that point. Campoamor-Sanchez Br. at 5. He further argues that, to find that he remained liable for the *Giglio* disclosures amounts to imposing vicarious liability. *Id*. at 10-12. Disciplinary Counsel replies that his disclosure obligations emanate solely from his knowledge of the impeaching information. ODC Reply Br. at 18.

This is a close call. On the one hand, there can be no question that Respondent Campoamor-Sanchez had an independent obligation to comply with Rule 3.8(e). On the other hand, Disciplinary Counsel has cited no authority for the proposition that each prosecutor assigned to a trial team must take it upon themselves to make independent *Brady/Giglio* disclosures as to witnesses no longer assigned to them, particularly when he or she has no knowledge of the content of the final disclosures.

On these unique facts, therefore, we decline to read Rule 3.8(e) to impose such an obligation.[18]

For these reasons, we decline to depart from the Hearing Committee's recommendation that the charges be dismissed as to Respondent Campoamor-Sanchez.[19]

B. Rule 3.8 (Special Responsibilities of a Prosecutor)

The Hearing Committee determined that Respondent Haines violated Rule 3.8(e) because she intentionally failed to timely disclose to the defense impeaching information concerning Morales, the government's sole confession witness.[20]

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[18] Disciplinary Counsel also raises the novel argument that, even if the Board concludes that Respondent Campoamor-Sanchez did not violate Rule 3.8(e), there is clear and convincing evidence that he violated Rule 8.4(d) because "withholding *Giglio* is improper . . . [and] the ensuing result bore directly on the judicial process and tainted that process in more than a *de minimis* way." ODC Reply Br. at 18 (citing *In re Hopkins*, 677 A.2d 55 (D.C. 1996)). In light of our determination that Respondent Campoamor-Sanchez had no obligation to make the *Giglio* disclosure by the date on which they were due, we decline to find a violation of Rule 8.4(d) on this basis.

[19] Respondent Campoamor-Sanchez raises two additional arguments that he asks the Board to consider in the event that we do not agree with the Hearing Committee that the charges should be dismissed. He argues that the Hearing Committee violated his right to confront his accusers by refusing to allow discovery of Guandique's attorneys and by refusing to conduct an in-person hearing during the Covid-19 pandemic. Campoamor-Sanchez Br. at 54-59. Because we agree with the Hearing Committee that the charges against him should be dismissed, we do not reach these arguments.

[20] While the government initially identified other confession witnesses, ultimately only Morales testified. HC Rpt. at 39 n.5.

Rule 3.8 provides that:

> The prosecutor in a criminal case shall not: . . . (e) Intentionally fail to disclose to the defense, upon request and at a time when use by the defense is reasonably feasible, any evidence or information that the prosecutor knows or reasonably should know tends to negate the guilt of the accused or to mitigate the offense . . . except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

Thus, to have proved a Rule 3.8(e) violation in this case, Disciplinary Counsel must have proved by clear and convincing evidence (1) that Respondent was aware of Morales' prior debriefing with law enforcement; (2) that Respondent knew (or that a reasonable prosecutor would have known) that evidence of Morales' prior debriefing with law enforcement tended to negate Guandique's guilt; and (3) that Respondent intentionally failed to disclose evidence of Morales' prior debriefing with law enforcement. *See In re Dobbie*, Board Docket No. 19-BD-018, at 23 (BPR Jan. 13, 2021) ("[A] prosecutor can violate Rule 3.8(e) by intentionally failing to disclose something that she does not believe 'tends to negate the guilt of the accused' if a reasonable prosecutor should know that the withheld information 'tends to negate the guilt of the accused.'"), *review pending*, D.C. App. No. 21-BG-024.

1. There is no dispute that Respondent Haines was aware of Morales' prior debriefing with law enforcement at all relevant times.

Respondent Haines received a copy of the Zaldivar letter on March 24, 2009, well over a year before Guandique's trial. She read the Zaldivar letter shortly after it was received. Respondent Haines does not contend otherwise.

2. Evidence of Morales' prior debrief with law enforcement tended to negate Guandique's guilt.

Rule 3.8(e) requires disclosure of information that impeaches the credibility of a government witness. *See In re Kline*, 113 A.3d 202, 213-14 (D.C. 2015) (Rule 3.8(e) violation for failure to disclose prior inconsistent statement of government witness); *In re Howes*, 52 A.3d 1, 4 (D.C. 2012) (Rule 3.8(e) violation for failure to disclose voucher payments "relevant to the jurors' credibility determinations of key government witnesses' testimony").

