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

In the Matter of:	:	
LILY MAZAHERY, ESQUIRE,	:	No. 2009-D217
	:	No. 2009-D280
Respondent.	:	No. 2009-D092
A Member of the Bar of the District of Columbia Court of Appeals Bar Number: 480044 Date of Admission: December 2, 2002	:	

REPORT AND RECOMMENDATION OF THE
AD HOC HEARING COMMITTEE

This consolidated proceeding arises out of Respondent Lily Mazahery's ("Respondent" or "Ms. Mazahery") pro bono representations of two former Iranian political prisoners and her humanitarian efforts on behalf of a woman sentenced to death in Iran. In the view of the Ad Hoc Hearing Committee ("Hearing Committee"), these well-intentioned efforts by Respondent were spoiled by her ignorance and/or disregard of the need to observe certain basic standards of conduct applicable to attorneys in this jurisdiction, and the personal relationships she formed with both of her *pro bono* clients, which adversely affected her judgment. Ultimately, Respondent's conduct deteriorated into multiple acts of dishonesty and even criminal conduct.

Three different complaints were filed against Respondent, and she is charged with one or more violations of the following provisions of the District of Columbia Rules of Professional Conduct ("Rules"):

- Rules 1.1(a) and (b) (competence) in the Batebi and Sanjari matters
- Rule 1.3(b)(1) (intentional failure to pursue the client's lawful objective) in the Batebi matter

- Rules 1.4(a) and(b) (communication) in the Batebi and Sanjari matters
- Rules 1.6(a)(1), (a)(2) and (a)(3) (client confidences) in the Batebi and Sanjari matters[1]
- Rule 1.7(b)(4) (conflicts of interest) in the Batebi matter
- Rules 1.15(a) and (b) in the Mahdavi matter
- Rule 8.1(a) (false statements in a disciplinary matter) in the Mahdavi and Batebi matters
- Rule 8.4(b) (criminal conduct) in the Mahdavi, Batebi and United Bank matters
- Rule 8.4(c) (dishonesty, fraud, deceit or misrepresentation) in the Mahdavi, Batebi, Sanjari and United Bank matters
- Rule 8.4(d) (conduct that seriously interferes with the administration of justice) in the Sanjari matter

For the reasons discussed below, the majority of the Hearing Committee concludes that Respondent committed 23 violations of the Rules of Professional Conduct and that Respondent should be disbarred. In a separate dissenting statement, one member of the Hearing Committee concludes that Bar Counsel did not prove by clear and convincing evidence four of the violations found by the majority, and recommends that Respondent should be suspended for a period of three years. All members of the Hearing Committee recommend that Respondent be required to demonstrate fitness and make restitution as conditions of reinstatement.

I. PROCEDURAL HISTORY

On September 10, 2010, Bar Counsel filed a Specification of Charges ("Charges") against Respondent, and subsequently filed amended Charges on October 18, 2010, December 6 and December 27, 2010. BX A2 at 4-33; BX A5 at 1-32, 36-67, 68-71.[2] On October 8, 2010,

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1 Bar Counsel also charged violations of Rules 1.6(b) and 1.6 (g), then noted in its brief that those rules are not an independent basis for discipline, but instead define and explain the scope of Rule 1.6. We agree.

2 "BX" refers to Bar Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on January 4, 5, 6, 7, 12, 14, 18, and 19, 2011.

and January 4, 2011, Respondent filed Answers to the Charges with the Board on Professional Responsibility ("Board"). BX A4.

On January 4, 5, 6, 7, 12, 14, 18 and 19, 2011, an Ad Hoc Hearing Committee of Chairman Robert A. Salerno, Esquire, Eric Fox, Esquire, and Billie LaVerne Smith, heard evidence and argument in this matter.

Bar Counsel called 14 witnesses: Asieh Nariman (complainant), Jennifer Hosny (donor), Michael LeFavor (eBay/PayPal custodian of records), Nazanin Boniadi (donor), Erica Fowler (United Bank custodian of records), Elton McIntosh (asylum officer), Kianoosh Sanjari (complainant), Roya Borourmand (friend of complainant), Barbara Ledeen (friend of complainant), Ladan Smith (immigration law expert), Elahe Hicks (friend of complainant), Allen Keller (torture survivor expert), Amwen Hughes (Human Rights First), Elise Auerbach (Amnesty International), Ahmad Batebi (complainant) and Eric Husketh (successor counsel). During the hearing, the Committee received into evidence Bar Counsel's exhibits BX Al -17, BX B 1-23, BX C1-7, BX D1-11, BX E1-40, BX F1-13, BX G1-4, BX H1-69, BX I-1-2, BX J1-13, and BX K1-23. Tr. 1268-70.[3]

Respondent, who was represented by counsel, testified and called no other witness.[4] During the hearing, the Committee received into evidence Respondent's exhibits RX 16, 23, 38,

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3 Bar Counsel's exhibits span eleven binders and number in the thousands of pages. Some of the exhibits appear to be the entirety of responses to subpoenas issued by Bar Counsel to Respondent and third parties. But Bar Counsel used only a fraction of these materials during the hearing and in its post-hearing briefs. For example, Bar Counsel would cite to only one or two pages of an "exhibit" that consisted of months-worth of chronological email communications and chat logs. By providing such voluminous exhibits of apparently raw discovery responses, rather than designating as exhibits the individual communications that it intended to use to support its allegations, Bar Counsel all but ensured that the Hearing Committee would be unable to review the evidence in advance of the hearing. It would have been more helpful to the Committee – in connection with both the hearing and the drafting of this Report – to have received a more selective set of exhibits without surplusage.

4 In response to a pre-hearing order, Respondent submitted a witness list on December 16, 2010, that included 22 different witnesses. During the hearing, Respondent repeatedly suggested that there were

66, 100, 105, 117-19, 122, 128-29, 132-35, 138, 140, 142, 144 (pages 4 and 5), 147, 150, 152, 155, 157-58, 160, 163-64, 166, 168, 170-71, 192, 198, and 207. Tr. 1409-10, 1449, 1452, 1469-70, 1471-72, 1478, 1482, 1487-88, 1494-1500, 1504-05, 1508, 1513, 1518, 1520-21, 1523, 1525-27, 1530, 1532, 1542.

Upon the conclusion of the hearing, the Committee made a preliminary non-binding determination that Respondent had violated one of more of the violations listed in the Second Amended Specification of Charges. Tr. 1826. Bar Counsel offered no evidence in aggravation of sanction, and Respondent offered no evidence in mitigation. Tr. 1826-27.

FINDINGS OF FACT

I. GENERAL FINDINGS

A. Respondent's Background

1. Respondent Lily Mazahery is a member of the Bar of the District of Columbia Court of Appeals. She was admitted by examination on December 1, 2002, and thereafter assigned Bar Number 480044. BX A1 at 1.

2. Respondent was born in Tehran, Iran. Following the 1979 revolution in Iran, her father fled that country to avoid political persecution. He was admitted to the United States under humanitarian parole and was later granted political asylum. Tr. 1304, 1307-08, Tr. VII 1304. Several years later, Respondent, her mother and her two younger brothers left Iran and reunited with her father. After initially settling in Northern Virginia, the Mazahery family subsequently relocated to Stafford, Virginia. Tr. 1308.

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additional witnesses who could support her positions. Tr. 1770 ("I can't tell you how many people who would be willing to sit here and testify."), Tr. 1813 ("I would be more than happy to put on the stand everyone that I have identified on that witness list…"). Ultimately, Respondent presented no testimony other than her own.

3. Respondent obtained her J.D. from American University in 1999. Tr. 1311 (Respondent). Upon graduation, she accepted employment as an associate with the law firm of Jones Day and worked primarily on intellectual property, antitrust and complex commercial litigation issues. Tr. 1318 (Respondent). After leaving Jones Day in 2002 for health reasons, Tr. 1312 (Respondent), Respondent became involved with various organizations assisting the victims of political, religious and gender persecution in Iran and other Middle Eastern countries. Tr. 1317-1318 (Respondent).

4. In 2007, Respondent became associated with Tankel Law, a Virginia law firm operated by her elderly neighbor and his son. Her practice primarily focuses on immigration and human rights matters. Tr. 1603 (Respondent). She also founded and is president of the Legal Rights Institute. Tr. 1604-06 (Respondent); BX D5 at 40-41, 43. Respondent testified that when she represents clients on a pro bono basis, she does not have her pro bono clients sign an engagement letter. Tr. at 1811.

5. During 2008, Respondent's office address was 8304 B Old Courthouse Road, Vienna, Virginia. Tr. 1615 (Respondent). From January through September 2008, Respondent lived at 1315 Round Oak Court, McLean, Virginia, which was her parents' home. Tr. 1616 (Respondent). Respondent used several different e-mail addresses, including lmazahery@gmail.com; lmazahery@tankel-law.com; and iranhumanrights2008@gmail.com. Tr. 1607-10, 1614-15 (Respondent).

6. Respondent is able to speak, read and write Farsi (Persian), although the evidence at the hearing was unclear as to the extent of her Farsi language skills. She conversed in Farsi during her childhood in Iran. Tr. 1306 (Respondent). Following her relocation to Virginia, she conversed primarily in English until 2007. Tr. 1308-09 (Respondent). At the time of the events

in question, she professed an ability to translate Farsi. For example, on June 10, 2008, while representing Ahmad Batebi, Respondent certified under penalty of perjury that "I am proficient in Persian (Farsi) and competent and experienced to translate documents from Farsi to English," and she translated Batebi's Iranian driver's license and Iranian Identification Card. BX K16. She also translated documents and interpreted at interviews for her clients and others. Tr. 1618 (Respondent); *see also* BX A8 at 2; BX A13 at 7, 18, 30, 72, 98, 100; BX D1 at 53, 94; BX D5 at 16; BX D6 at 63-64; BX I-1 at 286; BX J1 at 241. However, when Respondent wrote Persian, she did so in "Finglish," which uses the English alphabet to phonetically write in Persian. Tr. 1329; 1349-50 (Respondent).

B. Respondent's Bank Accounts

7. During the relevant period, Respondent opened several different bank accounts, into which funds at issue in this matter were deposited and/or from which funds at issue in this matter were withdrawn.

8. On May 1, 2008, Respondent opened a personal checking account at United Bank ending in 9443 ("9443 Account"). BX C2 at 1, 3; Tr. 177 (Fowler); Tr. 1377-78 (Respondent). On or about May 2, 2008, United Bank issued Respondent a debit card ending in 5021, which was linked to the 9443 Account. BX C3 at 6-7; Tr. 190-92 (Fowler). On or about July 21, 2008, Respondent added her then-client, Ahmad Batebi, to her 9443 Account as a co-signatory. BX C2 at 1-2; Tr. 176-78, 183-84 (Fowler). Batebi was entitled to use all of the funds in the account, and there were no limitations or restrictions on his use of those funds. Tr. 1783 (Respondent). On or about August 8, 2008, United Bank issued Batebi a debit card ending in 0037, which was linked to the 9443 Account. BX C4 at 2-4; Tr. 195-96, 220 (Fowler). Batebi did not have access to the funds in the 9443 Account until he received his debit card. Tr. 996-97 (Batebi).

9. On or about July 21, 2008, Respondent opened a second personal checking account ending in 0878 at United Bank ("0878 Account"). BX C5 at 1. Respondent had exclusive control over this account, was the sole signatory on the account, and any debit cards issued on this account were issued to Respondent. BX C5 at 1; Tr. 186-87, 221, 240 (Fowler).

10. On or about September 2, 2008, Respondent closed the 9443 Account, withdrew $126.99 from the account, and deposited the funds into her 0878 Account. BX C2 at 34, 41-42; BX C5 at 21, 25; Tr. 188 (Fowler). A United Bank employee identified and marked on the 9443 Account bank statements whether a transaction was conducted with Respondent's 5021 debit card or with Batebi's 0037 debit card. BX C3 at 18-32; Tr. 192-94, 240-42 (Fowler).

11. On or about January 20, 2010, Respondent opened a checking account at United Bank ("2981 Account") with a cash deposit of $2,020. BX C6 at 1-3; Tr. 1398-99 (Respondent).

C. The Effects of Torture on Survivors

12. According to Dr. Keller, Bar Counsel's expert witnesses on the impact of torture, torture is "one of the most traumatizing events an individual can experience, having impacts . . . on the physical, psychological and social dimensions," which are all connected. Tr. 883-84 (Keller); BX D11 at 23. It is "arguably the quintessential violation of the social contract; an individual brutalizing, dehumanizing, completely controlling an individual." Tr. 883 (Keller). Dr. Keller testified that the "issue of control is central to part of the trauma of torture," and that torture can "profoundly undermine trust and a sense of safety in other individuals." *Id*.

13. Dr. Keller described psychological symptoms of torture as follows:

> [P]rofound anxiety, including post traumatic stress disorder; which includes symptoms of re-experiencing the trauma, hyper-arousal, for example being easily startled; of avoidance, trying not to think about things or getting irritable if you do think about things. Often torture survivors suffer from symptoms of depression, profound feelings of sadness, hopelessness, helplessness, both in terms of what happened to them and also in terms of what may have happened to colleagues and individuals they cared for, profound feelings of guilt, perhaps that they survived.

Tr. 884-85 (Keller); *see also* BX D11 at 23. Post traumatic stress disorder ("PTSD") is one of the effects of torture, and Dr. Keller testified that there are three broad categories of PTSD: re-experiencing (*e.g.*, nightmares), hyper-arousal (*e.g.*, easily startled), and avoidance (*e.g.*, blocking memories of events). Tr. 885 (Keller). Dr. Keller testified: "[I]ndividuals suffering from PTSD I think are particularly potentially vulnerable to being manipulated." Tr. 914 (Keller).

II. THE KIANOOSH SANJARI MATTER (COUNT III)[5]

14. Mehdi Kianoosh Sanjari Baf ("Sanjari") is an Iranian dissident and a former political prisoner from Iran. BX F1 at 4; Tr. 328, 330-31 (Sanjari). When he was in Iran, Sanjari was arrested, confined, and tortured. BX H1 at 18-22; Tr. 330-31, 333 (Sanjari). During his imprisonment, he was held in solitary confinement, physically beaten, and subjected to psychological torture. BX H1 at 18-22; Tr. 331, 333 (Sanjari). In March 2007, he escaped from Iran and went to Iraq. BX F1 at 4; Tr. 333 (Sanjari).

15. In early September 2007, Sanjari was in Iraq when he received an e-mail from a human rights activist who suggested that Sanjari contact Respondent. Respondent was copied on the e-mail. BX F1 at 4; BX F3 at 2, 10; Tr. 334-36 (Sanjari); Tr. 1320 (Respondent). On September 5, 2007, Respondent introduced herself to Sanjari via e-mail, describing herself as "a human rights and an immigration attorney" and "the director of the Legal Rights Institute," and provided her contact information. BX F3 at 12; *see also* BX F3 at 2; Tr. 336 (Sanjari). By no later than October 2, 2007, Sanjari believed that Respondent was acting as his lawyer. BX H2 at 4.

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5 For ease of understanding, we do not address the Counts in the order in which they appear in the Specification of Charges. For example, because the conduct in Count III (Sanjari) precedes chronologically the conduct in Count II (Batebi), those matters are best addressed in that order. And in

16. Sanjari trusted Respondent as his attorney, and he expected her to maintain his secrets and client confidentiality. BX H5 at 54 (Respondent's January 16, 2008 Google chat message ("G-chat") to Sanjari: "all the attorneys keep [their clients'] secrets."). Sanjari testified that, at that time, he had "total trust in her," to a point that he would send her his correspondence with other individuals. Tr. 402-03 (Sanjari). Respondent clearly knew that she had a duty to protect and maintain Sanjari's confidences. In Respondent's February 26, 2008 e-mail to a friend of Sanjari's, Respondent wrote: "After all, I am [Sanjari's] closest confidant, as I am of all my other clients. Anything that they say to me will go with me to my grave. I have a professional duty to protect them at every level, and they realize that." BX H6 at 236. In a March 7, 2008 e-mail, Respondent emphasized to Sanjari the inviolate nature of attorney client confidences:

> When someone tells you "don't tell this to your attorney (it does not matter who your attorney might be)," you must know something is not right. The only person who must and will keep safe all your secrets, ideas, words, etc is your attorney. Everyone knows this. No matter whom your attorney might be his/her only and only job is the advocacy of you and your interests. That is all.

BX I1 at 75.

A. Sanjari's Relocation to the United States

17. Sanjari was in considerable danger while in Iraq. Tr. 441 (Sanjari); Tr. 1322 (Respondent). In September 2007, Amnesty International facilitated, and the United Nations High Commissioner for Refugees granted, Sanjari's request for refugee status, and arranged for him to live in Norway. BX F3 at 24, 27, 31-34; BX H1 at 11, 17-18; Tr. 667 (Mirbagheri). Respondent was aware of these efforts and agreed that it would be prudent for him to leave for Norway, in light of the dangers he faced in Iraq. Tr. 1322-23 (Respondent).

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order to discuss and understand the conduct in Counts I (Madhavi) and IV (United Bank), it is helpful to have some familiarity with the conduct in Count II (Batebi), so those counts will be discussed last.

18. There is no doubt that Sanjari was interested in resettling to the United States, both before and after he went to Norway. From the outset of his communications with Respondent while he was still in Iraq, Sanjari made that interest clear, and Respondent offered to help him. BX F3 at 20 ("If immigrating to America is your aim, then I can help you."). In September 2007, Respondent stated that she "was not in direct and frequent contact with Mr. Sanjari during that period personally…." BX F3 at 3. Respondent differentiates this period from later periods by stating: "In October 2007, however, I began to communicate with Mr. Sanjari on a more regular basis." *Id*. Thereafter, in an e-mail dated October 21, 2007, Respondent advised Sanjari that it would be better for him to go to Norway first, and then she would help him come to the United States. BX F3 at 3, 39; Tr. 1322 (Respondent); Tr. 339 (Sanjari); *see also*, BX H1 at 18; BX H3 at 6-7.

19. At the end of October 2007, Sanjari left Iraq and went to Norway. BX F3 at 40; BX F1 at 4; Tr. 333-34 (Sanjari). On November 17, 2007, in response to Sanjari's inquiries about his options, Respondent advised Sanjari via e-mail that because he had been granted asylum in Norway, he could not apply for asylum status in the United States. BX H3 at 6; BX F1 at 5; Tr. 344-45 (Sanjari). She told Sanjari not to worry because "[w]e'll get you here." BX H3 at 6.

20. While Sanjari was residing in Norway, Respondent assisted Sanjari in obtaining a B-1 business visitor visa so that he could travel to the United States BX F1 at 4; BX F3 at 4; F8 at 1-4; Tr. 1336-37 (Respondent). She investigated and sought out speaking engagements, interviews and other appearances for Sanjari in the United States. BX H6 at 180-81; BX F5 at 5; BX H5 at 10; Tr. 343-44, 401 (Sanjari). Ultimately, Respondent arranged for Sanjari to be the keynote speaker on April 7, 2008, at the Iran Freedom Concert, sponsored by Sacred Heart

University in Connecticut. *See* BX F1 at 4; BX F3 at 4, 69; *see also* BX F8 at 1-4; BX F10 at 1; Tr. 345 (Sanjari). In addition to the Iran Freedom Concert engagement, Respondent arranged for Sanjari to be invited to the United States and interviewed by The Abdorrahman Boroumand Foundation, a human rights organization located in Washington, D.C. BX F1 at 4; BX F5 at 1, 5, 23-25; Tr. 567-68 (Boroumand); Tr. 345 (Sanjari).

