



him in an immigration removal action by asserting an asylum claim. YMP received an adverse decision on the asylum claim. Respondent appealed the adverse decision following consultation with YMP and his tender of the government filing fee. This Petition does not concern Respondent's work on the original asylum matter, about which there is no claim of misconduct. This Petition is limited to issues surrounding the propriety of Respondent's withdrawal of YMP's appeal.

## **II. Stipulation of Facts and Charges**

The conduct and standards to which Disciplinary Counsel and Respondent stipulate are as follows:

1. YMP is a citizen of El Salvador. On May 2, 2013, YMP arrived in the U.S. and expressed fear of returning to his country.
2. On June 5, 2014, Respondent presented YMP with an engagement agreement for representation in his asylum case before the Immigration Court. Respondent set the legal fee at \$6,500.
3. On June 30, 2014, Respondent filed YMP'S petition for asylum.
4. On July 11, 2017, after an asylum hearing, an Immigration Judge denied YMP's asylum claim.
5. On July 21, 2017, Respondent and YMP met at her office to discuss the possibility of appealing the denial of his asylum application. Respondent told YMP that he would have to pay an additional legal fee for Respondent to represent

him on the appeal.

6. YMP paid the \$110 government filing fee to Respondent to file the appeal at the meeting but did not advance any legal fees for the appeal. Respondent did not provide YMP anything at that meeting in writing about the basis or rate of her fee for representing him in the appeal.

7. On July 24, 2017, Respondent filed a notice of entry of appearance and a notice of appeal on behalf of YMP with the Board of Immigration Appeals.

8. Between July 24, 2017, and June 2018, Respondent met with YMP on at least four occasions regarding case status and to reach an agreement in writing about the representation.

9. Respondent and YMP last met in person on June 15, 2018, at which time Respondent recommended that YMP withdraw the appeal in light of a recent Attorney General opinion in the Matter of A-B-, which appeared to render YMP's appeal futile.

10. Respondent informed YMP that she would withdraw the appeal unless she heard back from YMP with contrary instructions by June 19, 2018. Having heard nothing by that date from YMP, Respondent filed a motion to withdraw the appeal in which she cited a change in controlling law (Matter of A-B-) as the reason for withdrawal.

11. The BIA granted the motion and dismissed YMP's appeal in

October 2018.

12. Respondent forwarded that decision to YMP via certified mail and YMP received the mailing.

13. On April 14, 2021, YMP requested a copy of his file, and a file pick-up appointment was set for April 22, 2021. YMP did not show up for the appointment.

14. On May 24, 2021, successor counsel for YMP emailed Respondent requesting YMP's file. Respondent replied the next day indicating that the file had been ready since April 22, 2021. Successor counsel's assistant picked up the file on May 26, 2021.

15. On December 21, 2021, successor counsel filed a Motion to Reopen the previously withdrawn appeal on grounds of Respondent's ineffective assistance of counsel and changes in the law. Respondent cooperated with successor counsel's efforts on behalf of YMP, by providing a declaration that successor counsel attached to the Motion to Reopen.

16. On March 10, 2022, the BIA denied the Motion to Reopen as time-barred.

17. Successor counsel appealed denial of the Motion to Reopen to BIA. The parties believe that Motion is still pending but agree that its outcome does not impact the rule violations or sanctions to be imposed.

18. In the above-mentioned declaration, Respondent asserted that she thought she needed to withdraw the appeal in order to withdraw her representation; but as part of that declaration acknowledged, in hindsight, that she did not need to withdraw the appeal in order to move to withdraw her appearance.

19. Respondent stated that she withdrew the appeal after her client failed to comply with the deadline for giving her other instructions by the deadline she gave him in their June 15, 2018, meeting. YMP, however, had not consented to Respondent's withdrawing the appeal.

20. Respondent's conduct violated the following District of Columbia Rules of Professional Conduct or parallel violations under 8 CFR §1003.102 (EIOR grounds of discipline)

a. Rule 1.1(a), in that Respondent failed to provide competent representation when she withdrew her client's appeal without definitive instructions to do so, rather than merely withdrawing her appearance; and

b. Rule 1.16(d), in that Respondent failed to protect her client's potential appeal rights when she withdrew her client's appeal without definitive instructions to do so, rather than merely withdrawing her appearance as his counsel.