Rule 3.8(e)'s requirement that prosecutors disclose evidence that "tends to negate the guilt of the accused or mitigate the offense" originates from the Supreme Court's decision in *Brady v. Maryland*, 373 U.S. 83 (1963). "The standard adopts the definition of exculpatory material contained in the Supreme Court's decision in *Brady v. Maryland*, that is, material that tends to negate guilt or reduce punishment." *Kline*, 113 A.3d at 208 (quoting ABA Standard for Criminal Justice: The Prosecution Function § 3-3.11 (2d ed. 1986)). To comport with their obligations under *Brady*, prosecutors have a duty to disclose information and evidence that could be used to impeach the credibility of a government witness, commonly called *Giglio* information. *Giglio*, 405 U.S. at 166. "Impeachment evidence" is "evidence used to undermine a witness's credibility." *Impeachment Evidence*, Black's Law Dictionary (11th ed. 2019). "In *Giglio*, the Supreme Court refined the *Brady* standard to include impeachment evidence . . . ." *Lindsey v. United States*, 911 A.2d 824, 838 (D.C. 2006). "[I]mpeaching information does not have a lesser standing in the context of the government's *Brady* disclosure obligations." *Vaughn v. United*

States, 93 A.3d 1237, 1254 (D.C. 2014). "[I]mpeaching evidence is exculpatory and thus can be material to guilt or punishment within the meaning of *Brady*." *Bennett v. United States*, 797 A.2d 1251, 1256 (D.C. 2002) (alteration in original) (quoting *Lewis v. United States*, 408 A.2d 303, 307 (D.C. 1979)); *see also United States v. Bagley*, 473 U.S. 667, 676 (1985) ("This Court has rejected any . . . distinction between impeachment evidence and exculpatory evidence."). "When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within [*Brady*]." *Giglio*, 405 U.S. at 154.

The Hearing Committee concluded that the statement in the Zaldivar letter about Morales' debriefing was critical impeachment evidence that Respondent Haines was obligated to have provided to defense counsel:

> Morales was the sole witness linking Guandique to the murder of Chandra Levy. [] His credibility was critical to the prosecution's case. [] Evidence that he had previously debriefed to law enforcement stood in sharp contrast to Morales's "sinner to saint" narrative. [] The fact that Morales obligingly met with police authorities was *conduct* utterly at odds with his professed "thug mentality" (irrespective of what he discussed with them), and directly contradicted his explanation as to why he delayed reporting Guandique's supposed confession.

HC Rpt. at 39 (emphasis in original).[21]

[21] Counsel for Respondent Campoamor-Sanchez argues that Rule 3.8(e)'s disclosure obligations do not extend to impeachment evidence, unless that evidence is also exculpatory. Campoamor-Sanchez Br. at 29. Recognizing that the Supreme Court and the Court of Appeals have erased the distinction between solely impeaching evidence and exculpatory evidence as a matter of constitutional due process, counsel argues that Rule 3.8(e) does not present a question of constitutional due process. Rather, it presents one of statutory construction. Among other things, counsel points out that in 1969, six years after the *Brady* decision, the ABA adopted the Model

We agree with the Hearing Committee that the evidence of Morales' debriefing to law enforcement tended to negate Guandique's guilt. The mere fact of the prior debriefing, in of itself, would have challenged significantly – and very likely undermined – Morales' credibility before a jury. Morales claimed that, prior to his participation in the prison skills program, he would not have been inclined to report Guandique's confession to law enforcement because he had a different value system, did not trust the police, and had "never done that before . . . never done nothing like that." The fact of Morales' prior debriefing with law enforcement was materially inconsistent with these statements and with this story. Consequently, Respondent Haines should have disclosed this information as potentially

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Code of Professional Responsibility and Disciplinary Rule 7-103(B) (reflecting the holding of *Brady* and representing, as described in *Kline*, 113 A.3d at 208, the "first prominent appearance in the ethical realm of the tends to negate guilt standard"). But the Supreme Court did not decide *Giglio* until 1972. Thus, according to Respondent Campoamor-Sanchez's counsel, the principles contained in *Giglio* could not have been embodied in the Rule at the time of adoption. Counsel asserts that the Rule is a "specific free-standing rule for disciplinary cases," that "[i]t is therefore wrong to assume that Rule 3.8(e) incorporates the full range of constitutional requirements that have evolved in the body of case law since *Brady* was decided," and that "if Rule 3.8(e) is to be expanded, it must be by amendment of the rule." Campoamor-Sanchez Br. at 28.

We agree with Disciplinary Counsel's response that there is no statement in the legislative history of Rule 3.8(e) indicating that a prosecutor's disclosure obligation does not extend to impeachment evidence. And we also find it noteworthy that the D.C. Court of Appeals adopted the current version of Rule 3.8(e) in 1990, "well after it was firmly established that impeachment information about government witnesses constituted *Brady* material." *See* ODC Reply Br. at 4-5. Because counsel cites insufficient support for the contention that Rule 3.8(e) was intended to exclude impeachment evidence, we decline to reach that conclusion here.

exculpatory impeachment to defense counsel at least as of the date she sent the *Giglio* letter on October 4, 2010.