21. Sometime in late February or early March 2008, Respondent filed an application for a non-immigrant visa on Sanjari's behalf. BX F8 at 1-4; Tr. 1336-40 (Respondent). In the application, Respondent stated that Sanjari was planning to stay in the United States for 15 days to attend the Iran Freedom Concert and the Bahar Ball, and that Sacred Heart University planned to pay for his plane ticket. BX F8 at 1; Tr. 343-45 (Sanjari). Respondent listed her own address as the location where Sanjari intended to stay while in the United States. BX F8 at 1. On March 10, 2008, Sanjari interviewed at the U.S. embassy in Oslo. BX F3 at 73-78. On or about March 14, 2008, the U.S. embassy in Oslo granted Sanjari's visa to the United States, valid for three months. BX F1 at 4; BX F3 at 5, 88; BX F7 at 6; BX F5 at 28.

22. On March 13, 2008 – after Sanjari's visa application was filed and one day before his application was granted – Respondent sent Sanjari by email three copies of a partially completed asylum application. BX I-1 at 187-99, 200-12, 213-26. In one of her emails, she told Sanjari to keep the application "in a safe and secure location that you could easily access when needed." BX I-1 at 200.

23. In an e-mail dated March 16, 2008, Respondent requested financial assistance from Roya and Ladan Boroumand to pay for Sanjari's ticket to the United States because Sacred Heart University would be unable to pay Sanjari until after the event, and Respondent could not do so herself because she was "in a dire financial situation" and was "completely out of money."

BX F5 at 28, 31; Tr. 620-21 (Boroumand); BX H6 at 180. Respondent told Sanjari that his plane ticket to the United States would be reimbursed by Sacred Heart University. BX F1 at 5, 7; Tr. 349, 410, 457-59 (Sanjari); Tr. 572-73 (Boroumand). Sanjari purchased his plane ticket with a loan from his friend. BX I-1 at 317; BX F1 at 5; Tr. 349, 457 (Sanjari). On or about March 20, 2008, Sanjari arrived at Washington Dulles International Airport. BX F1 at 5; Tr. 347 (Sanjari); Tr. 1328 (Respondent).

24. Bar Counsel's immigration expert, Ladan Mirbagheri Smith, testified at the hearing that it is improper for an attorney to represent to a government authority that a visa applicant was traveling to the United States for a temporary visit when the attorney knew that the applicant intended to settle in the United States. Tr. 669-71, 703-04 (Mirbagheri). Based on her experience, Mirbagheri testified that if the U.S. consul discovered that there is any intent on the part of the applicant to remain in the United States, the nonimmigrant visa would not have been issued. Tr. 670 (Mirbagheri).

25. At the hearing, Respondent was asked if, when she prepared the visa application, she knew whether Sanjari was intending to stay in the United States. Respondent explained:

> I did not. … I wasn't sure if Mr. Sanjari would, in fact, want to. That was his decision. It seemed like he had built it up in his head for so long. So I almost though it would be sort of a disappointment to him because it seemed like the land of milk and honey that he had built up for himself. So I didn't know one way or the other. I advised him quite clearly that the offer he has received for employment in Europe is something that he should consider very seriously and come here and talk to Mr. Batebi's colleagues here and see if they can accommodate him the same way that they would in Europe and then make a decision accordingly.

Tr. 1814-15 (Respondent). The employment opportunity was a job offer from Crown Prince Reza Pahlavi to work in Germany or France for a "very handsome salary." Tr. at 1331 (Respondent).

26. Respondent was also asked if, at or before she applied for the visa, Mr. Sanjari had expressed a desire to seek asylum in the United States. Respondent answered:

> Not necessarily asylum in the United States, but wanted to come to the United States because a lot of friends were here. So he wanted to come -- and one of the main things that we were trying to do was to see -- given that he had such an amazing offer from the crown prince to work in Europe, to whether if he even liked the United States compared to Europe. Because he had -- you know, so one of the reasons for the trip, for him to get a feel for what this United States was all about that he was so interested in.

Tr. 1339 (Respondent). We credit Respondent's testimony that when she applied for a visa on Sanjari's behalf, there was enough uncertainty about Sanjari's desire to live in the United States that she did not misrepresent his intention to visit the United States temporarily in his visa application.

27. Respondent further testified that she believed Sanjari was going to Norway on a "temporary basis until the rest of his case was sorted out." Tr. 1322 (Respondent). As Bar Counsel points out, beginning in November 2007, Respondent advised Sanjari and other interested parties, including the embassy in Oslo, that Sanjari had received asylum from Norway. BX H3 at 6; BX F1 at 4-5; Tr. 344-45 (Sanjari); *see also,* BX H5 at 240 (Respondent's January 24, 2008 e-mail to Sanjari: "For traveling to the United States, the Norwegian passport holders do not need to have a visa. But since you were granted a political asylum it might be required [visa]."); 323 (Respondent's January 31, 2008 e-mail to Amnesty: "With the assistance of Amnesty International, Kianoosh was recently able to obtain political asylum in Norway. . . ."); BX H6 at 99 (Respondent's February 13, 2008 e-mail to associates of the Crown Prince of Iran: "Also, it is my understanding that since Kianoosh has asylum in Norway . . . ."), BX H6 at 219 (Respondent's February 23, 2008 e-mail to Sanjari asking him to review her proposed responses to interview questions: "I am delighted that [Sanjari] was granted asylum in Norway a few months ago . . . . "); BX F3 at 77 (Respondent's March 9, 2008 e-mail to the U.S. embassy

in Oslo: "Mr. Sanjari, who has prominent dissident status, is originally from Iran, but has been granted political asylum by the Norwegian government."). We do not find that Respondent testified falsely about whether Sanjari had received asylum in Norway, however, since we credit her testimony that "[w]e weren't exactly sure what he had received because of the very unusual circumstances of his case." Tr. 1813 (Respondent).

B. The Personal Relationship Between Respondent and Sanjari

28. Beginning in or about January 2008 and continuing until April 8, 2008, Respondent engaged in an intimate, personal relationship with Sanjari. Tr. 340 (Sanjari); Tr. 1342, 1789-90 (Respondent). Because the nature of the relationship affects the disposition of certain of the charges in this matter, we will address it is some detail.

29. While Sanjari was still in Norway, Respondent and Sanjari expressed their romantic feelings and sexual interest in e-mails, text messages, telephone calls, online chat sessions, and via webcam. Tr. 340-43, 442-43, 447-50, 455-56 (Sanjari). Almost daily, and multiple times a day, Respondent and Sanjari expressed their sexual feelings and mutual interest in each other. Tr. 405 (Sanjari). Contrary to Respondent's suggestion that Sanjari unilaterally increased contact with her and expressed his love for her, Respondent repeatedly expressed interest in Sanjari as well. Tr. 1327 (Respondent). For example, Respondent sent Sanjari numerous photographs of herself, including close-up shots of her lips and breasts. BX H5 at 133-147, 219; BX H6 at 44-51; Tr. 409 (Sanjari); Tr. 1326 (Respondent). Respondent wrote to Sanjari that she loved him, she missed him, and she sent him love poems, lyrics of love songs, and images of hearts. *See, e.g.*, BX H5 at 273-74; BX H6 at 13, 34, 55, 66, 76-78, 80, 114-119, 263; Tr. 405, 409 (Sanjari).

30. While Respondent was engaged in this intimate personal relationship with Sanjari, she continued to represent him as his attorney. For example, on January 22, 2008, from

her work e-mail address (lmazahery@tankel-law.com), Respondent sent Sanjari a Notice of Entry of Appearance as Attorney or Representative (G-28 Form) and requested that he complete the required fields and send it back to her "ASAP." BX F3 at 58. On the same day, January 22, 2008, Respondent sent Sanjari a picture of her breasts. BX H5 at 219; Tr. 409 (Sanjari). Also, in an e-mail dated January 24, 2008, Respondent advised Sanjari that she was working on getting him a visa to the United States. BX F3 at 64. On the same day, Sanjari wrote to Respondent: "I am guessing the orgasm of few night's ago has really weakened you. Gorgeous, take some VITAMIN C!!" BX H5 at 231.

31. In addition to their e-mail communications while Sanjari was in Norway, Sanjari and Respondent engaged in sexual conduct while they were in contact by telephone or through a webcam. Tr. 341-43 (Sanjari); BX I-1 at 252 (Respondent's March 15, 2008 e-mail to Sanjari: "I had not seen you on the stupid webcam tonight. It literally changed everything. See you on Wednesday."); BX H5 at 231; BX H6 at 229-30 (February 26, 2008 G-chat exchange where Sanjari writes that he will be on Skype soon, Respondent responded: "Yyaay SEX!!! LOL.").

32. Contrary to the documentary evidence and Sanjari's testimony, Respondent falsely testified at the hearing that while Sanjari was in Norway, she did not have video contact with him. And she testified evasively about the sexual nature of their relationship while he was in Norway.

> Q; Did you also have a sexual relationship with Mr. Sanjari while he was in Norway?
> A: How can you have a sexual relationship with someone who is on the other side of the planet?
> Q: Did you engage in sexual conduct while you were in direct communication with Mr. Sanjari, either by chat or telephone?
> A: I'm not sure what that means.
> Q: And you're unable to respond to the question, then?
> A: Yes.

Tr. 1790.

33. Respondent admitted to "very briefly" having sexual relations with Sanjari after he arrived in the United States. Tr. 1342 (Respondent). Sanjari testified to having sexual relations with Respondent "a number of times" but "less than 10 times." Tr. 349, 486-87 (Sanjari).

34. In the complaint that Sanjari submitted to Bar Counsel, he alleged that Respondent expected sex from him in lieu of payment for legal services. BX F1 at 5. But no other evidence was presented in support of that allegation, and we make no such finding.

35. In her response to Bar Counsel regarding the complaint, Respondent wrote: "Never did I ask him to be paid for my services, never did I ask him for any sort of sexual favors in return, and never did I have or suggest an ***inappropriate*** sexual relationship to him at any time." BX F3 at 4, par. 3 (emphasis added); Tr. 1342-43 (Respondent).

36. Once Sanjari arrived in the United States, Respondent continued her simultaneous legal representation of and sexual relationship with Sanjari. BX F1 at 5-6; Tr. 348-51, 357-59 (Sanjari); Tr. 1342 (Respondent). On his first night in the United States, Sanjari stayed with Respondent in her parents' home, and they had sexual relations. BX F1 at 5; Tr. 348-49, 486-87 (Sanjari). Mr. Sanjari testified:

> And what happened which was put me in a very shameful position, the morning that we woke up, I heard the verbal argument between Ms. Mazahery and her mother. Her mother noticed that her daughter had brought a man to the house. Ms. Mazahery came downstairs, and she told me that her mother is upset over this. Her mother had told her, what are you doing? Why did you bring him home?

Tr. 348-49 (Sanjari). The next morning, Sanjari left the Mazahery home to live with a friend. BX F1 at 5; Tr. 348 (Sanjari); Tr. 573 (Boroumand).

37. On March 27, 2008, Ms. Avni Jagar ("Jagar"), Respondent's law clerk, contacted Sanjari via e-mail and advised him that he should file for U.S. asylum "as soon as possible so

that you can receive work authorization and avoid being deported." BX F3 at 91; BX I-1 at 398. Sanjari wrote to Ms. Jagar thanking her for her email and expressing interest in filing an application for asylum in the U.S. BX F11 at 10; BX I-1 at 401. On the same day, March 27, 2008, Sanjari signed an asylum application prepared by Respondent. BX F8 at 33; Tr. 467-68 (Sanjari); Tr. 1339-40 (Respondent).

38. On March 27, 2008, Respondent and Sanjari spent the night together. On March 28, 2008, Respondent wrote to Sanjari: "I had a FANTASTIC time. Thank you for a great night/day. I hope we'll be able to repeat it soon." BX I-1 at 412; Tr. 392 (Sanjari). Later on March 28, 2008, Respondent repeatedly called Sanjari "with an emotional tone, depressed, and accompanied with crying" and talked about personal problems she was having with her family, and the fact that she had allowed Sanjari to stay with her in her room at their house. BX F4 at 8-9; Tr. 350-51, 495-96 (Sanjari). In one of the conversations, Respondent told Sanjari she had been kicked out of her parents' house and suggested that they live together. BX F4 at 8; Tr. 495-96 (Sanjari). In addition to phone calls, Respondent was also sending Sanjari e-mails insisting that she needed to be with him that night: "I can't believe that I am the one who needs YOU now and I can't reach you. I'm an emotional mess." BX I-1 at 417. Sanjari responded:

> I am both happy and upset[.] I am happy for being here and getting to see you. And unhappy for the problems I have created for you and for upsetting you. . . . Truth be told I have a heavy heart. I feel I create problems. I need to start working as soon as possible. I am going crazy from this situation . . . . Write me to say if you are going home tonight or no. I think you should go home. Talk to them very logically, politely, and say what you did was wrong. Please talk to them.

BX I-1 at 418-19. Respondent replied:

> WISH YOU WERE HERE! I am the type that normally does not need anyone. But I don't know how to deal with all the pressures which they bunched up together today and fell on top of my head. I really feel bad and don't know how to deal with it. Moreover, I have never been so open about my personal life with anyone. I don't know why I trust you so much. But please don't make me regret

> it. PLEASE. In any event, tomorrow I start looking for a place for myself. If I find a suitable place, it could also be the place that you wanted to have and were looking for it!!!! I wish you were here with me. I don't remember the last time I felt this way.

BX I-1 at 418. After Sanjari declined to meet her, Respondent persisted, and approximately two hours later, Respondent again asked to see Sanjari. BX I-1 at 415; Tr. 350-51 (Sanjari). (Respondent's March 28, 2008 e-mail sent at 8:57 p.m.: "CAN YOU COME OVER??? I will pick you up at the Metro, and we can stay at the hotel next to my office. I really don't want to be alone tonight."). About 15 minutes later, Sanjari wrote:

> I really have a strange feeling[.] Iran – exile – loneliness and you and dizziness and all other problems[.] [Y]ou are my supporter, I love you, and this is very good[.] But believe me; sometimes I feel a lack of energy[.] [A]ll the pressures of work and even love is making me feel like a kid who can't handle it all. I become dizzy, frightened and feel that I am a bad person or that I am weak[.] [T]hese are all contradictory feelings that I have[.] Please be logical and don't worry[.] [F]or possibly causing you grief or to cry, it really makes me to be upset with myself[.]

BX I-1 at 418. Sanjari declined to meet with Respondent. Tr. 351, 495 (Sanjari).

39. On the night of March 28, 2008, Sanjari determined that he was not interested in a personal relationship with Respondent, and he did not want to participate in the Iran Freedom Concert or other speaking engagements with Respondent. BX F4 at 8; Tr. 350-355, 494-96 (Sanjari). The next day, on March 29, 2008, Respondent wrote to Sanjari: "Are you not talking to me now??!! For whatever it's worth, I'm sorry that I was so harsh on you last night. It was a very emotional and painful night for me and I should not have taken it out on you as I did. I apologize." BX I-1 at 427. Sanjari limited his communications with Respondent, cancelled meetings, and appeared depressed. BX I-1 at 437, 438; Tr. 578-79 (Boroumand); Tr. 351, 355, 357-58 (Sanjari).

40. Respondent and Sanjari were scheduled to appear and speak at the Iran Freedom Concert in Connecticut on April 7, 2008. BX F10 at 1; Tr. 351-52 (Sanjari). Sanjari did not

wish to travel to Connecticut or stay in the same accommodations with Respondent, and he told Respondent that he was unwilling to travel with her. BX F1 at 6; Tr. 352. Respondent informed Jason Guberman ("Guberman"), one of the student organizers of the concert, about Sanjari's refusal to travel with her. Tr. 1347-48 (Respondent); *see also* BX I-2 at 2-4. On April 2, 2008, Guberman contacted Sanjari by e-mail and notified him that he did not have an option to travel apart from Respondent or stay in separate hotels. BX I2 at 5. Guberman told Sanjari that if he did not do exactly as he was told, he would not be allowed at the concert, he would not be compensated, and his visa would be in jeopardy. *Id.* Sanjari responded that he was grateful for what Guberman had done, he was committed to attending the event, and inquired whether he could travel on his own to the concert. *Id.* ("I will participate in the event and do the best that I can. I am more comfortable to come alone to the university. It is not big issue and has no impact in the event. It is supposed you as a member of American society respect to my private sphere."); Tr. 352-54 (Sanjari). Guberman responded that Sanjari travelling and staying with Respondent were "non-negotiable" and that "[Respondent] as your attorney and visa sponsor, is the only person we are empowered to deal with on your behalf." BX K2 at 1. Sanjari wrote to Guberman he would attend the concert. *Id.*

41. On April 3, 2008, after Sanjari had informed Respondent that he was unwilling to travel with her, Respondent called Sanjari in the middle of the night and told him that if he did not travel with her, she would cause him to be deported from the United States. BX F1 at 6. Sanjari testified:

> Three times she threatened me, saying that the organizer of the programs are [*sic*] to take back their invitation and then I will be forced to leave the United States. She even said the police is coming to some organization, ICE something or another, to get me and deport me. And I was waiting for them any moment to come to the door and grab me.

Tr. 353-54 (Sanjari); BX F1 at 6; BX F4 at 9 (Sanjari: "But this unfair, tyrant of an attorney was threatening me with deportation from the United States . . . because I did not want to accompany her on a trip and spend the night in the same hotel and the same room with her."); Tr. 580-81, 590 (Boroumand); BX I-2 at 67-71 (Respondent's April 9, 2008 e-mail to Sanjari with the subject line: "ICE arrests 94 people in DC area," a link to the news article, and the following text written in Persian: "FYI!!!! Look, they are not joking around!!!").

42. Respondent testified that she "absolutely" never threatened Sanjari with deportation. Tr. 1347 (Respondent).

43. On April 7, 2008, Respondent and Sanjari appeared at the Iran Freedom Concert. Tr. 353-54, 470 (Sanjari); Tr. 1343 (Respondent); BX F1 at 7; BX F10 at 2-7. Sanjari and Respondent attended the concert and shared a hotel suite. BX F1 at 7; Tr. 354, 471-72 (Sanjari). On April 8, 2008, the morning after the concert, Sanjari and Respondent had sexual relations for the last time. Tr. 354, 473-75 (Sanjari). On April 9, 2008, Respondent sent Sanjari a handwritten note, congratulating him on his speech at the Freedom Concert. BX I-2 at 51-53. Respondent also wrote to Sanjari via e-mail and told him: "That was REALLY good. Thanks. I had a GREAT time on so many levels. It was so nice to have the Kianoosh that I had grown to know over the past 6 months or so back finally! All smiles, Lily." BX I-2 at 54.

C. Representation of Sanjari in Connection with the Asylum Application

44. During the escalating conflict in their personal relationship, Respondent continued to represent Sanjari as his attorney. On April 3, 2008, Respondent notified Sanjari via e-mail, written in English, that she had filed his asylum application with the United States Customs and Immigration Services ("USCIS"). BX F3 at 92-93; BX G4 at 463-64; Tr. 1339-41 (Respondent).

45. On or about April 7, 2008, USCIS received Sanjari's application for asylum. BX F7 at 8-10; BX F8 at 5-13, 25-36. On the asylum application, Respondent had listed her own

home address as Sanjari's address on the first page, even though Sanjari was staying in another location. *See* BX F8 at 5, item 8. She stated that Sanjari resided in her home from March 20, 2008, until the "present." BX F8 at 8, item 2.