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<sup>1</sup> The parties agree that choice of laws issues need not be resolved in a Negotiated Petition. *See In re Jenkins*, 23-BG-0545 (D.C. 2023).

### **III. Statement of Promises**

Disciplinary Counsel has not made any promises regarding the underlying matter other than to recommend the sanction set forth in this negotiated disposition.

### **IV. The Agreed-Upon Sanction**

#### **A. Agreed Sanction**

Respondent and Disciplinary Counsel have agreed that the appropriate sanction for the stipulated misconduct and rule violations in this matter is a censure by the District of Columbia Court of Appeals with a requirement that Respondent take three (3) hours of continuing legal education in the area of client communications, subject to Disciplinary Counsel's pre-approval of any such coursework. After executing the original Petition, and shortly before executing this Amended Petition, Respondent completed these continuing education requirements. The parties therefore agree that the only sanction to be imposed by the Court is a censure without further conditions.

#### **B. Relevant Precedent**

The range of sanctions for violations of Rules 1.1 and 1.16(d) range from informal admonitions to suspensions, some with fitness requirements, depending

on the severity of the misconduct and the violation of other Rules.

As set forth below, the agreed-upon sanction in this matter is appropriate given the range of sanctions in cases involving incompetence and failure to protect a client's interests.

The cases that have resulted in Informal Admonitions involve substantial mitigation such as the attorney's lack of disciplinary history, prompt communication to the client about the outcome of the case, acceptance of responsibility for the misconduct, payment of restitution to the client, informing the client that he or she may have a malpractice claim, providing the client with the attorney's malpractice insurance carrier, and/or taking steps to protect or salvage the client's legal interests in order to lessen the effect of the misconduct. *See Isadore B. Katz Esquire*, BDN 2008-D484 (July 8, 2009) (attorney violated Rules 1.1(a), 1.1(b), 1.3(a), and 1.3(c) by failing to file malpractice claim before statute of limitations expired); *In re Dharma Devarajan, Esquire*, BDN 2006-D113 (May 24, 2007) (attorney with no disciplinary history violated Rules 1.1(a), 1.1(b), and 1.3(a) by failing to file personal injury lawsuit but immediately notified professional liability insurance carrier of the incident and advised client). For more recent admonitions, see *In re Price*, DDN 2023-D022 (June 2, 2023); *In re Dennis*, DDN 2022-D135 (February 1, 2023); *In re Miller*, DDN 2022-D151 (February 1, 2023); *In re Jennings*, DDN 2021-D227 (January 31, 2023).

The cases that have resulted in short suspensions involve, *inter alia*, aggravating factors such as a failure to accept responsibility during disciplinary proceedings or a failure to inform the client of court decisions. *See In re Outlaw*, 917 A.2d 684 (D.C. 2007) (60-day suspension for attorney who failed to file personal injury action before expiration of statute of limitations); *In re Ontell*, 593 A.2d 1038 (D.C. 1991) (30-day suspension where attorney neglected two cases, allowing default judgment in one and dismissal in another – but was candid in disciplinary proceedings and voluntarily compensated one client financially for damages resulting from his misconduct); *In re Cole*, 967 A.2d 1264 (D.C. 2009) (30-day suspension for attorney who failed to file asylum application for client and lied to client about status of the application but later made restitution and assisted successor counsel); *In re Banks*, 577 A.2d 316 (D.C. 1990) (60-day suspension with all but 30-days stayed in favor of one-year probation where attorney failed to file personal injury complaint before statute of limitations expired and had prior disciplinary history).

This case does not merit a suspension because Respondent (a) cooperated with YMP's successor counsel; (b) cooperated with this investigation; (c) has taken responsibility for actions based on an incorrect assumption that her client's failure to provide other instructions following their last meeting indicated he did not want

to pursue the appeal. This matter does not include aggravating factors found in the above-cited suspension cases.

**C. Mitigating Circumstances**

Respondent has no prior discipline. Respondent has taken full responsibility for her misconduct and has demonstrated remorse. Respondent has fully cooperated with Disciplinary Counsel.

**WHEREFORE**, the Office of Disciplinary Counsel requests that the Executive Attorney assign a Hearing Committee to review the petition for negotiated disposition pursuant to D.C. Bar Rule XI, § 12.1(c).

Respectfully submitted,

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