3. Disciplinary Counsel has not proven that Respondent Haines subjectively recognized the debriefing as exculpatory.

The Hearing Committee determined that Respondent Haines knew that Morales' prior debrief tended to negate Guandique's guilt. According to the Hearing Committee:

> there is ample evidence that Respondent Haines actually knew that the Morales debriefing tended to negate Guandique's guilt.[] When she prepared Morales to testify and he denied having "ever testified, worked for the government, cooperated in any sense of the word [or] ever come forward]," she felt it necessary to "confront" him with the prior debriefing.[] She then worked with Morales to neutralize any cross-examination on the subject: She prepared him to take the "sting" out of the evidence by explaining that the content of his debriefing was inconsequential.[] All of this, of course, was because she anticipated that, if they knew about it, the defense would use the debriefing to undercut Morales's credibility.

HC Rpt. at 39-40.

While we accept the Hearing Committee's subsidiary findings of fact as supported by substantial evidence, we review its determination of ultimate facts *de novo*. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194. Thus, whether there is clear and convincing evidence that Respondent Haines had actual knowledge that the debriefing was exculpatory is a finding that we must review *de novo*. *See, e.g.*, *In re Romansky*, 938 A.2d 733, 740 (D.C. 2007) (agreeing with Board that evidence was not clear and convincing that the respondent acted knowingly). We find that there is not this quantum of evidence on this point in this record.

In the Board's determination, the record evidence does not demonstrate clearly and convincingly – does not support a firm belief or conviction – that Respondent Haines actually understood the exculpatory nature of the debriefing when she drafted the *Giglio* letter. The Hearing Committee found that Respondent Haines believed that "impeachment" evidence was subject to a different disclosure requirement than "exculpatory" information. *See* HC Rpt. at 26-27 (FF 80). Respondent believed, mistakenly, given case law, that she could test the evidence before disclosing it to defense counsel and, here, she did exactly that. But we consider an issue that the Hearing Committee seemingly did not – namely, the impact of Respondent Haines' mistaken belief that she could first test the evidence on whether she had actual knowledge that it was exculpatory. We, like the Hearing Committee, are troubled that, in considering how to present and question Morales as a witness at trial, Respondent Haines considered whether there was a need to "take the sting out of" evidence that she had withheld from the defense. We are similarly troubled that, despite her experience as a prosecutor and her involvement in the *Zanders* case, she held such a mistaken belief. Even so there is insufficient evidence that, at the time she drafted and submitted the *Giglio* letter, she subjectively understood her obligation to turn over the statement in the Zaldivar letter about Morales' prior debriefing given its impeachment value.

Moreover, the record does not sufficiently support the conclusion that, at any point before or during the trial, Respondent Haines subjectively realized or understood, *as she reasonably should have realized or understood*, that the evidence

to be evaluated for purposes of determining whether it tended to negate the defendant's guilt (and, therefore, needed to be disclosed to defense counsel) was the statement in the Zaldivar letter – without any potential later explanation or embellishment by Morales,[22] but viewed in the context of Morales' anticipated testimony at trial regarding his change of heart – that Morales had previously "debriefed to law enforcement about his gang involvement." Disciplinary Counsel failed to prove by clear and convincing evidence that Respondent Haines did not subjectively believe that the evidence to be evaluated for purposes of disclosure to defense counsel was the information about Morales' prior debrief as he might (and eventually did) "explain" it to her once she had the opportunity to "test" him on that

[22] And, for purposes of the discussion and conclusions in this Report, the evidence to be evaluated was the statement about the debriefing in the Zaldivar letter, without consideration of facts about the "debriefing" that came to light only after the trial.

evidence.[23] Disciplinary Counsel did not rebut her hearing testimony that she subjectively believed she did not have to turn it over.[24]

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[23] Before the Board, Respondent Haines' counsel relies on this same, incorrect characterization of what the evidence at issue in this case is. For example, in Respondent Haines' brief to the Board, counsel states:

> The information at issue is this: more than ten years before Guandique's trial, confession witness Armando Morales debriefed with law enforcement officials – who were not involved in the Guandique case – to discuss his own gang involvement. That's it. During that debrief, Morales did not incriminate anyone, name any names, seek any benefit, or receive any benefit. He was not a cooperator; he was just a prisoner whose brains some law enforcement agents wanted to pick.

Haines Br. at 1.

And again:

> The fact that Morales had once debriefed – more than ten years before the Guandique trial . . ., to discuss his own gang involvement, when he did not incriminate anyone else, nor did he seek or obtain any benefits – was not exculpatory.

Id. at 25; *see also id.* at 28, 31.

As noted, the evidence at issue in this matter is the statement in the Zaldivar letter about Morales' previous debriefing to law enforcement, unembellished by how Morales later described and explained away that debriefing to Respondent Haines. That information did not include, and for purposes of this matter should not be evaluated as including, Morales' post-hoc explanations to Respondent Haines that, at the debriefing, he discussed only his own gang involvement, did not incriminate anyone else, or name any names. (For purposes of our discussion, analysis, and conclusions in this Report, the fact that, post-trial, these representations by Morales to Respondent Haines – about the limited scope of his "debriefing" – were shown to be false is not relevant.).