46. On April 11, 2008, Sanjari, via e-mail, requested that Respondent send him by e-mail a copy of the asylum application she had filed and the notice of receipt. BX I-2 at 124. On April 12, 2008, Respondent replied and informed Sanjari that "[w]henever you want, you can come to the office and make a copy of it for yourself." BX I-2 at 134. On April 15, 2008, Respondent notified Sanjari that USCIS had acknowledged receipt of his asylum application. BX I-2 at 186.

47. By May 2008, Respondent and Sanjari's personal relationship had become very acrimonious, and Sanjari was reluctant to meet with Respondent because of their prior sexual relationship. Tr. 357 (Sanjari), 414 ("the relationship had gotten to be really bad."). The friction caused a break-down in their communication during the two weeks prior to Sanjari's asylum interview scheduled for May 12, 2008, which was a critical juncture in the representation. BX F5 at 2; BX J1 at 9 (Respondent's May 1, 2008 e-mail: "I have NO idea what this kid's problem is. I am at a complete loss!! NOTHING seems to satisfy him.").

48. The interview with the Asylum Officer ("AO") is "the most critical element of the case." Tr. 269 (McIntosh). The AO decides, based on testimony given at the interview, the documentary evidence submitted, and the relevant case law, whether to grant asylum, which would mean the applicant is allowed to remain in the United States. Tr. 267-68 (McIntosh). If the AO decides against the applicant and the applicant is not in legal status, the case is referred to an immigration judge, who will conduct a *de novo* review of the applicant's claim. Tr. 269, 289-90 (McIntosh).

49. On May 2, 2008, Sanjari met with Respondent to discuss his case at a restaurant in Virginia. Tr. 357-58 (Sanjari). Instead of discussing Sanjari's asylum interview, Respondent discussed their personal relationship and future projects. *Id*. Respondent became intoxicated, later drove her car into a curb, and stayed at a hotel nearby. Tr. 358-60 (Sanjari). Sanjari paid for Respondent to stay in the hotel for the night because Respondent did not have sufficient funds to pay for the room, and then he left. Tr. 359-60 (Sanjari). In a May 3, 2008 text message to Boroumand, Sanjari described the events. BX F5 at 66.

50. On May 6, 2008, Respondent sent Sanjari a string of e-mails several minutes apart. BX J1 at 26-30. The text of each e-mail was a word or phrase written in English:

2:28 p.m.: master manipulator
2:32 p.m.: manipulator: to change by artful or unfair means so as to serve one's purpose
2:36 p.m.: self-destruct
2:37 p.m.: sadistic
2:38 p.m.: copout

BX J1 at 26-30. Sanjari did not know the meaning of these words and arranged to have them translated. Tr. 412-14 (Sanjari).

51. Sanjari decided that he wanted a copy of his client file because he felt that "[t]here are things that are missing or are needed to be in my case file that I wasn't privy." Tr. 367 (Sanjari). On at least two occasions, Sanjari went to Respondent's office to obtain his file. On May 7, 2008, Sanjari informed Respondent via e-mail that he would come to her office that afternoon for a copy of his client file; he went to her office, but Respondent was unavailable. BX J1 at 33; Tr. 365-67, 480-81 (Sanjari). A second time, just days before the asylum interview, Sanjari went to Respondent's office, he and Respondent argued, and he left with a copy of his file. Tr. 367-68, 481-82 (Sanjari). On May 8, 2008, Respondent wrote to Sanjari in an e-mail emphasizing that she needed to prepare him for his interview. BX J1 at 36. Respondent

forwarded a copy of this e-mail to Roya Boroumand, writing that "[t]his is probably the fourth email/phone I message have sent [to Sanjari] in the past couple of days about this," and further stated that "I have not had any responses, unfortunately." BX J1 at 36. Sanjari replied to Respondent's May 8, 2008 email explaining that he had met with Respondent the week prior to discuss his asylum interview but that, rather than discuss his asylum interview, Respondent became intoxicated and "did not say a word about this issue!" BX F5 at 75-76.

52. Sanjari turned to Boroumand as an intermediary and for help in communicating with Respondent. BX F5 at 2; BX J1 at 44-45; Tr. 363 (Sanjari). Boroumand was copied on the e-mail exchanges between Sanjari and Respondent. BX F5 at 75-76 (Boroumand's May 8, 2008 e-mail: "This e-mail exchange is very counterproductive. I am really sorry your relationship has become so problematic and there are so many misunderstandings between the two of you."). Boroumand expressed her concern that their personal relationship was "prevent[ing] the two of you from working well together and that it may have consequences for the interview," and offered to meet with them together. BX F5 at 70.

53. On May 12, 2008, Respondent appeared with Sanjari for his asylum interview at USCIS. Tr. 371 (Sanjari). McIntosh was the AO assigned to Sanjari's case. Tr. 270 (McIntosh). Respondent did not submit a written memorandum at the time of the asylum interview, even though she had told Boroumand that she intended to present a brief at the asylum interview. BX J1 at 47 (Respondent's May 8, 2008 e-mail to Boroumand: "Given that preparing the legal arguments and writing the brief that I am working on for Kianoosh's case (which I intend to submit to the AO on Monday). . . .").

54. At the conclusion of the interview, McIntosh asked Respondent to brief whether Sanjari had firmly resettled in Norway, which would preclude him from asylum in the United

States. BX F3 at 7; Tr. 371 (Sanjari); Tr. 272-73 (McIntosh). McIntosh instructed Sanjari to appear in person on May 27, 2008, to obtain the AO's decision; however, he subsequently notified Respondent that Sanjari was not required to appear in person to receive the final decision. BX F7 at 10, 11; Tr. 273-74 (McIntosh).

55. Following the asylum interview, Respondent advised Sanjari that she had spoken by telephone with the AO regarding the status of his asylum application. BX J1 at 114. Sanjari repeatedly asked Respondent to tell him about her conversation with the AO, what issues the AO raised, what requests he made, what information he needed, and whether the AO had an opinion about his case. BX J1 at 111-14, 121; Tr. 372-73, 395-96 (Sanjari). Instead of responding to Sanjari's repeated e-mail requests for information regarding his case, Respondent replied on four separate occasions telling Sanjari alternatively that she could not translate into Persian what the AO had told her in their conversation or that he needed to obtain new counsel to handle his case. BX J1 at 111-14.

56. Bar Counsel's expert testified that Respondent did not meet the standard of care in providing competent representation to Sanjari because she failed to file a brief with the asylum application or at the time of the interview addressing the most significant issue in his case – whether Sanjari had firmly resettled in Norway before coming to the United States. Tr. 678-80, 696-97, 700 (Mirbagheri).

57. Bar Counsel's expert further testified that there was nothing negligent or incompetent about the brief that Respondent ultimately filed for Sanjari. Tr. 699.

58. Respondent testified that she had submitted approximately 30 asylum applications for clients, and that in none of those instances had she ever submitted a brief. Tr. 1808-09. In this instance, she made a conscious decision not to file the brief in advance of Sanjari's interview

with the AO. Tr. 1362-63 ("he could very well have been qualified to seek asylum in the United States, because he was only in Norway for four months. And as an attorney, you don't want to alert someone to a problem and make something out of -- you know, a mountain out of a molehill if, you know, it's not necessary. And it was not necessary to do that unless and until the asylum officer requested it.").

59. The AO testified at the hearing that the asylum application that Respondent filed was documented "very well" and that the testimony that Sanjari provided was "good, credible testimony." Tr. 271. He also testified that this was a "very unique issue because we rarely see an individual who prior to filing for asylum with us has been granted relief in another country," and that Respondent requested an opportunity to provide more information on the issue. Tr. 271, 273.

60. Bar Counsel's expert testified that there was nothing negligent or incompetent about the application that Respondent submitted for Sanjari. Tr. 699.

61. Bar Counsel's expert opined that Respondent did not meet the standard of care for reasonable communication with a client after an asylum interview while a decision was pending, and in keeping Sanjari reasonably informed about that status of his matter. Tr. 684-89, 695 (Mirbagheri). The expert testified that if there is a language barrier, an immigration attorney should use a translator to communicate with the client or, at a minimum, write a letter in English and tell the client to take the letter to a translator. Tr. 687, 691 (Mirbagheri). Bar Counsel's expert also testified, however, that any applicant in [Sanjari's] position would be confused if he received a written communication from the AO saying that he should come back to the asylum office for a decision and a subsequent communication from his attorney saying that you do not have to go and we need to write a brief. Tr. 684-85 (Mirbagheri).

62. Respondent continued to pursue a personal relationship, but by at least May 29, 2008, Sanjari had made it clear that he had no interest. BX J1 at 144, BX J1 at 249-50 (Sanjari's May 29, 2008 e-mail to Respondent: "This was a very, very bad experience for me. I am sorry and do not ever want to have an attorney anymore. Thank you for what you have done to this point. . . . Goodbye.").

63. On May 28, 2008, Respondent wrote to Sanjari via e-mail that she already had filed the brief with the AO addressing the resettlement issue. BX J1 at 232; *see also* BX F12 at 2. Respondent filed the brief two days later, on May 30, 2008. BX F12 at 3-9; Tr. 276 (McIntosh); Tr. 1364 (Respondent).

D. Termination of the Representation

64. In a letter dated May 30, 2008, addressed to Sanjari and with the header "NOTICE OF WITHDRAWAL AS COUNSEL" and "TERMINATION OF REPRESENTATION ON ALL MATTERS," Respondent notified Sanjari that she was withdrawing from the representation. BX F4 at 91. In her withdrawal letter, Respondent made disparaging comments about Sanjari's character, integrity, veracity, and behavior. *Id*. Also on May 30, 2008, Respondent sent Sanjari a personal e-mail: "are you going to talk to me or are you just going to sweep things under the rug and not deal with things as you should? How is it with the cold you've caught?" BX J1 at 254. Respondent wrote in the withdrawal letter: "[Y]ou have repeatedly and steadfastly ignored counsel's advice as well as well-established rules and regulations." *Id*. Further, Respondent wrote: "Despite repeated requests, you have refused to provide my office with updated, truthful, accurate, and valid information about yourself – including your most recent contact information." *Id*. Respondent also wrote: "You have been consistently disrespectful, belligerent, uncooperative, offensive, and from time to time, down-right uncouth and hostile." *Id*. Respondent concluded the letter with this sentence: "***I will***

forward a copy of this letter to the appropriate agencies to notify them of my decision." *Id*. (emphasis added)

65. Respondent sent to the AO a copy of her May 30, 2008 withdrawal letter addressed to Sanjari. Tr. 276-78 (McIntosh); Tr. 1365-67, 1791-92 (Respondent). The withdrawal letter became part of Sanjari's "A-file," which contained all of the documents that had been submitted while an asylum case is pending. Tr. 279, 281 (McIntosh). Respondent was not required to file a written notice of withdrawal. Tr. 279-80 (McIntosh); Tr. 1366 (Respondent). Bar Counsel's immigration law expert testified that Respondent's statements in the withdrawal letter could have had a negative impact on Sanjari's claim relating to the issue of credibility, and that Respondent did not meet the standard of care for an immigration attorney in an asylum application proceeding when she sent the withdrawal letter to the AO. Tr. 696 (Mirbagheri). When Sanjari learned of Respondent's sending of the May 30, 2008 withdrawal letter to immigration authorities, it caused Sanjari to "feel sick mentally." Tr. 375 (Sanjari).

66. Respondent testified at the hearing that she sent this letter to the AO by mistake. Tr. 1791-92 (Respondent). We do not find this testimony to be credible, as it is contrary to her statement in the letter that she would be forwarding the notice of withdrawal to the appropriate agencies. See *infra* at 98.

67. On June 4, 2008, Respondent sent the May 30, 2008 withdrawal letter to Sanjari via e-mail. BX J2 at 5-7; BX F4 at 89. On June 9, 2008, Sanjari retained new counsel. BX F7 at 17. On July 17, 2008, USCIS issued a Referral Notice to Sanjari, indicating that his asylum application had been denied and referred to an immigration judge for adjudication in removal proceedings. BX F7 at 12; Tr. 280-281 (McIntosh).

68. The AO testified at the hearing that he found Sanjari to be credible at his

interview, and that Respondent's withdrawal letter did not play any part in his decision. Tr. 281 (McIntosh). The AO forwarded Sanjari's A-file, including the May 30, 2008 withdrawal letter, to the trial attorneys who represent the government before the immigration court. Tr. 282, 285 (McIntosh). According to Bar Counsel, on January 31, 2011, after the hearing in this disciplinary matter had concluded, the immigration court held a hearing on Sanjari's petition for asylum and granted him asylum in the United States. BC Brief at 89, n. 21.

E. Disclosure of Sanjari's Communications to Third Parties

69. On June 15, 2008, Respondent sent Sanjari an e-mail seeking to resolve their differences: "[if you are]man enough, contact me so I can figure out what all this nonsense is all about ! If you are an adult, LETS TALK !" BX J2 at 64 (brackets in original). After a series of combative emails, Sanjari wrote: "Get lost, weirdo! Don't scare [threaten] me with prison; I have been raised in one! Pay attention and do not send me emails anymore! you filthy liar!" BX J2 at 67 (brackets in original).

70. On June 18, 2008, Respondent forwarded to Guberman, the student organizer of the Iran Freedom Concert, an e-mail chain that Sanjari had sent her in February 2008. BX F3 at 144-48. The forwarded email chain is a series of communications about a potential speaking engagement for Sanjari. *Id*. The subject line of Respondent's e-mail to Guberman states: "response to your article about kianoosh -- OH MY DEAR GOD." *Id*. In the body of her e-mail to Guberman, Respondent referred to Sanjari's correspondence regarding a speaking invitation at the World Prout Assembly as "the Mojahedin!!!!!!! [*sic*]" BX F3 at 144. On or about March 24, 2008, Respondent had arranged for both her and Sanjari to speak at the World Prout Assembly human rights conference. BX I-1 at 403-04; Tr. 376, 396-97 (Sanjari). On April 3, 2008, the organizer of World Prout Assembly rescinded her invitation to Respondent to participate in the conference. BX F4 at 10; BX I-2 at 14. The Mujahadin is a militant group that the U.S. State

Department lists as a terrorist organization. BX F9 at 1-2. On June 20, 2008, Respondent also forwarded the same e-mail chain – including her disparaging comment to Guberman – to Kathryn Lurie, a Foreign Affairs Officer employed by the U.S. State Department. BX J2 at 77-82; Tr. 375, 377 (Sanjari); *see also* Tr. 1335 (Respondent). Sanjari believes that Respondent's e-mails to Guberman and Lurie adversely affected his reputation among his Iranian supporters. Tr. 375-79 (Sanjari); BX F4 at 10.

71. On February 18, 2009, Sanjari filed a complaint against Respondent, which Bar Counsel docketed for investigation. BX F1 at 1-8; Tr. 386-87, 389-90 (Sanjari). Sanjari testified that he filed a complaint to stop Respondent from publishing confidential information about him and ruining his reputation. Tr. 497 (Sanjari). Sanjari testified:

> I'm very upset that [Respondent] is sitting here and I'm complaining about her. What I want to express is after the information which was in my file, the e-mails that she wanted to publish, I wanted to tell her somehow to -- that is not the right thing to do. Whatever was between us was between us. Because I was a political activist, and this thing would have sullied my reputation, and she knew that clearly. And now that I'm here, I don't want anything bad to happen to her. All I wanted was what had taken place to stop, the talking behind my back and publishing things against me. And I don't have any other complaint against her.

Tr. 497 (Sanjari). At the hearing, Sanjari testified that "this issue has sickened me. I've consulted a physician, I've taken medication. I've tried to forget about this. Now I had to force myself to recall these dates." Tr. 498 (Sanjari).

72. On March 9, 2009, Bar Counsel sent Respondent a copy of Sanjari's complaint and asked Respondent to file a written response to the allegations. BX F2 at 1-2. In her March 31, 2009 response to Bar Counsel, Respondent stated that she conducted her work "with utmost professionalism and care." BX F3 at 6. Respondent also alleged that Sanjari was associated with a group linked to the Mujahadin. BX F3 at 5.

III. THE BATEBI MATTER (COUNT II)

73. Batebi is an Iranian-born journalist, photojournalist and a human rights activist. BX D1 at 4; BX E6 at 1, par. 1; Tr. 979 (Batebi). Batebi has been described as "one of the most prominent prisoners of conscience in the past 30 years in Iran . . . ." and "was well known as a Iranian dissident and political prisoner before he ever came to the United States." Tr. 168 (Boniadi); Tr. 933-34 (Hughes). In July 1999, during student protests in Iran, Batebi was photographed holding up the bloodied shirt of a fellow protestor. BX D5 at 14, 25; BX E6 at 1. The photograph was published on the cover of *The Economist* magazine, which brought Batebi international recognition. BX D5 at 25; BX E6 at 1; Tr. 980 (Batebi).

74. Following publication of the photograph in *The Economist*, Batebi was arrested in Iran, tried, found guilty of "creating street unrest," and sentenced to death. BX D5 at 14, 37; BX E6 at 13, par. 60. Batebi was imprisoned for almost ten years and brutally tortured. Batebi was beaten with metal cables resulting in the loss of consciousness on several occasions; forced to sit in a chair blindfolded with his hands cuffed behind his back for three days while his torturers cut his upper arm and put salt in his wounds; suspended from the ceiling by his arms; submerged in a toilet full of feces; subjected to mock executions, where on one occasion, the two individuals on either side of him were hanged; and kept in solitary confinement for two years. BX D11 at 4-6; BX E22 at 4-6; Tr. 905-06 (Keller).

75. On February 17, 2008, Sanjari recommended via e-mail that Batebi communicate with Respondent. BX D1 at 4, 15; Tr. 383-84 (Sanjari); Tr. 981 (Batebi). In March 2008, when Batebi was temporarily released from prison for medical treatment, he escaped from Iran and went to Iraq. BX D5 at 15; Tr. 981-82 (Batebi).

A. Respondent's Relationship with Batebi

76. Respondent agreed to represent Batebi *pro bono* in his efforts to leave Iraq and

settle in the United States. BX D3 at 2; Tr. 1739-40 (Respondent). Respondent told Batebi that it was necessary for him to sign some forms, and that she would do so on Batebi's behalf. BX D1 at 4. While in Iraq, Batebi authorized Respondent to sign forms necessary to pursue his entry into the United States. BX D3 at 2; BX D1 at 4; Tr. 1001 (Batebi).

77. Respondent clearly knew that she had a duty to protect and maintain Batebi's confidences. On March 18, 2008, Batebi communicated with Respondent via Yahoo messenger. BX I-1 at 331. During this chat session, Respondent advised Batebi:

> I am an attorney my dear, WHATEVER you tell me, I have to take to my grave[.] That which my client tells me I can not under any circumstances tell someone else[.] [M]y entire life is safekeeping of secrets[.] [I]f it was not so, I could not have been able to help anyone[.]

Id.

78. On March 23, 2008, Batebi told Respondent in a chat session that he had escaped from Iran, was in Iraq, and his life was in danger. BX I-1 at 354-59. Batebi emphasized that no one could know of his location. *Id*.; Tr. 985 (Batebi). Respondent assured Batebi that she could not and would not reveal his confidences. BX I-1 at 354 (Batebi: "[W]hatever I tell you keep it only and only to yourself[.] [O]k?"; Respondent: "[O]f course. [I]t is always that way."); *Id.* at 355 (Respondent: "[A]ccording to the law, if I reveal it, I cannot be an attorney for one more day[.]"). Respondent specifically asked Batebi if he would permit her to tell Sanjari about Batebi's location. BX I-1 at 358. Batebi repeatedly told Respondent that she could not tell anyone – including Sanjari – about his location. BX I-1 at 358; Tr. 985 (Batebi). Contrary to Batebi's instructions, Respondent told Sanjari that Batebi had escaped Iran and was in Iraq. Tr. 384 (Sanjari).