[24] There is insufficient evidence in the record before the Board – and no direct evidence – of bad faith on the part of Respondent Haines (or Respondent Campoamor-Sanchez) in this matter.

Viewed in this way, Respondent Haines' failure in this case, like her failure in the earlier *Zanders* case, was her decision not to disclose information that was potentially exculpatory based on – or, more accurately in the instant case, pending and based on – "an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder." Viewed in this way, Respondent failed to evaluate the evidence, as required by case law, from the perspective of defense counsel and may have subjectively believed that she was not required to disclose it to defense counsel as *Giglio* evidence and under Rule 3.8(e).[25]

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[25] Counsel for Respondent Haines reads the Court's opinion in *Zanders* too narrowly when they argue that the guidance therein to prosecutors regarding the duty to disclose exculpatory information is limited to instances where such information is "on its face exculpatory." Haines Br. at 35 (citation omitted). Yes, that phrase appears in the relevant paragraph of the opinion. *See Zanders*, 999 A.2d at 164. But the use of the broader, more inclusive term "potentially exculpatory information" in the first sentence of this important paragraph makes clear that the Court's guidance applies to information that may not be indisputably exculpatory "on its face":

> It should by now be clear that in making judgments about whether to disclose potentially exculpatory information, the guiding principle must be that the critical task of the evaluating the usefulness and exculpatory value of information is a matter primarily for defense counsel, who has a different perspective and interest than the police or prosecutor.

Id. at 163-64 (citing *Perez v. United States*, 968 A.2d 39, 66 (D.C. 2009)). Further, the Court's concluding statement in this paragraph that "[a]ny doubts [about the exculpatory nature of information] should be resolved in favor of full disclosure made well before the scheduled trial date," *Zanders*, 999 A.2d at 164, makes sense only if the Court's guidance is intended to comprehend information about which there may be some doubt as to its exculpatory nature, that is, information that is not "on its face exculpatory."

Moreover, it should be emphasized, as Disciplinary Counsel notes, that the "obligation to produce impeachment information as exculpatory evidence is not

4. A reasonable prosecutor would have recognized that the debriefing tended to negate Guandique's guilt.

We agree with the Hearing Committee's conclusion that a reasonable prosecutor would have disclosed the information from the Zaldivar letter on Morales' prior debriefing to law enforcement. *See* HC Rpt. at 37-39; *see also id*. at 27 (FF 82) ("A reasonable prosecutor in Respondent Haines's position, adhering to the standards of the Justice Department and USAO and to the admonitions in *Zanders*, would have disclosed the first page of the Zaldivar letter to defense no later than two weeks before the start of trial.").

The Hearing Committee found that, "[r]elying solely upon what Morales told her about his debriefing session, Respondent Haines rationalized that the debriefing was consistent with his maintaining the gang's code of silence and 'the particulars

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limited to cases where the evidence is 'impeaching on its face.'' ODC Br. at 18. As Disciplinary Counsel explains:

> Most information is not per se impeaching or impeaching on its face; it is impeaching in context. The fact that a client has poor eyesight but does not wear spectacles is not impeaching if her lawyer is being charged with misappropriation. The same fact may be impeaching if that person has made an eye-witness identification in a robbery case. The context is dispositive. Respondents knew that they intended to portray Mr. Morales as a recent convert who, before he renounced the thug life around 2008, would never have helped law enforcement – would not even know how to approach him. [T]he very fact that he had previously debriefed with law enforcement about gang activities contradicted this portrayal.

Id. at 19.

of the debriefing' were thus not *Brady* material; she decided that she did not need to disclose them." HC Rpt. at 15 (FF 43).

Yet, a reasonable prosecutor would have known that this was impermissible because it was the kind of evidence the defense would want to know about and it was for the defense to determine its usefulness. *See Mackabee v. United States*, 29 A.3d 952, 962 (D.C. 2011) ("[A]n 'eminently sensible standard' for whether evidence is exculpatory" is whether the evidence is "'of a kind that would suggest to any prosecutor that the defense would want to know about it.'" (citations omitted)).[26] As discussed above, two months earlier the Court had admonished Respondent Haines concerning this very issue in *Zanders*.

Consequently, Respondent should have known that she could not wait to "test" the statement that Morales had previously debriefed to enforcement before disclosing this statement to defense counsel. She was obligated to evaluate the evidence from the perspective of defense counsel. The record in this disciplinary matter demonstrates that she failed to do so, instead choosing to undertake "an

[26] Respondent Haines points to the lack of hearing testimony by a "reasonable prosecutor" on this issue. *See* Haines Br. at 35. To the extent that Respondent Haines is arguing that expert testimony was necessary to permit the Board to find that the fact of the debriefing was exculpatory, we believe that expert testimony was not required in light of the clarity of the law on this point. *See, e.g.*, *In re Nwadike*, Bar Docket No. 371-00 at 28 (BPR July 30, 2004) (where the "conduct is so obviously lacking . . . [,] expert testimony showing what other lawyers generally would do is unnecessary"), *findings and recommendation adopted*, 905 A.2d 221, 227, 232 (D.C. 2006).

assessment of how that evidence might be explained away or discredited at trial."

See Zanders, 999 A.2d at 164.[27]

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[27] Counsel for Respondent Haines argues that "[n]o reasonable prosecutor thought the information about Morales's debrief was exculpatory," Haines Br. at 35, and specifically states: "Even OPR [the Office of Professional Responsibility of the Department of Justice] – the proverbial "reasonable prosecutor" – did not find that the information was exculpatory." Haines Br. at 36. This characterization of what OPR determined with respect to the statement at issue in this matter is technically true, as far as it goes. In its letter to counsel for Respondent Campoamor-Sanchez summarizing its Report of Investigation into the conduct of both Respondents in this matter, OPR does not *explicitly* state either that the statement – on page one of the Zaldivar letter, that Morales "debriefed to law enforcement about his gang involvement" – was exculpatory or that it was not exculpatory. *See* FCSX 80A at 1-6. OPR's summary avoids stating an explicit conclusion on this question. Implicitly, however, the OPR letter appears to accept that the information that Morales had debriefed to law enforcement would have been exculpatory because it would have impeached his trial testimony about why he had not come forward for almost three years after Guandique, allegedly, confessed to him. In its summary letter, OPR stated that it "found that Haines did not violate her duty to disclose exculpatory and impeachment evidence when she did not disclose that Morales told her that when he debriefed with law enforcement, he 'told them everything.'" *Id*. at 4. But this finding by OPR with respect to Morales' statement that he "told them everything" is made contingent by OPR on whether or not Respondent Haines had otherwise disclosed to the defense that Morales had debriefed to law enforcement:

> If the government did in fact disclose page one of the Zaldivar letter . . . then the defense would have known that Morales debriefed with law enforcement, even if Haines did not disclose that Morales said he had "told them everything." Further, if page one was disclosed, it would have mitigated any prejudice resulting from the decision not to disclose that Morales said he "told them everything," as the defense could have asked Morales to explain the meaning of what Zaldivar wrote on page one.

Id.

In its investigation, "OPR could . . . not establish by preponderant evidence that the trial team [in the Guandique trial] failed to disclose page one" of the Zaldivar letter

5. Use of the debriefing by the defense was reasonably feasible by the date set by Judge Fisher, not two nights before Morales testified.

The Hearing Committee determined that the evidence of Morales' debriefing should have been provided to defense counsel no later than the date of its *Giglio* disclosures at least two weeks prior to the start of Guandique's trial. The Committee reasoned that, in setting this deadline, "the trial court weighed Respondents' disclosure obligations, accounted for the need to preserve witness security, and balanced those factors against the legitimate needs of the defense." HC Rpt. at 34-5; *see also id*. at 8-9 (FF 20-23). In doing so the trial court assessed many of the considerations underpinning Rule 3.8(e) and ordered the government to make its *Giglio*-related disclosures no later than two weeks before trial. "That resolution implicitly determined the date past which the defense would no longer be able reasonably to use information that was disclosed." *Id*. at 34-35.

Respondents argue that the evidence of Morales' debriefing did not need to be disclosed under Judge Fisher's order because the statement was not materially inconsistent with anything known before or during trial. As explained above, we disagree. Morales' statement that he had previously debriefed to law enforcement *was* "materially inconsistent" with his explanation of why he did not come forward earlier, namely that he had "never done that before," did not trust the police, and

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before Morales testified at trial. *Id*. at 3-4. Counsel for Respondent Haines cites this statement by OPR to support their erroneous argument that there is not sufficient record evidence in this matter to support the Hearing Committee's determination, accepted by the Board, that page one of the Zaldivar letter was not disclosed to the defense before Morales testified at trial. There is sufficient evidence in the record to support this determination by the Hearing Committee and by the Board.

"had never done nothing like that."[28] Furthermore, the prosecution's argument that Morales came forward as a result of a change in how he would make decisions may not have held up under cross-examination by the defense regarding his previous debrief.

What if Respondent Haines had provided defense counsel with the full Zaldivar letter as *Jencks* material two nights before Morales testified? Would disclosure to the defense at that time of the information about Morales' prior debriefing have been sufficient? We need to emphasize here that the Board accepts and adopts the Hearing Committee's factual finding – firmly grounded in explicit and specific credibility findings – that page one of the Zaldivar letter was *not* turned over as *Jencks*. HC Rpt. at 16-18 (FF 46-50). But even if it had been, the Board does not believe that would have permitted effective use of the evidence. In the District of Columbia, defense counsel must be provided with exculpatory evidence with sufficient time to permit "effective" use of the evidence at trial and "effective

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[28] We recognize that the statement concerning Morales' prior debriefing was contained in the background section of the Zaldivar letter on page one, and not in the narrative portion of the letter dictated to Zaldivar by Morales'. Thus, a reasonable question may be raised whether its disclosure was required under Judge Fisher's order. We find that it was. Even if Morales did not dictate the statement concerning his prior debriefing to Zaldivar, Morales adopted this statement during his grand jury testimony when he reviewed and confirmed its accuracy. DCX 6 at 91-95.