79. Respondent submitted an application for humanitarian parole on behalf of Batebi, and on or about June 17, 2008, the application was granted. BX E2 at 18-21; K14 at 1-2. Batebi

arrived in the United States on June 23, 2008. BX D8 at 5; Tr. 1415 (Respondent); Tr. 704-05 (Mirbagheri). Mr. Ledeen purchased a plane ticket for Batebi to fly from Iraq to the United States. Tr. 635-37 (Ledeen). Respondent told Batebi that she had paid for his plane ticket to the United States from her own personal funds. Tr. 985, 1236 (Batebi).

80. When Batebi arrived in the United States, he did not speak English well – he required an interpreter and translator – and he was not familiar with American laws or regulations. BX D1 at 5. "[Respondent] being my attorney and having trust in her, I would accept all she would tell me." *Id*.; *see also* BX D6 at 10; Tr. 805 (Hicks); Tr. 939-40 (Hughes); 990 (Batebi). Initially, Batebi stayed in Respondent's parents' home, where Respondent also resided. BX D3 at 3; Tr. 1415 (Respondent); Tr. 985-86 (Batebi).

81. Although the relationship between Batebi and Respondent started as one of client and attorney, they developed a closer personal relationship. When asked at the hearing about the nature of their relationship, Respondent testified:

> He became a part of our family. We opened our homes and hearts to him. My mother cooked for him and washed his clothes and made his bed. . . . We were his translators. I mean, he became a part of the family. He became a trusted friend, someone who my mother -- someone who ended up hurting my family significantly because of his actions. It was -- he became someone who became -- he was someone who became a part of my family and my -- my life and my family's life.

Tr. 1775.

82. After Batebi arrived in the United States, Respondent paid for at least some of his necessities and gave him cash. Tr. 994-95, 998 (Batebi). For example, Respondent testified to paying for clothing, meals, beverages, cell phone service, and hair care for Batebi. Tr. at 1534-42 (Respondent).

83. Respondent initially controlled Batebi's finances. BX D1 at 5; Tr. 988, 993-95 (Batebi). Batebi discussed with Respondent the possibility of opening a bank account, but she

told him that he was not able to open a bank account without a social security number, and the only way he could have a bank account was to open a joint account with her. Tr. 988, 993-94 (Batebi); BX D1 at 5. Batebi did not have direct access to the funds in the 9443 Account until United Bank issued him a debit card in August 2008. BX D1 at 5; BX C4 at 2-4; Tr. 195-96 (Fowler).

84. Respondent told Batebi that he was earning money from the sale of his photographs, speaking engagements, and interviews, which she deposited in a bank account. Tr. 986-87, 994-95 (Batebi); BX D1 at 93 (Respondent's August 29, 2008 e-mail to Batebi: "Wanting to see the picture you have from Iran, they've contacted me again from Europe. They want to use it in an article and are also willing to pay royalty (copyright money). What do you want to do?"). But Respondent did not tell Batebi how much she had received on his behalf, the source of the funds, or how much she spent for his benefit. Tr. 994-97 (Batebi); Tr. 1149-50, 1180-82 (Husketh).

85. Respondent also initially controlled Batebi's access to the press and other individuals. BX D1 at 5; Tr. 990, 1012-13 (Batebi); Tr. 941 (Hughes). Respondent insisted that she be present during all of his press and government interviews as his attorney, and she acted as his interpreter. Tr. 989-90, 1012 (Batebi); BX D1 at 5; BX D5 at 16; BX E35 at 4. Batebi was concerned and frustrated because Respondent spoke on his behalf and made statements without his permission. Tr. 989-90 (Batebi), 1010 ("[Respondent] would think for me, would act for me, would decide for me, and this would upset me and make me angry.").

86. Batebi testified that Respondent threatened him with deportation, and other witnesses provided hearsay corroboration. Respondent told Batebi that the U.S. government had granted him entry based on her reputation and connections, and if he did not listen to her and do

as she instructed, she had the authority to have him deported. BX D1 at 5; Tr. 1010-11 (Batebi) ("[Respondent] would tell me, 'You do not do what I tell you to do, you and your friends will have fled from Iran, I will deport back to Iran."); Tr. 1166-67 (Husketh); Tr. 812 (Hicks). Respondent told Batebi that the CIA and FBI had placed Batebi in Respondent's custody and if he did not comply with her instructions, she would cause both him and his friends to be deported. BX D1 at 5; Tr. 1415 (Respondent) ("[When I] picked [Batebi] up at Dulles Airport, the White House officials kind of turned over custody of Mr. Batebi to me on the 23rd of June of 2008."). Respondent denied that she threatened to deport Batebi. Tr. 1459 (Respondent).

B. Respondent's Receipt of Funds for Batebi

87. On July 13, 2008, the *New York Times* newspaper published an article about Batebi's experience as a prisoner in Iran and his escape to the United States, and included a photograph of Batebi and Respondent. BX D5 at 15. The article named Respondent as Batebi's attorney, stated that she translated on behalf of Batebi, and described her as "an Iranian-American lawyer who is helping him resettle." *Id*. at 16.

88. After the publication of the *New York Times* article, Muneer Satter, a wealthy individual who worked for Goldman Sachs, contacted Respondent to discuss how he could assist Batebi. BX J3 at 32; Tr. 1423 (Respondent). On July 23, 2008, Mr. Satter wired a $24,000 gift for Batebi into the 9443 Account for Batebi's benefit. BX C2 at 13, 17-20; BX K5 at 2, 7-8 ("My wife and I are each making a gift of $12,000 to Ahmad Batebi. Please wire $24,000 to his account."); Tr. 183-85 (Fowler); Tr. 1424 (Respondent). Satter had informed Respondent that he did not want Batebi to know about the funds and wished for the funds to be controlled by Respondent. Tr. 1426-27; RX 121. Accordingly, Respondent did not tell Batebi that she had received $24,000 from Satter for his benefit. Tr. 1425-26 (Respondent); Tr. 1034 (Batebi).

89. On July 14, 2008, Auerbach, the Iran country specialist for Amnesty International, contacted Respondent via e-mail, asking if she could meet with Batebi. BX D6 at 2; Tr. 1079-80 (Auerbach). Auerbach informed Respondent that Amnesty had a fund that provides money to former prisoners of conscience, and also let Respondent know that one of Auerbach's duties as a country specialist was to write support letters for asylum seekers. BX D6 at 5; Tr. 1082-83 (Auerbach).

90. Auerbach successfully applied for and obtained the maximum contribution of $3,000 from an Amnesty fund to donate to Batebi. BX D6 at 12, 17-20; Tr. 1085-86 (Auerbach). On July 22, 2008, Auerbach notified Respondent via e-mail that the $3,000 gift for Batebi had been approved. BX D6 at 28. Auerbach "made it very clear" to Respondent that the funds were to be used for Batebi's support, including medical, counseling, and living expenses. Tr. 1088-89 (Auerbach).

91. Respondent told Auerbach that she had added Batebi to her own bank account, and the check could be made out either to Respondent or to Batebi. BX D6 at 27. Auerbach issued a cashier's check made payable to Batebi. BX D6 at 31, 34, 96-100; Tr. 1087-88 (Auerbach). In an August 1, 2008 e-mail, Respondent instructed Auerbach to send the check to Respondent at her office address. BX D6 at 34. Auerbach sent the check to Respondent along with a receipt for Batebi to sign and return. BX D6 at 34; Tr. 1087-88 (Auerbach). Auerbach never received a signed receipt from Batebi. BX D6 at 37; Tr. 1088 (Auerbach).

92. On or about August 8, 2008, Respondent signed Batebi's name on the back of the check and deposited the $3,000 into the 9443 Account. BX C2 at 16, 24; BX D1 at 8; Tr. 1442 (Respondent); Tr. 1000 (Batebi). Respondent did not notify Batebi that she had received $3,000 on his behalf, and Batebi did not authorize Respondent to endorse his name on the check.

BX D1 at 5; Tr. 1000-01 (Batebi). Respondent testified that she told Batebi that she had received a check from Amnesty. Tr. 1779-80 (Respondent).

93. When Auerbach learned at the end of August that Batebi and Respondent were no longer working together, she contacted Batebi through his friend, Hadi Ghaemi ("Ghaemi"), the Executive Director of the International Campaign for Human Rights in Iran. Tr. 1090 (Auerbach). Batebi first learned about the $3,000 from Amnesty from Ghaemi, who asked him about the funds. Tr. 1233-34, 1237-38 (Batebi). On August 29, 2008, Batebi wrote to Auerbach: "Thanks a lot about your email but [I] did not know any thing about this check.[ ]I did not know when you sent it and when she got it. I described all of this [*sic*] thing about [the] check to Hadi Ghaemi and if you want to ask him.[ ]He know [*sic*] about that very well." BX D6 at 39.

94. On or about July 24, 2008, Pam Mitchell ("Mitchell") contacted Respondent via e-mail and wrote that she "want[ed] to make a donation to Batebi for him to be able to make films, to get medical care and for his wife to get out of Iran." BX D4 at 26. Respondent replied and instructed Mitchell to send the donation to Respondent. BX D4 at 25. On or about August 8, 2008, Mitchell sent Respondent a check made payable to Ahmad Batebi for $50. BX C2 at 23. Respondent did not notify Batebi that she had received the $50 check, and Batebi did not authorize Respondent to endorse his name on the check. Tr. 1000-01 (Batebi). Respondent signed Batebi's name on the back of the check and deposited the $50 into the 9443 Account. BX C2 at 16, 23; Tr. 187 (Fowler); Tr. 1441 (Respondent); Tr. 1000 (Batebi).

95. Respondent testified that she never received any payments for photographs taken by Mr. Batebi or from media outlets for his interviews and other activities. Tr. 1551-52 (Respondent). There is no evidence that she actually received any such payments, other than

Batebi's testimony that Respondent ***told him*** that she had received such payments. Tr. 987 (Batebi).

96. In total, Respondent received at least $27,050 for Batebi's benefit from Satter, Amnesty and Mitchell. On or about August 6, 2008, Respondent transferred $17,320 from the 9443 Account to her 0878 Account. BX C2 at 15, 27; Tr. 1438 (Respondent). These included funds Satter had given Respondent for the benefit of Batebi. BX C2 at 13-15. After Respondent's transfer on August 6, 2008, the 9443 Account was in overdraft status with a negative balance of $142.31. BX C2 at 15.

C. Respondent's Purchase for Batebi and Activists in Iran.

97. Even before Batebi arrived in the United States on June 23, 2008, Respondent made a number of purchases for Batebi and his friends in Iran, including individuals with the aliases of "BK" and "Iran Proxy." For example, on June 4, 2008, Respondent used her 5021 debit card to purchase the domain name "ahmadbatebi.com" from Network Solutions to benefit her client, Ahmad Batebi, in the amount of $99.95 with funds from the 9443 Account. BX C3 at 21; BX K18 at 8 (Respondent's June 4, 2008 chat session with Batebi: "right this moment I am buying ahmadbatebi.com for you . . . . congratulations! www.ahmadbatebi.com is owned by your Excellency for 5 years"); RX 100; Tr. 1663-64 (Respondent); Tr. 1002-05 (Batebi).

98. On or about June 8, 2008, Respondent made a website-related purchase with a recurring charge of $17 per month, at the direction of BK. BX K24 at 7.

99. Respondent also purchased anti-filtering services for a group of activists in Iran. She testified that BK directed her to a website, told her what services they needed, and provided her with the necessary log in and password information. Tr. 1658-59 (Respondent). Respondent entered the number of her debit card linked to the 9443 Account and made the purchase. *Id*. The group had previously been using the credit card number of an individual in Europe to make

purchases, but when that person objected, they asked Respondent for her assistance. Tr. 1655-56, 1659-60. Recorded chat sessions between Respondent and BK corroborate Respondent's testimony. See BX K24 at 5-8. A transaction with IX Webhosting occurred on June 11, 2008, when $180.24 was debited from the 9443 Account. BX C3 at 22.

100. Thereafter, additional amounts were charged to Respondent's card that she did not authorize. Tr. 1670-71 (Respondent). Once she saw the unauthorized purchases, she brought them to the attention of Batebi (who by this point was in the United States), and Batebi assured her that the funds would be returned to her. Tr. 1670 (Respondent). On or about August 10, 2008, Respondent contacted BK about the purchases, stating that $179, $108 and $504 had been withdrawn from her account. BX K24 at 11. BK responded that "we are following up to why it was withdrawn in this way" and that "even if Ahmad [Batebi] would not be able to pay this debt to you. . . . by the end of the month we will send it ourselves." *Id*.

101. On July 21, 2008, Respondent wrote to Kouyyar.g@gmail.com

> **Someone or (some people) had illegally charged hundreds of dollars by using my Visa check card which had been issued through that account. I did not find out about it for weeks. (I even made a police report on the incident. I told the police that someone or some people had stolen my account, which might have been done when my computer was hacked, and the [account number] information might have been stolen then. The report is available.)**
>
> Anyway, I am supposed to call the company which had repeatedly charged my Visa-check card and inform them of the situation. And tell them that except the first charge [made with the card], all other charges which started two days after that charge were illegal. . . .
>
> If I could have foreseen even one of these incidents happening, I would have never gotten myself, my [bank] account or anything else involved."

BX J3 at 76-77 (emphasis and brackets in original). On July 22, BK forwarded Respondent's email to Batebi. *Id*. at 76.

102. On July 22, 2008, Batebi wrote an email to BK, acknowledging that he and BK were responsible for purchases charged to Respondent's card:

> I finally got to get a card for myself through another person's [bank] account. From now on we will do the shopping ourselves. We will be getting our own credit card in a week.

BX J3 at 75. Referring to Respondent, Batebi asked BK to "[w]rite exactly how much we have to give her." *Id.*

103. On July 24, 2008, BK replied to Batebi's e-mail, stating:

> Tell this lady $1800 is not that large of an amount. If she is claiming to be an activist, this comes with the territory; we are spending hundreds of times more than this amount. We weren't expecting such reaction from an attorney, a [jurist] doctor who is also a human rights activist.

BX J3 at 75 (brackets in original). This email suggests that BK estimated that the purchases charged to Respondent's card totaled $1800.

104. Still apparently unclear as to what had occurred with her account, on August 12, 2008, Respondent submitted to United Bank an ATM Check Card Disputed Transaction Form ("Transaction Form") as well as an ATM/Check Card Fraud Affidavit ("Affidavit"), which she signed under penalty of perjury to dispute the June 13, 2008, $503.75 payment to IX Webhosting. BX C7 at 4-7; Tr. 1474 (Respondent). In the Transaction Form, Respondent asserted several times that she had authorized the expenditure in the amount of $180.24 to IX Webhosting. First, she handwrote the following bolded language in the form: "I authorized one transaction in the amount of **$180.24**; however, this amount has been deducted from my account **2** (#) times. **$503.75**." BX C7 at 6. Second, Respondent handwrote: "I authorized the purchase of a web hosting package for the amount of $180.24 on 6/11/08 from an internet-based company. Two days later without my authorization or request the same company had charged my check card for an additional $503.75." *Id.* Finally, in response to Question 13 on the Transaction

Form, Respondent handwrote: "I authorized purchase of a hosting package over the internet on 6/11/2008, but 2 days later, there were additional charges that I had never authorized. They were made by the same company." *Id*. at 7. In the accompanying Affidavit, which Respondent signed under penalty of perjury, Respondent reported that IX Webhosting, without her authorization, had debited $503.75 from her 9443 Account on June 13, 2008. BX C7 at 4.

105. Respondent was worried that her computer may have been hacked, and she twice contacted law enforcement authorities. In early September 2008, she brought her computer to the police in McLean, Virginia, but did not leave it with them. The police informed her that this was a matter that should be brought to federal authorities. Tr. 1671-75 (Respondent). Thereafter, she brought her computer to the FBI. Respondent had no documentary evidence of bringing the computer to the police, but she did provide a receipt confirming that she had brought her computer to the FBI. RX 180.

106. On October 31, 2008, in response to an email notification from avahost.net that her account was past due in the amount of $145.25, Respondent replied, "I have NEVER ordered this, nor have I authorized anyone to order it on my behalf." RX 192.

D. Conflict in the Relationship Between Respondent and Batebi Leading to the Termination of the Representation

107. By the middle of August 2008, the personal and professional relationship between Respondent and Batebi had broken down. Tr. 641 (Ledeen). Batebi informed Respondent that he did not want Respondent involved in his interviews and scheduled appointments. Tr. 990, 1011-13 (Batebi). In an e-mail dated August 16, 2008, Respondent wrote to the Ledeens about Batebi:

> He's going down and taking everyone who has ever supported him in any manner down with him. Kianoosh [Sanjari] and Tara's [Niazi] influence on him have proven every bit as disastrous as I had suspected. And they are continuing to manipulate his mind to get him to do what they want. I am so heart broken. I

> brought each and every one of these guys here and never, ever expected ANYTHING in return other than their safety, freedom, happiness, and a chance to start a new life in a civilized and productive manner. I am so numb from pain that I can not even cry.

BX D7 at 1. On August 17, 2008, Respondent again wrote to the Ledeens:

> He informed me last night (after calling me some of the worst things I have EVER heard anyone call another human being) that because he is being forced to keep his appointments for this week, he will do so. . . . He also wanted to get out of things because he did not want me involved in any of the meetings and appointments, and I very calmly explained to him that a great many of these appointments (including tonight's dinner) are ones where people specifically have requested that I be in attendance and not everything is about him! He refuses to understand that he is not the end-all-be-all of the universe, and continuously states that I am a no body, have accomplished nothing in my life, I am a charlatan, a con-artist, etc. etc. etc.

BX D7 at 4. On one occasion, when Batebi refused to attend an interview at the State Department with Respondent (unrelated to his asylum application), she stopped her car on the George Washington Parkway and dropped off Batebi on the side of the road to walk home. Tr. 1012-13 (Batebi). When Batebi did not show up at the State Department, they called him, said that Respondent was there, and asked why he had not appeared. *Id*. Batebi told them that he did not want Respondent to act as his interpreter, and he went to the State Department on his own the following day for the interview. *Id*. at 1013.

108. After Batebi arrived in the United States, he was joined by his girlfriend, Tara Niazi. Because of tensions with Respondent, Batebi moved out of the Respondent's family home and rented an apartment in Virginia, which he subsequently turned over to Niazi. Tr. 1440 (Respondent); Tr. 1005-06, 1017-18 (Batebi). Batebi then moved to Maryland to stay with friends. Tr. 1019-20 (Batebi); BX E40 at 4.

109. Respondent had been in contact with Dr. Keller about Batebi and his medical issues beginning in at least mid-July 2008, and in August 2008, Respondent arranged for Batebi

to meet with Dr. Keller and attend various meetings in New York. Tr. 887-88, 917, 919-21 (Keller); *see also* BX G4 at 234.