Moreover, even if the statement is not attributable to Morales as a prior inconsistent statement by him, it was evidence that tended to negate Guandique's guilt because it impeached Morales' foundational conversion narrative. And, under Rule 3.8(e), it needed to be disclosed to the defense in time for its use to be reasonably feasible.

use" contemplates some ability to investigate that evidence. As the Court has repeatedly recognized,

> exculpatory evidence must be disclosed in time for the defense to be able to use it ***effectively***, not only in the presentation of its case, but also in its trial preparation. *Lindsey v. United States,* 911 A.2d 824, 839 (D.C. 2006); *Edelen* [*v. United States*]*,* 627 A.2d [968], 970 [(D.C. 1993)]. In the context of the present appeal, it is important to recognize that "the longer the prosecution withholds information, or (more particularly) the closer to trial the disclosure is made, the less opportunity there is for use." *Leka* [*v. Portuondo*]*,* 257 F.3d 89, 100 [2nd Cir. 2001)]. This is so, in part, because "new witnesses or developments tend to throw existing strategies and preparation into disarray." *Id.* at 101. The sequence of events in this case, like the record in *Leka,* "illustrates how difficult it can be to assimilate new information, however favorable, when a trial already has been prepared on the basis of the best opportunities and choices then available." *Id.* "The defense may be unable to divert resources from other initiatives and obligations that are or may seem more pressing," and counsel may not be able, on such short notice, to assimilate the information into their case. *Id.* Further, "[t]he more a piece of evidence is valuable and rich with potential leads, the less likely it will be that late disclosure provides the defense an 'opportunity for use,'" *DiSimone v. Phillips,* 461 F.3d 181, 197 (2d Cir.2006), *i.e.,* "the opportunity for a responsible lawyer to use the information with some degree of forethought." *Leka,* 257 F.3d at 103.

Miller v. United States, 14 A.3d 1094, 111-12 (D.C. 2011) (emphasis added).

In support of the position that evidence need not be disclosed in time to investigate, Respondent Haines cites *Mackabee*, 29 A.3d at 956-61, *Lindsey*, 911 A.2d at 840, and *Ebron*, 838 A.2d at 1155-56. These cases are inapposite and do not stand for the proposition that no time to investigate the evidence is required, particularly since the Court found – in each instance – that defense counsel had been able to *effectively* use the evidence in the absence of additional time to investigate.

In *Mackabee*, the government's delay in disclosing a copy of a videotaped witness statement – until seven days before the presentation of evidence began – did not amount to a due process violation where "the only exculpatory part" of the videotaped statement had been produced over a year prior to the start of trial within the notes of a police officer. 29 A.3d at 958. The Court also found that, at trial, "defense counsel made particularly effective use of a detail contained in the videotape but not in the officer's notes" and appellant was unable to show how more effective use could have been made of the evidence had it been turned over earlier. *Id.* at 960.

In *Lindsey*, the Court concluded there was no reversible error where, despite the government's concession that its *Brady*/*Giglio* disclosures were deficient and tardy, the trial court delayed the proceedings mid-trial to allow the government to supplement its disclosures and defense counsel was ultimately able to make effective use of the evidence at trial. 911 A.2d at 839-40.

In *Ebron*, the Court approved the government's disclosure of *Giglio* material (impeaching evidence that government witnesses received sums of money while in the witness protection program) at the time the jury was selected and sworn. Defense counsel did not object to the procedure when it was announced or request a delay of trial to investigate the matters further when they received the evidence. In addition, they were able to effectively "use the information extensively" in cross-examination to challenge the witnesses' credibility. 838 A.2d at 1155. The appellants failed to meet their burden of showing how additional information on the witnesses' receipt

of the money would have aided their case. *Id.* at 1155-56. For these reasons, the Court declined to remand on this basis.

Here, had Guandique's attorneys timely received evidence of the earlier Morales debriefing, they would have sought information in the Fresno law enforcement files, spoken to law enforcement, and sought other witnesses who might have helped undercut Morales' testimony. HC Rpt. at 13 (FF 36). Receiving this information two nights before such a key witness testified would not have afforded defense counsel this opportunity. At that late date, Respondent Haines should not have assumed that defense counsel remained in "investigatory mode" after they had been assured that the relevant evidence had already been disclosed. *See Miller*, 14 A.3d at 1113 ("[O]nce trial comes, the prosecution may not assume that the defense is still in its investigatory mode.[] [O]ur decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed.").

6. Respondent Haines intentionally failed to disclose the evidence of Morales' debriefing to defense counsel by the deadline for *Giglio* disclosures.

The Court has explained that:

> the intentionality requirement under Rule 3.8(e) best fits the definition employed in the context of intentional failures to act – namely, that "intentional" requires an element of purposefulness or deliberateness or, at a minimum, of aggravated neglect.[] In assessing intent, the 'entire mosaic' of conduct should be considered.