110. On August 21, 2008, Batebi and Respondent traveled to New York City by train. BX G4 at 257-259; Tr. 1454-55 (Respondent); Tr. 888-89 (Keller); Tr. 1028, 1254 (Batebi). Throughout the day, Respondent called Dr. Keller about arrangements for him to meet with Batebi. Tr. 917 (Keller). Dr. Keller initially asked Respondent to schedule an appointment for Batebi at his office in the clinic, but Respondent advised Dr. Keller that Batebi was acutely agitated, irritable, very anxious, and insisted that Batebi needed to be evaluated that night. Tr. 889-92 (Keller). Dr. Keller then suggested that Respondent bring Batebi to Bellevue Hospital in New York, but Respondent asked Dr. Keller to meet them at the train station in New York because she was concerned that Batebi would refuse to go to Bellevue for the evaluation. *Id*. at 891. Dr. Keller agreed to meet Respondent and Batebi at the train station. Tr. 891-92 (Keller). Based on Respondent's description of Batebi's condition, when Dr. Keller arrived at the train station, he approached a police officer, identified himself as a physician, and alerted the officer that he anticipated meeting with an individual who was very agitated, and that he might need the officer's assistance. Tr. 892-93 (Keller).

111. When Respondent and Batebi arrived at Penn Station in New York, they met with Dr. Keller, who was "immediately struck by Mr. Batebi's relatively calm demeanor." Tr. 895 (Keller) ("He smiled, he seemed under control, he warmly shook my hand."); Tr. 1031 (Batebi). Dr. Keller observed that, unlike Batebi, Respondent appeared "a bit agitated and shaken, like she'd been through a stressful period." Tr. 895 (Keller); Tr. 1461 (Respondent). After Dr. Keller talked with Batebi, he determined Batebi did not present "an acute, dangerous situation," that Batebi "seemed quite cogent," and suggested that if Batebi remained in New York, Dr.

Keller would schedule an appointment to see him. Tr. 896, 901 (Keller); Tr. 1461-62 (Respondent). During Dr. Keller's conversation with Batebi, Batebi told Dr. Keller that it was not clear that he would be allowed to remain in the United States, and that he was required to do what Respondent told him. Tr. 902-03 (Keller).

112. On August 22, 2008, Batebi left Respondent and stayed with his friend, Elahe Hicks ("Hicks") for the next couple of days "because I did not want to be with [Respondent]." Tr. 1032 (Batebi); *see also* Tr. 832 (Hicks).

113. Between August 19 and 26, 2008, Batebi used his 0037 debit card to withdraw and use funds in the 9443 Account. BX C3 at 30-32; Tr. 834, 836-839 (Hicks); App. E to BC Brief. Batebi told Hicks that he was concerned that if he did not withdraw the funds, Respondent would empty the account. Tr. 834 (Hicks). Based on Respondent's representations, Batebi believed that all of the funds in the account belonged to him. Tr. 1033, 1215, 1222-23 (Batebi); 1783 (Respondent).

114. Ms. Hicks' husband, Neil Hicks, worked at Human Rights First, and on August 24, 2008, Mr. Hicks e-mailed Amwen Hughes at Human Rights First and arranged for Batebi to meet with her. BX D8 at 1.

115. On August 25, 2008, Hughes briefly met with Batebi. BX D8 at 2; Tr. 935 (Hughes) ("It was a preliminary meeting just for me to get, try to figure out what his situation was and to see to what extent we might be able to assist him."); *see also* Tr. 1037-38 (Batebi). In the preliminary meeting, Hughes discussed with Batebi several points, including his current legal status and Respondent's representation. Tr. 935-36 (Hughes). Hughes asked Batebi whether Respondent still represented him, what legal action she had taken, including what applications she had filed on his behalf, and specifically whether Respondent had filed an asylum application

on his behalf. Tr. 935-36 (Hughes). Batebi had brought documents with him relating to his admission to the United States for humanitarian parole and the EAD application that Respondent had filed on his behalf, but he did not have a copy of an asylum application or believe that one had been filed. Tr. 936-37, 947 (Hughes). (An Employment Authorization Document ("EAD") is a work authorization card issued by the United States Customs and Immigration Services ("USCIS").) During their meeting, Batebi told Hughes that he no longer wanted Respondent to represent him. Tr. 938-39 (Hughes). On August 25, 2008, Batebi signed a Notice of Entry of Appearance (G-28 Form), which granted Hughes authority to represent him in his asylum application (I-589 Form). BX D8 at 3; Tr. 938, 956-57 (Hughes). That day, Hughes contacted the asylum office and they informed her that they had no record of an asylum application having been filed on Batebi's behalf. BX D8 at 2; Tr. 937 (Hughes).

116. On August 27, 2008, Hughes met with Batebi in New York a second time for a full intake interview with "a view of taking on his case for representation." Tr. 939 (Hughes); *see also*, BX D8 at 10; Tr. 1039-40 (Batebi). Batebi testified that after the first meeting with Hughes but prior to the second meeting with her, Batebi had contacted Respondent by telephone, thanked her for what she had done for him, and terminated her representation. Tr. 1038-39 (Batebi) ("My friends in New York. . . . told me this country is free to the level that if you want to, that you can dismiss your attorney who is threatening you to deport you.") and ("I told her she's no longer my attorney, and if somebody contacted her about me, please tell them to contact me directly."). Tr. 1040-41 (Batebi). Hughes also testified that during this intake interview, Batebi told Hughes that he had terminated Respondent's representation. BX D8 at 10; Tr. 939 (Hughes) ("I know definitely that by the time I met with him on the 27th, he had told me that he had told [Respondent] that she was no longer his lawyer."). When asked if Batebi terminated her

representation by telephone during this time frame, Respondent testified: "Absolutely not." Tr. 1466-67 (Respondent).

117. On August 27, 2008, Respondent wrote a check in the amount of $327.62 payable to cash from the 9443 Account and deposited the check into her 0878 Account. BX C2 at 34, 40; BX C5 at 21, 24. Respondent's withdrawal of $327.62 from the 9443 Account put the account into overdraft status. BX C2 at 34; Tr. 188-89 (Fowler). On August 28, 2008, Respondent transferred funds from her 0878 Account back into the 9443 Account to cover the overdraft. *Id*.; *see also* BX C5 at 21. On August 30, 2008, a refund in the amount of $199.99 from "Godaddycom" was deposited into the 9443 Account. BX C2 at 34. On September 2, 2008, Respondent closed the 9443 Account by withdrawing the balance of $126.99 and depositing the amount into her 0878 Account. BX C2 at 34, 42; BX C5 at 21, 25.

118. On or about August 28, 2008, Respondent spoke with Auerbach on the telephone and told her that Batebi had been withdrawing funds from the account, he was presently in New York, and that Respondent was not in contact with Batebi because there had been a rift between them. BX D6 at 37. Respondent told Auerbach that Batebi owed her about $10,000. *Id*. Respondent had not kept an accounting of the funds she had received or spent on behalf of Batebi. Also on August 28, 2008, Respondent contacted United Bank via e-mail and asked them to close her 9443 Account "IMMEDIATELY" and wrote that "it has been subjected to misuse and unauthorized activities." RX 170. On August 29, 2008, Auerbach notified Respondent that she had sent a copy of the $3,000 Amnesty Internatioanl check as well as a copy of the receipt for the check to Batebi in New York. BX D6 at 42. Respondent continued to contact Auerbach on the telephone and talk to her about Batebi. BX D6 at 84, 91; BX E4 at 90, 94; Tr. 1093-94 (Auerbach).

119. In addition to contacting Auerbach, on August 28, 2008, Respondent wrote to the Ledeens via e-mail and sent them a copy of a portion of a bank statement from the 9443 Account reflecting itemized transactions from the period of August 22 through 27, 2008. BX D7 at 8; Tr. 1782-83 (Respondent). The subject line of Respondent's e-mail stated: "What Ahmad has done to my bank account." BX D7 at 8. The copied portion of the statement showed a balance of $3,737.04 on August 22, 2008, and a negative balance of $326.25 on August 27, 2008. BX D7 at 8-9. The $3,737.04 in the account on August 22, 2008, consisted of funds deposited for Batebi's sole benefit from Satter, Amnesty, and Mitchell. *Supra* at ¶¶ 92, 94, 96. Batebi did not give Respondent permission to disclose his financial records or bank statements. Tr. 1241 (Batebi).

120. The Ledeens had never discussed or agreed to act as Batebi's spokesperson or representative. Tr. 652 (Ledeen). After Batebi went to New York, Ms. Ledeen did not have much contact with him. Tr. 645 (Ledeen). In late August through early October 2008, Respondent continued to communicate with the Ledeens, and was in contact with Ms. Ledeen three to four times a week, sometimes in very long telephone conversations and repeated e-mails communicating her dismay and desperation over how she felt Batebi was treating Respondent. Tr. 646-47 (Ledeen). Respondent's accusations and assertions regarding Batebi's conduct and alleged theft of funds from her account caused a breach in the relationship between Ms. Ledeen and Batebi. Tr. 654-55 (Ledeen); *see also* BX D7 at 10.

121. Later on August 28, 2008, Respondent again sent an e-mail to Ms. Ledeen in the same e-mail chain with the subject line: "What Ahmad has done to my bank account" and wrote: "This is only A FRACTION of the total amount! What I find so ironic is that Ahmad's friends who are attacking me are doing so on the websites that I PURCHASED for them!!!"

BX D7 at 23. Ms. Ledeen asked Respondent whether she could cancel the websites. BX D7 at 22. Respondent answered: "No. Once the websites have been purchased, there is nothing more that can be done. These guys promised to pay me back, but I didn't think that they would pay me back with slander and other forms of indignities! I am beyond disgusted by ALL of them." *Id*. When Ms. Ledeen asked who promised to pay Respondent back, she answered: "This person whose assumed named [*sic*] is [BK] and his friend 'Mr. Proxy' and then Ahmad himself. They have DRAINED me financially over the past few months. I can't believe that we can't do ANYTHING about this in this country!!" *Id*.

122. In an e-mail dated September 3, 2008, Respondent wrote to Auerbach: "Ahmad Batebi successfully withdrew every bit of that money [the $3,000 gift from Amnesty] from the account in which it was deposited using an ATM card that had his name and the password that was known only to him." BX D6 at 45. Respondent ended her e-mail by stating: "I firmly and unequivocally dispute Mr. Batebi's claim that he has not received that money, and I refuse to tolerate actions that, for all intents and purposes, amount to ***financial fraud*** and ***deception***." *Id.* (emphasis added); *see also,* BX D6 at 50 (Respondent's September 4, 2008 fax to Auerbach: "In fact, any claim that Mr. Batebi did not receive the funds that you provided for him amounts to financial fraud, misrepresentation, and deception . . . .").

123. On or about September 3, 2008, around 1:00 AM, via e-mail, Batebi wrote to Respondent:

> Thank you very much for everything that you have done for me up to now. However, I do hereby, with this letter, officially inform you that as of this moment, the client/attorney relationship between the two of us is null and void. Therefore, you do not have any further legal responsibility pertaining to me.

BX D1 at 11. Batebi sent this e-mail to Respondent at her lmazahery@tankel-law.com e-mail account. *Id*. On September 3, 2008, after Batebi sent his e-mail, Respondent sent e-mails from

the same law firm e-mail address. *See, e,g.*, BX D6 at 45; BX D7 at 26. Respondent testified that she did not receive Batebi's termination e-mail. Tr. 1467 (Respondent).

124. On or about September 4, 2008, Respondent sent Auerbach correspondence via facsimile and e-mail stating that Batebi was responsible for causing the 9443 Account to become overdrawn. BX D6 at 50-62. Respondent included a copy of the portion of the 9443 Account statements. BX D6 at 56-57. Auerbach received these records, but did not accept Respondent's claim that they confirmed that Batebi had received the funds. Tr. 1092-93 (Auerbach).

125. Also on September 4, 2008, Respondent contacted Batebi through Yahoo messenger. Batebi did not respond. BX K20 at 3; Tr. 1754-55 (Respondent). On September 5, 2008, Respondent again contacted Batebi through Yahoo messenger. Batebi initially provided brief responses to her questions, and then told Respondent: "let me be," "do not work on my nerves," and "just do not pester me, that is all[.]" BX K20 at 6. Although Respondent continued to ask Batebi questions, he did not respond. *Id*.

126. On or about September 5, 2008, Respondent sent an e-mail to Batebi referring to a discussion they had had the previous week regarding a debt she claimed that he owed to her and sent the same e-mail by blind copy to the Ledeens. BX D7 at 29. Respondent wrote in the subject line in both Farsi and English: "Payment of the debt that you had promised to pay back." BX D1 at 94. Likewise, in the body of the e-mail, Respondent wrote the text first in Persian, and then below the Persian text, she wrote the same paragraph in English. *Id*. In the e-mail, Respondent wrote to Batebi that Batebi had promised to pay Respondent back for "the money that you had taken out of the account ($3,000) plus the $6,000 that I gave to Tara [Niazi], plus the amount that I had to pay for hosting services and domain names of IranProxy, plus the amount that I paid for the phones for Human Rights Activists in Iran, etc." *Id*. Respondent

stated that Batebi owed her $10,000. *Id*. As reflected in the e-mail, Respondent failed to disclose to Batebi that all of the funds that Batebi had withdrawn from the 9443 Account belonged to him – and consisted of gifts from Amnesty, Mitchell, and Satter. *Id*.; *see*, s*upra*, at ¶¶ 92, 94, 96; App. E to BC Brief; Tr. 1227-28 (Batebi) ("In the previous occasions, [Respondent] had told me that the money in this joint account belongs to me, meaning Mr. Batebi. And when I spent $3,000 from this account, [Respondent] said that money was not yours and you should not have spent that money. And she sent me the receipt, saying that the money belonged to [Respondent] and I had to refund it to her."). Batebi did not give Respondent permission to discuss his finances or any alleged debt with Ms. Ledeen, and Respondent's allegations that Batebi owed Respondent money caused him embarrassment. Tr. 1229 (Batebi), 1230 ("After I realized that [Respondent] is telling my friends and the Iranian community that she's spending money on my expenses, it really upset me.").

E. Respondent's Efforts to Obtain Employment Authorization for Batebi

127. An Employment Authorization Document ("EAD") is a work authorization card issued by the United States Customs and Immigration Services ("USCIS"). An immigrant who has an EAD can get a social security number, which would then allow him or her to obtain a drivers license and open a bank account. Tr. 707-09 (Mirbagheri); Tr. 971-72 (Hughes). The EAD request is filed on an I-765 Form and is a relatively simple task. Tr. 709-10 (Mirbagheri).

128. Although Batebi arrived in the United States on June 23, 2008, Respondent did not file an I-765 Form for Batebi until July 18, 2008, and the form that she filed was incomplete and/or contained inaccurate information. BX D9 at 8-9. Respondent failed to complete item number 12, which requested Batebi's "date of last entry into the U.S. (Month/Day/Year)." BX D9 at 9; Tr. 711-12 (Mirbagheri). Also, Respondent incorrectly entered Batebi's eligibility code in response to item 16, listing "(A)(04)," instead of the correct response of "(c)(11)," which

identifies Batebi as entering the United States under humanitarian parole. BX D9 at 9; Tr. 711-12 (Mirbagheri).

129. Bar Counsel's immigration law expert testified that Respondent failed to meet the standard of care in competently or promptly filing Batebi's I-765 form. Tr. 713, 735 (Mirbagheri). There was no testimony about how long a competent attorney should take to submit an I-765 Form after a client's arrival in the United States. Rather, the testimony was simply that waiting until July 18, 2008, when Batebi had arrived on June 23, 2008, was too long. Tr. at 713 (Mirbagheri).

130. The submission of an incomplete I-765 Form caused delay and, thus, harm to Batebi. Tr. 712-13 (Mirbagheri); BX D9 at 51; BX D8 at 16; Tr. 941 (Hughes) ("[Batebi] also was in a material situation [on August 27, 2008] that at that point was extremely difficult, because he did not yet have work authorization. He had arrived from Iran via Iraq with basically nothing, and he had been in a situation since his arrival here where, from what he told me, his access to funds, to means of communication and other things had been heavily controlled by his former counsel."); Tr. 1137 (Husketh) ("[Batebi] was in dire financial straits and was worried about getting his work authorization as quickly as possible.").

131. In a letter dated September 16, 2008, USCIS issued a "Request for Evidence" ("RFE") based on Respondent's failure to (1) file a photocopy of Form I-94, Nonimmigrant Arrival/Departure Record, which was issued when Batebi arrived in the United States, and (2) Batebi's failure to appear for his biometrics appointment. BX E3 at 2; BX D9 at 51-52. On or shortly before September 30, 2008, Respondent forwarded the RFE with Batebi's client file to his successor counsel. BX E2 at 1-27 (confirming receipt and thanking Respondent for "sending it so promptly"). Approximately two weeks later, on or about October 14, 2008, Batebi's

successor counsel, Husketh, submitted the required documentation, and on November 17, 2008, USCIS approved Batebi's work authorization. *See* BX E3 at 3-10; BX E4 at 115; BX J7 at 11. Husketh is licensed as an attorney in New York and was an associate at Latham & Watkins when he agreed to represent Batebi pro bono in September 2008. Tr. 1132-33 (Husketh).

F. Respondent's Submission of an Asylum Application on Batebi's Behalf

132. On August, 25, 2008 – the same day that Batebi was meeting with Hughes and signed a G-28 Form – Respondent returned to Washington, D.C. without Batebi. Tr. 1466 (Respondent); BX J4 at 31. The next day, August, 26, 2008, Respondent filed an asylum application on behalf of Batebi. BX D9 at 29. On August 8, 2008, Batebi had signed the signature page of an asylum application; however, Batebi did not understand or know what he was signing. BX D9 at 39; Tr. 1009 (Batebi) ("One of the reasons I had problem with Ms. Mazahery was she would never explain things to me. And I could not read in English. I did sign many things, this included, but I -- not knowing what it is."); Tr. 1175 (Husketh).

133. Respondent failed to complete "Part A.III. Questions" on page 4 of the application, which asked for information about the current location of Batebi's relatives. BX D9 at 17; Tr. 722-23 (Mirbagheri). USCIS does not accept an asylum application for processing if the application is incomplete and, instead, the entire application is returned to sender. Tr. 721 (Mirbagheri); Tr. 945-46 (Hughes). Furthermore, the asylum application that Respondent submitted did not discuss or substantiate the persecution Batebi had suffered, and the "Personal Statement of Ahmad Batebi" in support of the application was not signed by Batebi. Tr. 731 (Mirbagheri); BX D9 at 12-14. Respondent also did not provide corroborating objective evidence of persecution, including articles or other documentation. Tr. 731-32 (Mirbagheri); *see also*, e.g., BX E12-13, 23-37.

134. Bar Counsel's immigration law expert testified that Respondent did not meet the standard of care required for competently completing and filing Batebi's asylum application. Tr. 734-35 (Mirbagheri). Mirbagheri also testified that an applicant's affidavit would be "very important," and USCIS would not have given it any weight because it was not signed. Tr. 731, 733 (Mirbagheri). Mirabagheri further testified that the standard of care requires that an applicant submit a signed, notarized declaration. Tr. 732-33 (Mirbagheri).

135. Along with the asylum application, Respondent filed a Notice of Entry of Appearance as Attorney or Representative (G-28 Form), which was dated March 17, 2008. BX D9 at 19. A G-28 Form authorizes release of a client's immigration records to his or her attorney. Tr. 718-21 (Mirbagheri); BX D9 at 19. The G-28 Form submitted with Batebi's asylum application was the same G-28 Form that had been submitted in connection with the successful application for humanitarian parole. The instructions on the G-28 Form state: "An appearance shall be filed on this form by the attorney or representative appearing in each case." At the bottom of the form, the consent for disclosure of information to Respondent states that it applies to "[a]ll immigration matters." BX E2 at 4. Filing of this G-28 Form with Batebi's asylum application meant that all notices regarding that application would be sent only to Respondent. Tr. 728-29 (Mirbagheri). Respondent did not notify Batebi that she had filed this asylum application on his behalf, and she did not provide him with a copy. Tr. 1213 (Batebi); Tr. 945, 953-54 (Hughes).

136. According to Bar Counsel's expert, the standard of care in immigration law cases requires an attorney to file a G-28 Form with each "case" he or she undertakes on behalf of the client. Tr. 725-28, 736-37 (Mirbagheri). The expert explained that the requirement to file a G-28 Form for each "case" means that an attorney should filed a separate G-28 Form with each

application, but need not file separate G-28 Forms with subsequent submissions in connection with a previously filed application. Tr. 726-27 (Mirbagheri).

137. On or about August 27, 2008, USCIS received Batebi's asylum application. BX D9 at 29; Tr. 975 (Hughes). On September 3, 2008, USCIS issued a notice to Respondent returning the first asylum application Respondent had filed on Batebi's behalf because it was incomplete. BX D9 at 17; Tr. 1450 (Respondent). It was not returned because of any problem with the G-28 Form. *Id*.

138. On or about September 8, 2008, Respondent sent a second asylum application to USCIS, without Batebi's knowledge or permission, and again submitted the G-28 Form she signed on Batebi's behalf in March 17, 2008 that accompanied the humanitarian parole petition. BX D9 at 18-42; BX K21 at 1; BX E6 at 2; Tr. 1214 (Batebi). Respondent submitted the same application that she had first submitted on August 26, 2008, with insufficient corroborating documentation and Batebi's unsigned personal statement. BX D9 at 18-42; Tr. 1142-45 (Husketh). USCIS accepted the second application filed by Respondent on September 9, 2008. BX D9 at 20; Tr. 975-76 (Hughes). In Batebi's second asylum application, Respondent indicated that Batebi still resided at her home "from 6/2008 to Present," when she knew that Batebi had moved out of her residence by the middle of August. BX D9 at 20, 23; *see also*, Tr. 1339-40 (Respondent). Respondent did not send Batebi a copy of the asylum application that she filed. Tr. 1214 (Batebi).

139. In an e-mail dated September 15, 2008, Respondent notified Batebi via e-mail that USCIS had scheduled his asylum interview for October 2, 2008 in the Arlington, Virginia asylum office. BX D1 at 96-97.

G. Successor Counsel's Representation of Batebi and Further Disputes with Respondent.

140. On or about September 11, 2008, Husketh accepted the referral from Human Rights First, and agreed to represent Batebi in filing his asylum and employment authorization applications. BX D8 at 5; BX E4 at 1; Tr. 1135 (Husketh); Tr. 942 (Hughes). Hughes remained involved in the representation, answered questions and reviewed written submissions before they were filed. BX D8 at 6; Tr. 931, 944 (Hughes); *see also* BX D8 at 16, 21-22, 24-27. Husketh filed a voluminous asylum application (portions are contained in BX E) on behalf of Batebi, including an affidavit from Batebi (BX E6), an affidavit from Dr. Keller (BX E22), and a letter from Auerbach (BX E20).

141. On or about September 15, 2008, Respondent sent Batebi via e-mail a copy of USCIS notices she received regarding his asylum application and EAD. BX D1 at 96-97, 98-99. On September 17, 2008, Batebi notified Husketh that Respondent had sent him a letter informing him that he had an interview scheduled on October 2, 2008 for his asylum application. BX D8 at 8, 12; BX E4 at 3.

142. On or about September 18, 2008, Respondent contacted Batebi to make arrangements for his October 2, 2008 asylum interview. Tr. 1009 (Batebi); BX D8 at 16. Batebi told Respondent he would not attend the interview with her, she was no longer his attorney, he had successor counsel, and she should no longer contact him. BX D8 at 16. Respondent told Batebi that she had not received his September 3, 2008 e-mail officially ending their attorney-client relationship (BX D1 at 11) and that he was making a mistake by not attending the asylum interview. BX D8 at 16. Husketh canceled the October 2, 2008 asylum interview in Virginia and had the case transferred to the New York asylum office. BX D8 at 26; Tr. 1146-47 (Husketh).

143. On September 22, 2008, Husketh met with Batebi. BX D8 at 21; BX E40; Tr. 1136-37 (Husketh). In that first meeting with Husketh, Batebi was "extremely distraught" that Respondent was telling people that he owed her a large sum of money. Tr. 1140 (Husketh).

144. In a letter dated September 22, 2008, Husketh notified Respondent that Batebi had retained successor counsel to represent his immigration matters, including his asylum interview scheduled for October 2, 2008. BX E4 at 17; Tr. 1140-41 (Husketh). Husketh asked Respondent to send a copy of Batebi's file and to forward to them any correspondence she received on behalf of Batebi. BX E4 at 17. Also on September 22, 2008, Husketh requested that Batebi's asylum case be transferred from Arlington, Virginia to Rosedale, New York. BX E4 at 21. In an e-mail dated September 26, 2008, Respondent acknowledged receipt of Husketh's letter and provided Husketh a copy of the asylum application that had she submitted on behalf of Batebi, including Batebi's unsigned affidavit. BX E2 at 2; 15-17; BX E4 at 35.

145. At some point between September 3 and 30, 2008, and after Batebi learned that Respondent was telling third parties that he owed her money, Batebi met with Respondent to determine what debt Respondent believed Batebi owed. Tr. 1230 (Batebi). Batebi asked Respondent to identify the items and the amount, and Batebi wrote down what Respondent told him. He testified:

> I went to her office one day, and there was a pad of -- yellow pad of paper on her desk which I picked up. I asked [Respondent], how much do I owe you? Tell me, and I write it down. She told me, and I wrote it down. I totaled it up, and I told her at the most, this is what I owe you. Please stop saying that in the public, and once I'm able and I have a job, I will pay you back.

Tr. 1230 (Batebi); *see also*, Tr. 1186-87 (Husketh); BX D6 at 66. Batebi's handwritten note contained two columns written in Farsi: one column listed an item and the second column listed a corresponding amount. BX D6 at 65. The total claimed to be owed by Batebi was $6,800. *Id*.

Batebi did not give Respondent permission to disclose this note to anyone else. Tr. 1238 (Batebi).

146. On September 30, 2008, Respondent sent Batebi's hand-written note to Auerbach and Ms. Ledeen, via e-mail, with the subject line, "Hand-written note of Ahmad's Debt," and attached a scanned copy of Batebi's note. BX D6 at 63-64; BX D7 at 30-32; Tr. 1186 (Husketh). Respondent testified that she may have sent this e-mail to other individuals. Tr. 1784 (Respondent) ("I don't think anyone else, but I don't know. I doubt anyone else. But I'm not sure."). In the body of Respondent's September 30, 2008 e-mail to Ms. Ledeen and Auerbach, Respondent presented her own English translation of Batebi's note, which indicates that Respondent intended to disseminate the note to third-parties who could not read the Persian text. BX D6 at 63-64. BX D67 at 63. Respondent's disclosure of Batebi's note caused him embarrassment. Tr. 1238 (Batebi).

147. On or about September 30, 2008, Batebi met with Respondent again to try and resolve their disagreements. BX D8 at 25. The same day, but after Batebi had met with Respondent, he contacted Husketh and asked him to speak to Respondent about control of the net domain ahmadbatebi.com. *Id.* Obtaining ownership and control of the domain was important to Batebi because it had been advertised as being Batebi's personal website and as a way to contact Batebi directly, and Respondent had control over the website. Tr. 1145-46 (Husketh).

148. On September 30, 2008, Husketh contacted Respondent on the telephone regarding the domain ahmadbatebi.com. BX D8 at 25, par. 3; BX E4 at 103. Respondent told Husketh that she had purchased the domain for Batebi in June from a cyber squatter, a person who had already registered the domain. *Id.*; Tr. 1152-53 (Husketh). Respondent also told Husketh that she had signed up for hosting on Network Solutions, and hired a web designer.

BX D8 25. Respondent told Husketh that she had spent several hundred dollars to purchase the domain and then "thousands of dollars" paying for design services and hosting services for the website. Tr. 1153 (Husketh); BX D8 at 25. Husketh contacted Network Solutions, the company who sold the domain name to Respondent. Tr. 1153 (Husketh); BX D8 at 26. Network Solutions informed Husketh that Respondent was the owner of ahmadbatebi.com, she had created and registered the domain on June 4, 2008, and she purchased the domain for $99 to host the site for five years. Tr. 1153-57, 1185 (Husketh); BX D8 at 26. The information Husketh testified that he received from Network Solutions is confirmed independently from records obtained from Respondent and Batebi. *See*, *supra*, at ¶ 97. In an e-mail sent to Respondent the same day, Husketh memorialized their telephone conversation and specifically asked Respondent to not discuss Batebi's case or personal life with the press or private individuals and "please maintain his secrets and confidences even though you no longer represent him. . ." BX E2 at 1, par. 2.

149. In addition to Batebi's asylum application, Husketh also represented Batebi in attempting to resolve Batebi's financial dispute with Respondent. Tr. 1148 (Husketh). In Husketh's September 30, 2008 e-mail to Respondent, he wrote: "Batebi has also asked me to request that you refrain from contacting him directly ***in any format***, directing any correspondence to us instead." BX E4 at 58; Tr. 1154 (Husketh) (emphasis added). Ignoring Husketh's directive, Respondent continued to contact Batebi through telephone calls, chat sessions, and e-mail correspondence. BX E4 at 92; Tr. 1242-45 (Batebi).

150. On or about October 2, 2008, Husketh, via e-mail, asked Respondent to provide an accounting of expenditures that she had made on Batebi's behalf, including credit card statements, and a billing history from the domain or hosting service, or at least an estimate of

expenditures, including the approximate date and recipient. BX E4 at 103. Respondent did not respond. *Id*.

151. In a letter dated November 12, 2008, Husketh asked Respondent to provide an accounting of any amounts she believed Batebi owed to her. BX E4 at 102-03. Specifically, Husketh asked Respondent to provide a full accounting, including expenditures that Respondent had made on Batebi's behalf, and any amounts she had received for or on behalf of Batebi, and asked for copies of receipts or documents in support of her accounting. *Id*. at 102. Husketh told Respondent: "Upon receipt of your accounting and appropriate receipts, etc., we will review your requested reimbursements with Mr. Batebi and promptly contact you to discuss a feasible arrangement for any amounts he may owe you." *Id*. at 103. Respondent failed to respond, and Husketh never received a financial accounting from Respondent. Tr. 1150-51 (Husketh). As of the date of the hearing, Batebi still did not know how much Respondent received on his behalf or how much she spent of her own personal funds for his benefit. Tr. 986-87, 996-97, 1239-40 (Batebi); BX D1 at 5-6; *see also*, Tr. 1148-50 (Husketh).

152. Also in the November 12, 2008 letter, Husketh wrote that "[i]t has come to our attention that you have called our client, Ahmad Batebi, on multiple occasions since Mr. Batebi terminated your representation of him. . . . " BX E4 at 102. Husketh notified Respondent that Respondent's "repeated calls have caused [Batebi] significant anxiety." *Id*. Husketh concluded by writing: "We also request in the future you contact us and refrain from any direct contact with Mr. Batebi." BX E4 at 103. Respondent testified that she believed that Husketh was saying that she should not have ***telephone*** conversations with Batebi. Tr. 1774 (Respondent) ("As I understood it, it said not to have any telephone conversations with him. That was my understanding."). Respondent also testified that she continued to contact Batebi because when

Batebi left the hotel in New York, he told her: "[F]rom here on what happens, people may say things to you that may not make any sense, just do everything as we have been doing and planned to do." Tr. 1770 (Respondent).

153. Contrary to Husketh's specific request in his letter of November 12, 2008, on November 16, 2008, Respondent contacted Batebi directly via Microsoft Messenger. BX D1 at 106-12 (Snapshot of the chat session); BX E4 at 106-09; Tr. 1157-58 (Husketh). During her chat session with Batebi, Respondent made disparaging comments about Batebi's character and conduct. BX D1 at 114. In response, Batebi wrote: "wasn't it agreed that you would not P.M [personal messenger] me again[?]" *Id*. Respondent answered: "No [t]he agreement was for me not to telephone you." *Id*. Batebi told her: "Well, I am now saying not give P.M either." Respondent answered, "That's fine, it is too late anyway[.] You will never be able to understand how sending this letter is tormenting me[.]" *Id*. When Batebi asked Respondent what letter she was referring to, she wrote: "[A]bout the response I have to send to your lawyer tomorrow[.]" *Id.* Batebi asked: "about the monies?" *Id*. Respondent answered: "[A]bout everything." *Id*. at 114-15. Batebi wrote to Respondent:

> Look [Respondent], . . . you can give any documents which you deem necessary to my attorneys or anyone else. The proviso being, your documents would not be like that piece of paper without any name or address on it which you sent to Amnesty International, Michael Ledeen and . . . . Don't forget, this here is a country run by the rule of law, and I have a lawyer. . . . You cannot lie to me anymore and tell me if I do not listen to you, you will deport me, you will deport Ali Afshari. You deport Kianoosh . . . . Look, you did many things to me which I could follow up through legal means. You know this yourself as well. And if to date I haven't done anything, firstly, it is because you did go through trouble for me and secondly, it would be due to your honorable father and mother who I will always remain indebted to."

BX D1 at 115; *see also* Tr. 1245-46 (Batebi). Respondent continued to contact Batebi. Tr. 1165-66 (Husketh) ("At no point did it ever subside and we felt like it had calmed down, no.").

154. On or about November 18, 2008, Respondent left Husketh a voicemail message apologizing for not responding to his requests for information and stating her intention to comply with his requests for an accounting. BX E4 at 122, par. 2. Respondent failed to respond or provide an accounting. *Id*.

155. On December 16, 2008, Husketh wrote Respondent a letter and again asked for an accounting and demanded that she stop contacting Batebi. BX E4 at 122. Husketh also wrote the following:

> We are increasingly concerned that you continue to contact our client directly. Batebi has expressed to you his desire that you not contact him, and we have repeatedly requested that you refrain from doing so. The frequency of these unwanted contacts increasingly resembles harassment and an attempt to cause Batebi undue distress, in violation of your ongoing duty to protect his best interests despite the termination of your attorney-client relationship. We must insist that you immediately cease attempting to contact Mr. Batebi in any manner whatsoever and direct any correspondence to us instead, or we will be forced to take such further action as may be necessary to protect our client's best interests.

BX E4 at 122-23; Tr. 1162 (Husketh).

156. On December 23, 2008, Respondent replied via facsimile. BX E4 at 124. Respondent submitted a letter dated November 17, 2008, and in the cover sheet, Respondent wrote that she had "nothing further to add to this letter, which you should have received via fax last month." BX E4 at 124-26. Husketh never received Respondent's November 17, 2008 letter. Tr. 1163 (Husketh) ("I absolutely did not [receive the letter]."). In Respondent's letter dated November 17, 2008, Respondent falsely denies contacting Batebi by phone except on one occasion. BX E4 at 125. Also, Respondent wrote that she would not be providing an accounting because, "I must admit that knowing Batebi as I do, I realize that he is not the kind of person to honor his commitments, particularly in this context. Accordingly, I have long given up any expectations regarding this issue." BX E4 at 125.

157. Respondent never provided an accounting of the funds she received for, or spent on Batebi. Tr. 1763-65, 1767 (Respondent) ("I did to a certain extent [try to keep an accounting], and I just gave up. The whole thing was -- I wanted to go on with my life and put this behind me."). At the hearing, Respondent attempted to identify which items charged to her 9443 Account were for the benefit of Batebi, Sanjari or Niazi, but she either could not do so or her attempts were unconvincing. For example, Respondent suggested that they had made purchases from stores (i.e., Staples, Beautyfirst, 7-Eleven) located within blocks of her office in Vienna, Virginia, even though at the time of the purchases, neither Batebi nor Niazi were physically present in the United States, and Respondent had withdrawn from her representation of Sanjari. Tr. 1644-48, 1647-50 (Respondent).

157A. Appendix E to Bar Counsel's Brief is list of the deposits into the 9443 Account and the amounts debited to the account (both purchases and withdrawals) using the debit card issued to Batebi. BC Brief at App. E. It shows that these deposits exceed these debits by a total of $23,209.86. *Id.* In her brief, Respondent did not dispute these amounts, which are supported by the underlying bank statements.

158. After the initial meeting with Dr. Keller at the train station, Batebi subsequently became a patient in the Bellevue/NYU Program for Survivors of Torture, and Dr. Keller served as his primary care physician. BX E22 at 3; Tr. 904, 908-09 (Keller). Dr. Keller met with Batebi on four occasions and spent approximately ten hours conducting a detailed medical evaluation of Batebi. BX E22 at 3-4; BX D11 at 4-11; Tr. 904 (Keller). In his expert medical opinion, Dr. Keller concluded that Batebi's physical condition and scarring were consistent with his reports of torture. BX E22 at 6-8; Tr. 906-08 (Keller), 910 ("[Batebi] had clear historical, physical, psychological evidence consistent with his allegations of torture."). Dr. Keller also

found that Batebi demonstrated significant PTSD symptoms. BX D11 at 9, 11; Tr. 909-10 (Keller). Dr. Keller prepared an affidavit that was submitted with Batebi's asylum application. BX E22; Tr. 910, 926 (Keller).

159. On November 19, 2008, Batebi attended his asylum interview. BX E7 at 1. Successor counsel filed a comprehensive asylum application on behalf of Batebi. BX E5-38. In a letter dated December 15, 2008, USCIS notified Batebi that his application for asylum was approved. BX E4 at 117; Tr. 1164 (Husketh).

160. As of the date of the hearing, Respondent had posted a description of her work and professional focus on the Legal Rights Institute website, which states: "Throughout her legal career, [Respondent] has regularly advocated for victims of rights violations and has represented clients on a *pro bono* basis, including the cases of high profile Iranian political dissidents such as Ahmad Batebi . . . ." BX D5 at 40.

161. Batebi did not authorize Respondent to identify him as a former client. Batebi testified:

> This is not the right thing to do. She was not my attorney. She had -- did not file for my legal status here. Someone else did that. By doing that, it would create the wrong impression that she was my attorney and facilitated my legal status here. I have a recognizable name in the Iranian community which fosters trust. And I did not want her to use that because I was of the opinion that she's not qualified to be -- to be doing that, although she had helped me as well.

Tr. 1249-50 (Batebi).

162. Respondent did not claim to have Batebi's express permission to post his name on her website. Tr. 1763 (Respondent). When asked if she knew that Batebi does not want his name on her website, Respondent answered:

> I didn't get that impression. He said something along the lines of the fact that I was not his lawyer, which is not true. I was his lawyer, and I did represent him. And that he said his name is associated with certain things and people trust it, and that's his impression of his own name.

Id.

H. Batebi's Filing of an Ethical Complaint Against Respondent and Respondent's Response

163. On July 7, 2009, Batebi filed a complaint against Respondent, in which he states that Respondent's misconduct caused him "much emotional and financial damage." BX D1 at 4, par. 1. At the hearing, Batebi explained why he filed the complaint:

> I was not intending to write a report until an event took place. I heard that [Respondent] had contacted some of the students who had to flee Iran to the neighboring countries, telling them that she can facilitate bringing them to the United States. In my opinion, this was a very dangerous thing, because she could have done to me -- excuse me, could have done to them what she had done to me.

Tr. 1247 (Batebi).

164. In her August 7, 2009 response to Bar Counsel, Respondent stated:

> I reiterate my absolute denial of any and all allegations of wrongdoing made against me by Mr. Batebi. I am astonished that someone whose life I have saved and have expended inestimable personal and professional time, resources, and energy to ensure his well-being and resettlement in a new life in freedom in the U.S. would lie so deliberately and brazenly about me.