Kline, 113 A.3d at 213 (citing *In re Ukwu*, 926 A.2d 1106, 1117 n. 20 (D.C. 2007) ("entire mosaic" refers to "the attorney's pattern or practice of conduct as reflected in the record")).

Here, there is no dispute that Respondent intentionally failed to disclose evidence of Morales' debriefing by the *Giglio* deadline. To be clear, the Rule does not require – and we have not found – that Respondent Haines intentionally suppressed evidence in an effort to deny Guandique a fair trial. The record evidence demonstrates that she did not disclose it because she did not believe it had to be disclosed as exculpatory information. HC Rpt. at 37. In that respect, her conduct is similar to that in *Kline*, where the respondent "consciously decided that the exculpatory evidence did not have to be produced – even though he was misguided in his calculus that it was not exculpatory – and, as such, intentionally withheld it." 113 A.3d at 214.

C. Rule 8.4(d) (Serious Interference with the Administration of Justice)

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a de minimis way, *i.e.*, it must have at least potentially had an impact upon the

process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

The Hearing Committee found that Respondent Haines violated Rule 8.4(d). It reasoned that (i) her failure to disclose Morales' prior debriefing was improper, because she was required to do so both by Rule 3.8(e) and *Giglio*; (ii) the misconduct bore upon the judicial process in the Guandique case by affecting the scope of the defense's cross-examination of Respondents' key witness; and (iii) and the misconduct evidently tainted the judicial process, "both by contributing to a guilty verdict that was eventually vacated and by giving rise to post-conviction litigation that required multiple hearings before the government eventually dismissed the charges." HC Rpt. at 42. As discussed above, we disagree with the Hearing Committee's conclusion that Respondent Haines appreciated the exculpatory nature of the information; however, her failure to disclose was nonetheless improper because a reasonable prosecutor would have known that it had to be produced. Thus, we agree with the Hearing Committee's conclusion that Respondent Haines violated Rule 8.4(d), albeit on slightly different grounds, as well.[29]

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[29] Respondent Haines contends, among other things, that the mere fact that the court was required to hold additional hearings is insufficient to find that she interfered with the administration of justice. *See* Haines Br. at 51. We recognize that not every action that requires court intervention interferes with the administration of justice, even though the court expends resources in deciding the matter. *See In re White*, 11 A.3d 1226, 1247-48 (D.C. 2011) (per curiam). But Respondent Haines' failure to

D. Rule 1.6 (Confidentiality of Information)

Rule 1.6(a) provides that a lawyer shall not knowingly reveal a confidence or secret of the lawyer's client. "'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client." Rule 1.6(b).

Respondent Haines acknowledges that she violated this Rule by forwarding internal prosecution emails containing confidential government information to her then-boyfriend, and she accepts responsibility for this Rule violation. *See* Haines Br. at 59, 61.

IV. SANCTION

The sanction imposed in an attorney disciplinary matter must protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In*

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comply with her disclosure duties ultimately was a significant factor leading to multiple post-trial hearings. And, more critically, she interfered with the ability of Guandique's attorneys to effectively cross-examine Morales.

Additionally, Respondent Haines argues that a finding that she violated Rule 8.4(d) is not appropriate where she was not proven to have acted consciously or intentionally. Haines Br. at 52. We are aware of no authority which supports her position. In fact, as we stated in *In re Agee*, a respondent may violate Rule 8.4(d) even where the respondent has acted negligently. BDN 243-01 at 33 (BPR May 14, 2004) ("A failure to act need not be intentionally improper or reckless in order to violate Rule 8.4(d).").

re Hutchinson, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam). The sanction must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 924; *Martin*, 67 A.3d at 1053.

In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *Howes*, 52 A.3d at 15). "'[T]he imposition of sanction in bar discipline cases is not an exact science' . . . and 'within the limits of

the mandate to achieve consistency, each case must be decided on its particular facts.'" *Cater*, 887 A.2d at 27 (citations omitted).

In *Kline*, the Court declined to impose a sanction on the respondent for his violation of Rule 3.8(e) due to the uncertain state of the law concerning whether Rule 3.8(e) applied to non-disclosures that did not meet the materiality element of *Brady*. 113 A.3d at 215-16. Because the misconduct here occurred before the Court decided *Kline*, as we read *Kline*, in assessing whether a sanction is appropriate here, we must first determine whether the failure to timely disclose the evidence of Morales' debriefing was material to the outcome of Guandique's trial.

As the Court stated in *Miller*,

> Evidence is material for purposes of *Brady* "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." [] "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." [] "The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence."

14 A.3d at 1119 (internal citations omitted); *see also In re Kyles*, 514 U.S. 419, 434 (1995) ("[A] showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal."). In evaluating whether impeachment evidence is material, the Court "consider[s] the importance of the witness to the government's case, the credibility of the witness, and the value of the withheld

evidence in undermining the witness' credibility." *Bennett*, 797 A.2d at 1256 (citing *Sterling v. United States*, 691 A.2d 126, 135 (D.C. 1997)).