BX D3 at 4. Respondent also excoriated Batebi for filing the complaint:

> The fact that Mr. Batebi has chosen to engage in such a deplorable act as filing this disgraceful complaint against me and shamelessly assert falsehoods that he knows can be easily and comprehensively refuted serves to further damage his credibility, veracity, and character. I regret that he has stooped to such a dishonorable level and hope that he seeks assistance to address that which drives him to engage in such repugnant behavior.

Id.

IV. THE MAHDAVI MATTER (COUNT I)

165. Akram Mahdavi is an Iranian woman who has been sentenced to death for the murder of her husband, and is in prison in Iran pending her execution. BX A6 at 2; Tr. 1214 (Batebi). In Iran, a defendant who has been convicted of murder may have his or her sentence of execution reversed if the family of the victim consents. BX A6 at 2; Tr. 19-20 (Nariman). The

victim's family's consent can be bought by a sum of money to be dictated by the family, which is known as *diyeh*, or blood money. *Id*. The family of Mahdavi's murdered husband agreed to rescind Mahdavi's death sentence if they received $60,000. BX A6 at 2; BX A13 at 127. Mina Jafari, an Iranian attorney located in Iran, represented Mahdavi in her criminal case. BX A6 at 2; Tr. 26 (Nariman); Tr. 1215 (Batebi).

166. A group of individuals ("the Group"), which included Jafari, began a campaign to raise awareness of Mahdavi's plight and collect donations for the blood money. Tr. 1370-73 (Respondent). By at least February 2008, Respondent became involved in the Group's effort to save Mahdavi's life. However, Respondent did not enter into an attorney-client relationship with Ms. Mahdavi or her Iranian lawyer, Ms. Jafari; she did not act as co-counsel to Ms. Jafari; and she did not hold herself out as representing either of them. Tr. at 1370-71 (Mazahery).

167. The Group decided that it would be necessary to raise Mahdavi's blood money by public donations from both inside and outside of Iran. BX A13 at 19. In mid-March 2008, Respondent registered a weblog, saveakram.blogspot.com, and added a page dedicated to Mahdavi on her own website, savedelara.com. Tr. 1619-20 (Respondent); BX A13 at 39, 40. Respondent subsequently posted material about Mahdavi on the weblog and her website. BX A13 at 46, 47; Tr. 1623, 1627 (Respondent). An article about Mahdavi was posted on both internet sites, describing Mahdavi's background, her pending execution, and efforts to save her life. BX A6 at 8-11, 15. The article asked individuals to donate funds for Mahdavi's benefit. BX A6 at 11, 15.

168. In early 2008, Respondent was aware that there were restrictions against transferring money from the United States to financial institutions in Iran. Tr. 1378-81 (Respondent). However, she was also aware of an informal money exchange system, known as

Haveleh, which was commonly used in Middle Eastern countries, whereby a sum of money would be provided by the donor to an individual in the source country and the same amount of money would be provided to the ultimate recipient in the destination country. Tr. at 1380-81 (Respondent). She was also aware that money destined for individuals in Iran is often delivered by travelers to that country who agree to transport and deliver it. Tr. 1381-82 (Respondent)

169. On March 14, 2008, Jafari informed Respondent that she had opened an account in Iran, and provided Respondent with the bank account information. BX A13 at 18. On March 14, 2008, Respondent informed Jafari that "[s]ince money could not be sent from western countries (especially America) to Iran, I will coordinate it with my family in Tehran to directly deposit the money into this account." BX A13 at 18, 30; *see also* Tr. 1631 (Respondent). On March 18, 2008, Respondent suggested that she could set up a PayPal account and link the account to the "site." BX A13 at 39. BX A13 at 39. On April 7, 2008, Jafari and another member of the group both contacted Respondent by email to ask Respondent to set up a PayPal account. BX A13 at 55, 97. Respondent replied that she would direct her assistant to set it up and provide the information to Jafari. BX A13 at 97.

170. During the investigation of this matter, Respondent told Bar Counsel that an activist "asked me to open an account that could be used to collect donations from supporters around the world and then given to [Mahdavi's] in-laws." BX A8 at 2. At the hearing, she testified that "they asked me to open up a PayPal account because of the fact that there were individuals outside of Iran who wanted to donate money to save this woman's life. However, they could not open a PayPal, or because of the financial restrictions, they couldn't accept, you know, obviously, payments through credit cards or donations of such." Tr. at 1372-73. Later,

when asked if she offered to set up a PayPal account, Respondent replied: "No. This is, again, in response to their inquiry about PayPal." Tr. at 1621.

171. On or about April 7, 2008, Respondent directed her law clerk, Avni Jagar ("Jagar"), to open a PayPal account. BX A10 at 138; BX A8 at 23; Tr. 1627-28, 1678 (Respondent). Jagar created an account on Respondent's behalf, and she provided Respondent, Jafari, and "Jelveh" with the assigned user name and password. BX A10 at 9, 138. The primary e-mail address linked to the PayPal account, iranhumanrights2008@gmail.com, was the address where PayPal sent notices about the account. BX B3 at 1; Tr. 71-72, 84-85 (LeFavor). Respondent had access to the iranhumanrights2008 e-mail account, received e-mails directly from that account, and also received e-mails from that account that were forwarded to Respondent's Gmail account. Tr. 1608-12 (Respondent); *see also, e.g.*, BX A8 at 11-12; BX A10 at 67, 72, 79, 80, 82, 83, 147; BX A13 at 143, 175.

172. On April 9, 2008, Respondent created a donation button, which was linked to the PayPal account next to the article about Mahdavi that was posted on the savedelara.com website, thus allowing individuals to donate funds directly into the PayPal account. BX A6 at 8, 15; BX B4 at 9; Tr. 85 (LeFavor). Individuals from around the world contributed donations into the PayPal account to benefit Mahdavi, including donors from the United Kingdom, France, Malaysia, New Zealand, Portugal, Canada, Germany, and the United States. *See* BX B5 at 1-3.

173. In April 2008, Respondent discussed Mahdavi's circumstances with Nazanin Boniadi, an Iranian-American actress and a social acquaintance of Respondent. BX A6 at 19, 26; BX A11 at 1; Tr. 147-48 (Boniadi). On April 15, 2008, Respondent sent Boniadi an e-mail with the internet article about Mahdavi. BX A11 at 5. Boniadi received information about Mahdavi only from Respondent, and she trusted and relied on the information Respondent

provided because she was "an attorney and seemed to be working on other human rights cases." BX A11 at 1.

174. Boniadi had a role on the television show, *General Hospital*, and agreed to donate the proceeds from the sale of the dress that she had worn to the 2007 Emmy Awards to benefit Mahdavi. BX A6 at 19, 26; BX A11 at 65; BX A13 at 127. A friend of Respondent, Mona Assemi, purchased Boniadi's dress for $520, and on May 20, 2008, the funds were deposited into the PayPal account. BX A8 at 2; BX A10 at 148-51; BX B5 at 6; BX A11 at 1, 28, 30; Tr. 152 (Boniadi).

175. Respondent told an acquaintance, Hosny, about Mahdavi and the campaign to collect donations to save her life. Tr. 58 (Hosny). Hosny lives in McLean, Virginia, and worked as an assistant to Jason Tankel, Esquire, in the same office suite as Respondent from April 2008 to May 2009. Tr. 55-57 (Hosny). On May 23, 2008, Hosny wrote a check for $300 made payable to Respondent with the notation on the check: "contribution: Save Mahdavi." BX C2 at 9; Tr. 59-60 (Hosny); Tr. 1651 (Respondent). On or about May 27, 2008, Respondent deposited Hosny's $300 check into her 9443 Account. BX C2 at 5, 9. In April 2009, Hosny declared her $300 donation on her tax returns as a charitable donation. Tr. 61 (Hosny).

176. Respondent received a total of $2,385.05 (gross) in donations to benefit Mahdavi. BC Brief App. A. When funds were received into the PayPal account, Respondent was charged a fee, which was deducted from the donation. Tr. 95 (LeFavor). Because PayPal assessed fees against the collected donations, Respondent received $2,232.23 (net) in donations. BC Brief App. A.

177. Respondent made several efforts to send the donated funds to Iran. The first took place in May 2008. On May 14, 2008, an individual known as "BK"[6] contacted the Group by e-mail and told them that he had a friend traveling to Iran who would be willing to bring the collected donations. BX A13 at 164. On May 19, 2008, Respondent replied to BK's offer and agreed with his proposal. *Id*. As of May 20, 2008, there was a balance of $1702.58 in the PayPal account. BX B5 at 6. On May 22, 2008, Respondent transferred $1,700 of that amount from the PayPal account opened at her direction to the PayPal account of Kamal Abdi ("Abdi"), the individual who agreed to take the donations to Iran. BX A10 at 154; BX B5 at 6; Tr. 1382-84, 1404-07 (Respondent). Abdi learned that he could withdraw only $500 a month from his PayPal account, which would not allow him to deliver all of the donations to Jafari in Iran. Tr. 1384-85 (Respondent). On the same day, May 22, 2008, Abdi transferred the $1,700 back into the PayPal account. BX B5 at 6; Tr. 104-05 (LeFavor). PayPal imposed a fee of $49.60 for the transfer. BX B5 at 6; Tr. 102-03 (LeFavor).

178. Respondent had registered her 9443 Account with the PayPal account. BX B3 at 2; BX B4 at 7; BX A13 at 151; Tr. 90-91 (LeFavor). Bank accounts registered to the PayPal account can be used to transfer money between the PayPal account and the bank account. Tr. 72-73, 82-83 (LeFavor). It is not possible to transfer funds from the PayPal account to a bank account unless it is a registered bank account. Tr. 82-83 (LeFavor). Respondent also had various credit and debit cards linked with her PayPal account. BX B3 at 2; Tr. 91-92 (LeFavor). When a credit card is linked to the PayPal account, the customer can use the credit card to fund payments to other PayPal users or websites that accept PayPal. Tr. 92 (LeFavor). To make a

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6 "BK" is currently being held in prison in Iran. Tr. 1236 (Batebi). At Bar Counsel's request, the Chair granted the motion to keep his identity under seal, and any reference to this individual will be by his initials "BK." *See* Tr. 1208-09 (Batebi).

purchase through the PayPal account, the customer would log into his or her PayPal account and designate the source of the payment; whether from a credit or debit card, or from funds in the PayPal account. *Id.*

179. After her first unsuccessful attempt to send donated funds to Iran through BK and Abdi, on or about May 23, 2008, Respondent either submitted or caused to be submitted a request to PayPal to transfer the donations from the PayPal account into Respondent's 9443 Account. BX A10 at 155; BX B5 at 6; Tr. 1388 (Respondent) ("I don't remember personally transferring this. So – but that does not mean that I did not"), 1612-13, 1651, 1629, 1651 (Respondent). PayPal notified Respondent of the transfer request via e-mail and, two minutes later, Respondent forwarded the PayPal notice to BK. BX A8 at 11; Tr. 1612-13 (Respondent). PayPal notified Respondent that the process of transferring the funds usually takes 3-4 business days to complete. BX A10 at 155.

180. On or about May 27, 2008, per Respondent's May 23, 2008 request, PayPal transferred $1,652.88 of Mahdavi's donations into Respondent's 9443 Account. BX B2 at 5; Tr. 1387-88 (Respondent). Also on or about May 27, 2008, Respondent deposited into her 9443 Account a check written by Hosny made payable to Respondent for $300 as a donation to Mahdavi. BX C2 at 5, 9; Tr. 1652 (Respondent). In total, on or about May 27, 2008, Respondent deposited into her 9443 Account $1,952.88 of Mahdavi's donations. *Id.*; *see also* App. B. Respondent knew that those funds were not for her personal use. Tr. 1678-79 (Respondent) (Question: "[W]as it your understanding with respect to that $1900 that that money was not meant for your own personal use?" Respondent: "Yes.").

181. After May 27, 2008, when Respondent deposited donations totaling $1,952.88 into her 9443 Account, no further deposits were made into the 9443 Account until July 14, 2008.

BX C2 at 5-10. Thereafter, between May 27 and June 13, 2008, all of the funds in Respondent's 9443 Account were depleted, and the account fell to a negative balance of $130.42. BX C2 at 7.

182. By May 2008, the Group had begun to ask for an update regarding the funds collected on Mahdavi's behalf through the PayPal account. In e-mail dated May 19, 2008, Jafari wrote to the Group that "a financial report is to be published in the papers by Saturday." BX A13 at 195. Jafari asked Goudarzi for a "status of the report on the foreign donations." *Id*.

183. In an e-mail dated May 20, 2008, Goudarzi asked Respondent to provide an accounting of the donations collected to date: "Dear Lily, would it be possible for you to send a statistical synopsis of the numbers who have made donations through PayPal and the total amount of donations?" BX A13 at 194-95. On May 20, 2008, Respondent sent Jafari and other group members an e-mail stating: "**PayPal amount: $1702.58: This is the amount after the sale of dear Nazanin's dress – With another $300 will be added tomorrow and we could say there would be $2,000 available and need to find someone to take to Iran."** BX A13 at 177 (bold in the original); BX B5 at 6; Tr. 1612 (Respondent).

184. In an e-mail dated June 11, 2008, that Jafari sent to Boniadi, Respondent, and several other individuals, Jafari wrote that she had spoken to Respondent by telephone and "[i]t was agreed that the small amount of donations you had collected were to have been sent to me in Iran by the first part of last week. As of this date, I have not received anything from you, and do not know the reason for all the delays. Would it [be] possible [for you to tell] me the reason for this matter?" BX A11 at 59. Respondent did not respond to Jafari's e-mail.

185. At the end of June 2008, when Jafari had not received the donations from Respondent, Jafari and other group members, including Boniadi, asked Respondent for an accounting of the funds and for an explanation on why the donations had not been sent. Tr. 153-

55 (Boniadi). Jafari expressed the need for financial accounting, and both Jafari and other members of the group repeatedly asked Respondent to account for the donations. *See, e.g.*, BX A10 at 47 (May 13, 2008 e-mail from Jafari: "By the way, aren't you going to give us the financial report so we could put it on the weblog? I think it is not that appropriate that we have not made available on the weblog any information on the foreign donations deposited into PayPal."); BX A10 at 46. Boniadi also asked for an accounting because she had been posting information about Mahdavi on her MySpace page, and friends, family, and fans had begun to ask her about Mahdavi. Tr. 155 (Boniadi). In spite of repeated requests from the group for an accounting of the donations, Respondent never provided them an accounting of the donations she received.

186. In an e-mail dated June 30, 2008, sent by Jafari to Respondent, Boniadi, and other individuals, Jafari stated that Respondent had not turned over the donations collected for Mahdavi and asked Respondent to send the collected $2,000 to Jafari. BX at A13 at 215. Jafari wrote:

> Ms. Mazahery, I am really tired and have had it with this situation. And I consider your delaying tactics as an insult to the human rights and humanitarian activities of the guys [my friends]. Anyway, for the very last time I am again requesting that by the end of this week you send us the collected $2,000. If not, we will commence our official action.

Id. By the date of Jafari's e-mail, all of the donations that Respondent had transferred from the PayPal account into her personal 9443 Account had been spent. BX C2 at 10.

187. After receiving Jafari's June 30, 2008 e-mail, on July 1, 2008, Boniadi sent Respondent an e-mail and asked Respondent: "What was Mina Jafari's e-mail about?? How come they haven't received the $2,000 yet?" BX A10 at 62; Tr. 163-64 (Boniadi). Respondent replied to Boniadi's questions in a June 30, 2008 e-mail:

> Ahmad (Batebi) is going to help me explain to her how the servers/hosting services that I put on my check card (which was charged more than the number of times that it should have been charged!!!!! for his friends who don't have credit cards in Iran) affected the account from which the money from PayPal was transfered [sic] to and was supposed to have been sent to Mina!! Because my check card was charged for the web hosting plans that they asked me to purchase for them was more than what it should have been, it resulted in approximately 10 bounced checks, which caused substantial fees and has caused a complete fiasco.

BX A10 at 62; BX A11 at 59.

188. Respondent's purchase (or authorization of the purchase) of webhosting plans did not cause "approximately 10 bounced checks, which caused substantial fees." BX C2 at 5-7. The purchases that ultimately caused Respondent's account to go into overdraft status occurred on June 13, 2008, and resulted in a total of $66.00 in overdraft fees. BX C2 at 6-7. On June 17, 2008, Respondent incurred an additional $33.00 overdraft fee when she charged an additional $90.00 for services provided at Nails by Thuc. BX C2 at 10.

189. On July 14, 2008, Respondent deposited $1,800 into the 9443 Account.. *Id*.

190. In a July 1, 2008 e-mail, Boniadi asked Respondent to let her know about Batebi's conversation with Jafari, asked if Respondent could send Jafari an international money order, and expressed her embarrassment that the money had not been transmitted because her name had been involved in the campaign to save Mahdavi. BX A10 at 62.

191. Also on July 1, 2008, Respondent answered an e-mail from an individual named Sakreh Sang who asked Respondent what the e-mail from Jafari meant. BX A10 at 52. Respondent replied: "A strange misunderstanding has taken place, which, Ahmad (Batebi) has promised me to clear up today. We will explain it to you as well. Just, if you can, tell Mina that, it is not AT ALL true whatever someone has told her." *Id*.

192. On July 21, 2008, BK sent an e-mail to the Group and wrote that Jafari had not received any funds from Respondent, BK's friend was available and willing to take the funds to

Iran, BK had provided Respondent with other options for transferring the funds, but Respondent had failed to transmit the funds to Jafari. BX A13 at 227. On or about the same day, Goudarzi, asked Respondent via e-mail: "What is the problem with transferring the money? And why nothing has been done about it yet?" BX A13 at 226.

193. In an e-mail dated July 21, 2008, Respondent responded to the Group and stated that she had transferred the donations that had been collected through the PayPal account into "an account which I use for this sort of thing," but "that account got block/freeze [*sic*]." BX A13 at 225- 26; BX A8 at 22; Tr. 1385 (Respondent) ("[W]hat had happened was PayPal had frozen the account. And because of that, my bank had also gone nuts, because they were concerned about what the purpose of this, you know, account was . . . they were concerned under international and federal regulations. So – and that affected the bank account as well, if I can remember correctly."). Contrary to Respondent's suggestion that the funds had been deposited into a trust account or other special purposes account, Respondent had deposited the funds into her personal checking account. BX C2 at 1, 5. Further, United Bank did not take any action to "block" Respondent's account. As reflected in the activity from the 9443 Account statement, Respondent had full access to and use of the funds in the account until they had been depleted by June 13, 2008. BX C2 at 5-7, 10. Respondent ended her July 21, 2008 e-mail to the group by apologizing and assuring Jafari and the group that she was making every effort to deliver the donations to Jafari. BX A13 at 226.

194. Additionally, Respondent stated in her July 21, 2008 e-mail that one or more individuals had illegally used her Visa check card. In that e-mail, Respondent stated that the unauthorized use of her card had caused "hundreds" of dollars in fines, that she reported the unlawful taking of the funds to the police who took her information, wrote a report, and that the

police report was available. BX A13 at 226; Tr. 167 (Boniadi) ("[Respondent] mentioned on the phone, too, that there [were] checks being bounced, and she didn't know what was happening, but her bank account was just in a mess."). In fact, United Bank assessed only $99.00 in overdraft fees during the period in question. BX C2 at 7, 10.