"A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him." *McCoy v. United States*, 890 A.2d 204, 211 (D.C. 2006) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991)). As the sole confession witness, Morales' testimony was critical at trial and his credibility was crucial. In fact, he was the only witness directly tying Guandique to the murder. As the Hearing Committee concluded,

> Morales's justification for his delay in reporting the alleged confession, and the defense's futile efforts to challenge that story, was a major theme at trial, surfacing repeatedly during his testimony and in summation. [] The impact of Morales's testimony was so dramatic that when he testified "you could hear a pin drop," and after he finished.

HC Rpt. at 45. We agree with the Hearing Committee that this evidence was material. It strains credulity to believe that the trial resulted in a "verdict worthy of confidence" in the absence of this evidence. Thus, we have determined that a sanction is appropriate in this matter.[30]

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[30] In determining that the evidence of Morales' debriefing was material, the Hearing Committee relied, in part, upon the government's actions post-trial, including the withdrawal of its opposition to the defense's motion for a new trial and its ultimate dismissal of the charges against Guandique. HC Rpt. at 45-46. We have reviewed the question of materiality *de novo*. While we have similarly concluded that Respondent Haines' failure to disclose the evidence of the debriefing was material, we have reached that conclusion solely on the grounds discussed herein.

There have only been two Court decisions addressing the appropriate sanction for violations of Rule 3.8(e) – *In re Kline* and *In re Howes*.[31]

In *Kline*, the Court determined that it would have approved a thirty-day suspension for the violation of Rule 3.8(e). 113 A.3d at 215-16. Noting that other jurisdictions had "imposed discipline that range[d] from public reprimand or censure to a six-month suspension from the practice of law," the Court concluded that a thirty-day suspension was "within the wide range of sanctions that generally would be appropriate." *Id*. at 215.

In *Howes*, the respondent was disbarred for failing to disclose witness voucher payments to trial court judges and defense counsel. 52 A.3d at 5. He committed twenty violations of seven Rules in three separate groups of cases (seventeen of which were stipulated). *Id*. at 10. He was also knowingly dishonest and took advantage of a system that made his dishonesty hard to detect, an aggravating factor. *Id*. at 23 (prosecutorial misconduct is difficult to detect).

In the absence of dishonesty or misappropriation, the sanction for violations of Rule 1.6 violation ranges from an informal admonition to a brief suspension. *See*, *e.g.*, *In re Paul*, 292 A.3d 779 (D.C. 2023) (thirty-day suspension for disclosing client confidences in a disciplinary complaint filed against a former client); *In re Koeck*, 178 A.3d 463, 464 (D.C. 2018) (per curiam) (sixty-day suspension with fitness where the respondent violated Rule 1.6(a) on four separate occasions and

[31] Currently pending before the Court is *Dobbie*, Board Docket No. 19-BD-018. The Board recommended therein that the respondents be suspended for a period of six months for their violations of Rules 3.8(e), 8.4(c), and 8.4(d).

refused to participate in disciplinary proceedings); *In re Gonzalez*, 773 A.2d 1026, 1032 (D.C. 2001) (informal admonition for revealing client secrets in a motion to withdraw); *In re Hecht*, Bar Docket No. 2010-D307 (Letter of Informal Admonition Dec. 29, 2011) (same).

We recognize that Respondent Haines served the public for many years as a prosecutor, including working to prosecute unsolved homicides on behalf of female victims. She has no prior discipline and we do not find that she engaged in dishonesty. Respondent Haines committed three disciplinary rule violations, but since the Rule 8.4(d) violation is based on the same conduct as the Rule 3.8(e) violation, we do not view it as an aggravating factor. And we depart from the Hearing Committee's conclusion that she knowingly failed to disclose exculpatory evidence to defense counsel in this matter. Respondent Haines has also acknowledged her wrongful conduct in violating Rule 1.6.

On the other hand, Respondent Haines' misconduct was grave. "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." Rule 3.8(e), cmt. [1]. By withholding crucial evidence, albeit based upon a mistaken and unreasonable understanding of that evidence, she failed to uphold her duties. Her inactions set in motion a cascade of events that underscore the importance of deterring such misconduct. And we find, as the Hearing Committee did, that her failure to abide by the Court's clear instructions in *Zanders* is a factor in aggravation.

In consideration of the foregoing, we find that a suspension of sixty days is a sanction sufficient to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct.

V. CONCLUSION

For the foregoing reasons, the Board finds that Respondent Haines violated Rules 1.6(a), 3.8(e), and 8.4(d), and should receive the sanction of a sixty-day suspension. 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).

For the reasons set forth herein, we dismiss all charges in this matter against Respondent Campoamor-Sanchez. *See* Board Rule 13.7.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Robert L. Walker
Robert L. Walker

All members of the Board concur in this Report and Recommendation, except Ms. Larkin, who did not participate.