195. In a July 25, 2008 e-mail, after Respondent had received a gift of $24,000 from Muneer Satter ("Satter") to support her human rights work, which she deposited into her 0878 Account, Respondent wrote to Jafari and several other individuals that the issue with her bank account had been resolved, and that she could now transfer the money donated to benefit Mahdavi to the bank account set up for her in Europe. BX A13 at 229; BX A10 at 23.

196. On or about August 6, 2008, Respondent withdrew $2,000 in cash from the 9443 Account. BX C2 at 15, 26. She testified that "in an attempt to safeguard the funds for the Mahdavi matter, I took out the cash until we could figure out what to do with it." Tr. 1392-93 (Respondent). Respondent testified at the hearing that she kept the $2,000 in cash donations in the bank envelope in a cigar box in a locked safe in her parents' home, and that she had sole and exclusive control of the key to the safe. Tr. 1680-82, 1718-19 (Respondent).

197. On August 8, 2008, Respondent attempted to transfer the donated funds to a bank account in Sweden. RX 135 (United Bank transfer request). The bank transfer request, however, was for only for $1,600, not the full amount of donations that had been collected. *Id*. Respondent had no idea why the transfer request was for less than the full amount of the donations collected. Tr. 1700-01 (Respondent). The attempted transfer was unsuccessful, however, because Respondent did not have the name and address of the bank in Sweden. Tr. 1702-03. Respondent made some efforts to obtain the missing information. Tr. 1394-97. For example, she requested the information during a chat session with BK. BX K23 at 6-7. She also

testified that a United Bank employee tried to get the missing information, but was unsuccessful. Tr. at 1704-08.

198. There was also some evidence that Respondent made efforts to transfer the donations to Fariba Davoodi, so that Davoodi could somehow send the money to Iran. Tr. 388-89 (Respondent). However, the evidence was vague as to the nature of such efforts and when they occurred.

199. On August 27, 2008, BK sent an e-mail to Respondent regarding her failure to deliver the donations. BX A13 at 234. On August 27, 2008, Respondent answered BK's e-mail and stated that "the money which we have collected for Mahdavi, ***as it has always been***, is ready to be transferred." BX A13 at 234 (emphasis added). Contrary to Respondent's statement, from the date that Respondent transferred the PayPal donations into her 9443 Account on May 27, 2008, until July 23, 2008 when she received $24,000 from Satter, Respondent did not have the full $1,952.88 of donations available to transfer. BX C5 at 5-7.

200. Also on August 27, 2008, Respondent forwarded to Barbara and Michael Ledeen BK's e-mail and her response. BX A13 at 230; BX D7 at 16. Ms. Ledeen asked Respondent what the e-mails were about and who was "Mahdavi?" BX A13 at 230; BX D7 at 16. Respondent explained to Ms. Ledeen: "Mahdavi is a woman on death row, for whom I set up a PayPal account to collect blood money that was needed to save her life. Due to the international sanctions against Iran, I can't just send the money (approximately $1600) to Iran directly. So I have been trying to figure out a way to do so legally." BX A13 at 230.

201. On August 31, 2008, Boniadi contacted Respondent and asked her for an update on Mahdavi. BX A11 at 64. Respondent told Boniadi that the collected donations were available to be transferred and being held in a separate account. Tr. 156, 157 (Boniadi); *see also*

BX A11 at 65, 68, 74, 81. In an e-mail response, Respondent stated that she had tried to wire the money to Europe, but her bank needed more information. BX A11 at 63. Respondent wrote to Boniadi that her "bank needs more information than what they have listed on the site, and my attempts to get info from these folks have gone nowhere." BX A11 at 63.

202. On or about September 15, 2008, Jafari contacted Respondent via a chat session and asked about the status of "Mahdavi's money," when the donations would be transferred, told Respondent that the funds were "seriously needed now." BX A10 at 4, 238. Jafari also told Respondent that she needed to provide a financial report. *Id*. Respondent stated that she attempted to wire the money to the bank account in Europe but her bank had requested the SWIF number which she did not have. *Id*. In this chat session, Jafari provided Respondent with the bank account number, the IBAN number, and the SWIF address of NDEASESS. BX A13 at 238-39; BX A10 at 5. Respondent confirmed that the NDEASESS address was what she needed to transfer the funds. BX A10 at 5. In response, Respondent wrote in English: "OH!! GOOD! THAT IS IT! !" BX A13 at 239; BX A10 at 3, 5. Jafari notified Respondent that this information had been posted publicly on Mahdavi's weblog. *Id*. Posted information included the name of the account, the bank account number, the IBAN number, and the BIC SWIF address. BX A6 at 36-37. It did not, however, include the name and address of the bank in Sweden, which is what Respondent understood that her bank required. Also during the September 15, 2008 chat session, Jafari gave Respondent contact information for an individual who could provide Respondent with any additional bank account information. BX A10 at 5.

Respondent did not contact that person or do anything to search the name and address of the bank linked to the SWIF address. [7] Tr. 1704-06 (Respondent); *see also* BX K23.

203. In addition to their chat session on September 15, 2008, Respondent and Jafari also exchanged e-mails. BX A13 at 242. Jafari told Respondent that the newspapers were still following Mahdavi's case, and she needed to make a financial report. *Id*. Jafari again provided Respondent with her telephone number. BX A13 at 242; BX Al 0 at 18. Respondent never provided an accounting of the funds. She testified that she did not keep an accounting of donations received through a ledger or spreadsheet, but that she knew the amount of donations received through access to the PayPal account. Tr. 1688 (Respondent).

204. On December 1, 2008, Sanjari contacted Jafari by e-mail and asked whether she had received the donations for Mahdavi that Respondent had collected. BX A13 at 246. Ms. Jafari responded: "Than[k] you for looking into this, the truth is, because [Respondent] did not have a transparent and honest relationship with us, and the account was in her name, I do not know the exact amount. But even the $2,000 which she had told us about, she never got it to us. We don't know what else we can do, we are totally stifled." *Id*.

205. In January 2009, Boniadi contacted Auerbach and asked whether she had information regarding Mahdavi or Jafari. BX A11 at 65. Boniadi also contacted Respondent and asked her about the status of Mahdavi's case and the donations Respondent had received. BX A11 at 1. Respondent answered that the donations were "sitting there in a separate account I set up for Mahdavi, I will send that to you." *Id*. At this time, according the Respondent's testimony at the hearing, cash in the approximate amount of the donations was in a cigar box in a

[7] Within BX K23 is a one-page printout from Nordea.com, which shows that the website was accessed and the document was printed on January 18, 2011. Bar Counsel offered this document to prove that the missing information was publicly-available and therefore could have been obtained by Respondent to

safe in her parents' home. Tr. 1681, 1718 (Respondent). Respondent further testified that by December 2008 or January 2009, she had given up hope that she would be able to transfer the funds to Iran. Tr. 1684-85 (Respondent).

206. In a February 9, 2009 email, Boniadi asked Respondent to return the $500 that Assemi had paid to purchase Boniadi's red carpet dress and provided a mailing address where the donation could be sent. BX A11 at 69; Tr. 158-59 (Boniadi). Boniadi contacted Assemi, and she agreed that the proceeds of the sale of the dress should be returned to Boniadi and donated to Amnesty's Iran division. BX A11 at 1, 74; Tr. 158-59 (Boniadi); *see also* Tr. 1114 (Auerbach).

207. On or about February 10, 2009, Respondent contacted Auerbach by telephone to discuss Mahdavi. BX A11 at 77; Tr. 159-60 (Boniadi). Respondent told Auerbach that she planned on sending Boniadi the money for the dress so that it could be donated to Amnesty. BX A11 at 77; Tr. 1114-15 (Auerbach). Respondent did not respond directly to Boniadi. BX A11 at 76.

208. On February 20, 2009, Boniadi contacted Respondent by e-mail, told her she had not received a response, and sought to confirm that Respondent had received her e-mails. BX A11 at 79. In an e-mail dated February 22, 2009, Respondent agreed to return the money to Boniadi and told her that she would take care of it "next week." BX A11 at 78; Tr. 159-60 (Boniadi); *see also* BX A11 at 81-82. Respondent did not transmit the funds to Boniadi as she had promised. Tr. 160 (Boniadi). In the following months, Boniadi contacted Respondent by telephone, e-mail, and via Facebook, but Respondent failed to respond to any of her further inquiries or requests for information. BX A11 at 1, 76, 81; Tr. 160 (Boniadi). Respondent did

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complete the transfer to the bank in Sweden. The document, however, only establishes that such information was publicly available on January 18, 2011, not back in August 2008.

not respond to Boniadi's request for information or return the $500 to Boniadi. Tr. 161 (Boniadi); BX A11 at1-2.

209. On March 4, 2010, over a year later, Respondent asked Boniadi via e-mail to contact Respondent by telephone "as there seems to be a number of unfortunate misunderstandings and lost, crossed, or miscommunications that I would love to address with you." BX A11 at 84; Tr. 161 (Boniadi). Boniadi responded by e-mail and reminded Respondent: "You agreed to send me this check, made out to Amnesty. I never received such a check." BX A11 at 83. She again provided a mailing address where Respondent could send the check. BX A11 at 83-84. In April 2010, Assemi (not Respondent) transmitted a check to Boniadi made payable to Amnesty, and Boniadi sent the check to Amnesty. BX A11 at 86, 89; Tr. 162 (Boniadi).

210. The PayPal account was not closed until October 22, 2009. Tr. 93 (LeFavor); Tr. 1716 (Respondent). Between May 27, 2008 (when donations were transferred to Respondent's 9443 Account) and October 21, 2009 (when the PayPal account was closed), additional donations in the amount of $281.20 (net) were deposited into the PayPal account. BX B5 at 7-15; *see also* BC Brief App. C.[8]

211. In August 2009, on several different dates, Respondent used donations from the PayPal account – not her debit or credit card – to purchase jewelry on eBay in separate transactions from multiple sellers. BC Brief App. C. All of the jewelry Respondent purchased was sent to "Lily Mazahery" and shipped to her home address of 1315 Round Oak Ct., McLean, Virginia 22101. BX B5 at 11-13. Respondent spent a total $116.53 of the Mahdavi's donations from the PayPal account. BC Brief App. C.

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[8] BC Brief App. C is a summary list of transactions in the PayPal account after May 27, 2008. The amounts are supported by other exhibits, and Respondent has not contested the accuracy of the summary.

212. Respondent testified that she did not understand that she was using donations from the PayPal account to purchase items on eBay. Tr. 1712-16 (Respondent). An individual who wishes to purchase an item through eBay is redirected to a PayPal page, which allows the customer to select the funding source. Tr. 129-32 (LeFavor). Respondent had, in the past, purchased several items on eBay using her own debit card linked to the PayPal account. For example, on January 29, 2009, Respondent purchased a Ralph Lauren jacket in the amount of $58.99 from eBay through the PayPal account, using one of the debit cards she had linked to the PayPal account. BX B7 at 1; BX B3 at 2; BX B5 at 9; App. C. Also on January 29, 2009, Respondent purchased a pair of earrings and a ring in the amount of $47.77 from eBay through the PayPal account, using a debit card she had linked to the PayPal account. BX B8 at 1; BX B3 at 2; BX B5 at 9; App. C. Both of these purchases were addressed to "Legal Rights Institute" and shipped to Respondent at her office address of 8304 Old Courthouse Road, Suite B, Vienna, Virginia 22182. BX B5 at 9.

213. Respondent acknowledged that once she "discovered" that some of the items had been purchased with PayPal donations, she did not return funds to the PayPal account. Tr. 1716 (Respondent).

214. On May 18, 2009, Bar Counsel sent Respondent a copy of the ethical complaint and asked her to respond in writing to the allegations. BX A7. On June 17, 2009, Respondent submitted her response. BX A8; Tr. 1698 (Respondent). In her June 17, 2009 response to Bar Counsel, Respondent falsely stated: "When I attempted to transfer the restored funds from Paypal to Jafari, I learned that economic sanctions barred direct transfers of funds from a financial account in this country to the account of an Iranian citizen in Iran." BX A8 at 2, last par. However, Respondent knew by at least March 2008, when she first became involved in the

matter, that it would be difficult for her to transfer funds directly into an Iranian bank account, and she thus suggested that she could have her family in Tehran deposit funds into the account. *See* BX A13 at 18, 30; Tr. 1631 (Respondent).

215. Respondent collected a total of $2,385.05 (gross) and $2,232.23 (net) in donations to benefit Mahdavi. BX B5; C2 at 5, 9; *see also* BC Brief App. A.[9] Respondent never sent any of Mahdavi's donations to Jafari or provided an account of the donations. Tr. 1628-29 (Respondent).

216. Although Respondent worked in the same office suite with Hosny from April 2008 through May 2009, Respondent never informed Hosny that she could not transfer or deliver the donations to Mahdavi. Tr. 55-57, 60 (Hosny). Respondent falsely testified that she told Hosny that she was having difficulty getting the donations to Iran. Tr. 1728 (Respondent). Furthermore, although Respondent testified that she sent a refund check to Hosny, Hosny never received a refund of her $300 donation. Tr. 60 (Hosny). Respondent did not receive the check by return mail, and she did not attempt to locate Hosny. Tr. 1723-24 (Respondent).

217. On October 21, 2009, Respondent refunded two donations that had been paid into the PayPal account by reversing the payments back to the individual donors, for a total refund of $105.11 (net). BX B5 at 15, Tr. 74-75, 116 (LeFavor); App. A. She then closed the PayPal account on October 22, 2009. BX B4 at 1; Tr. 93 (LeFavor); Tr. 1716 (Respondent).

218. On January 20, 2010, Respondent opened a checking account at United Bank ("2981 Account") with a cash deposit of $2020.00, which Respondent testified were Mahdavi's donations that she had kept in a cigar box. BX C6 at 3-5; Tr. 1717-18 (Respondent).

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9 BC Brief App. A is a summary list of amounts collected and refunded from the PayPal account. The amounts are supported by other exhibits, and Respondent has not contested the accuracy of the summary.

219. At the hearing, Respondent testified that in January 2010 she attempted to return all of the donations by sending letters with refund checks written off of her 2981 Account, and she presented numerous unsigned letters dated January 29, 2010, which were addressed to individual donors to support her testimony. Tr. 1682 (Respondent); RX 215. Most of the checks Respondent claimed that she sent were not presented for payment; however, ten checks dated January 27, 2010, made payable to individual donors, were presented for payment. *See*, App. D.[10] Respondent testified that she mailed out the refunds "shortly after" she wrote the checks that were dated January 27, 2010. Tr. 1721-22 (Respondent). However, the first check to be negotiated was on March 15, 2010, and the last check to be negotiated was on July 2, 2010. BX C6 at 17, 50. Respondent did not keep an accounting or record of how many checks were presented for payment and did not know how much of the donations she returned to donors. Tr. 1724-25, 1728 (Respondent).

220. Between January 20 and February 9, 2010, Respondent made no additional deposits into her 2981 Account. BX C6 at 3. According to Respondent's testimony, the cash funds in the 2981 Account were Mahdavi's donations. Tr. 1682, 1691 (Respondent). On or about February 9, 2010, Respondent transferred $1,000 from her 2981 Account into her 0878 Account, leaving a balance of $997.75, which was less than the amount of donations she had collected or that she claimed to have refunded by checks to donors. BX C6 at 3; BX C5 at 168 and 174; *see also* App. D. As Respondent testified, if all of the donors had presented their refund checks for payment, there would not have been sufficient funds in the account to cover the checks. BX C6 at 3; *see also* App. D. Further, between the dates of February 9 and 21, 2010; March 10 and 29, 2010; and April 13 and August 19, 2010, the balance in Respondent's

[10] BC Brief App. D is a summary list that itemizes the refunds made by Respondent to donors. The amounts are supported by other exhibits, and Respondent has not contested the summary list.

2981 Account fell below the amount of donated funds that had not yet been reimbursed to individual donors. *See* App. D.

221. In her June 17, 2009 response to Bar Counsel, Respondent stated: "What was most puzzling was Jafari's insistence that I transfer exactly $2,000, despite the fact that I had sent her daily (sometimes hourly) updates of the PayPal transfers and transactions." BX A8 at 3.

222. In her June 17, 2009 response to Bar Counsel, Respondent accepted no responsibility for any wrong-doing in this matter. Respondent wrote: "I reiterate my complete and unequivocal denial of any and all allegations of wrongdoing made in this case about me. I have acted with utmost professionalism, candor, and good-will in this context, and I have stopped at nothing to that which I have known to be legal, ethical, even moral." BX A8 at 4.

V. THE UNITED BANK MATTER (COUNT IV)

223. For a time, Batebi and his girlfriend, Niazi, both lived in Respondent's father's house. However, they began to have arguments that disturbed Respondent's family, and decided to move out of the house. Tr. 1005-1006. Batebi rented a room for Niazi in Virginia, and Batebi moved in with friends in Maryland. Tr. 1005-1006.

224. At some point, either while still living in the Mazahery household or after Batebi and Niazi had moved out of Respondent's father's house, Niazi told Batebi that she did not like the United States and wanted to return to Iran. Tr. 1013-1014. Batebi then told Respondent that Niazi wanted to return to Iran. Tr. 1014.

225. While Respondent and Batebi were in a car together driving to the White House, Batebi received "another hysterical call from Ms. Niazi, making various demands." Tr. 1429-1430 (Respondent). Respondent heard Batebi say to Niazi: "Okay, you want to go to Iran? Fine, go back." Tr. 1430 (Respondent). Respondent then testified that she called her colleague, Jason Tankel, who "used Travelocity" to purchase a plane ticket for Niazi. *Id.* Respondent gave her

wallet to Batebi, and Batebi gave Respondent's bank card information to the individual on the other end of the telephone conversation. Tr. 1430-31, 1785-86 (Respondent). Mr. Tankel did not testify at the hearing.

226. Within a 24-hour period, Respondent received three emails from Travelocity about the ticket purchase for Niazi. On July 28, 2008 at 3:30 pm, Travelocity sent Respondent an email confirming travel for Tahereh Niazi Mahmani from Washington Dulles to London Heathrow on July 29, 2008, from London Heathrow to Dubai on July 29, 2008, and finally from Dubai to Tehran on July 30, 2008. The email identified the originating flight from Washington Dulles as Continental Airlines Flight 8242 operated by Virgin Atlantic. RX K-1 at 2.

227. Respondent received a second email from Travelocity on July 28, 2008 at 3:07 pm, confirming travel booked with Travelocity.com. The email lists the originating flight as "CO 8242 28 JUL DEPARTS WASHINGTON DULLES AT 640P ARRIVES LONDON HEATHROW AT 705A OPERATED BY VIRGIN ATLANTIC," and also includes the flights from London to Dubai and Dubai to Tehran. The email also states that the "total fare for this reservation is: 1946.80." RX K-1 at 7.

228. On July 29, 2008 at 11:21 am, Respondent received a third email from Travelocity informing her that a change had been made to the flight times and/or flight numbers for the recently booked travel on Travelocity for "Tahereh," and assigning a different travel ID number. RX K-1 at 11.

229. Also on July 29, and apparently in response to the emails she had received from Travelocity, Respondent communicated twice with Batebi about the ticket. Via chat, she asked Batebi: "did you change Tara's ticket????????????" and "or someone has bought a new ticket with [using] my credit card????????????" RX K-1 at 12-13. She also emailed Batebi,stating:

"They just called and said the ticket which was obtained for Tara to [travel] last night, they have changed [the travel date] to tonight. Did you do it? Or what is up, what and where??? I am totally confused!!" RX K-1 at 16.

230. Also on July 29, 2008, Respondent replied to the Travelocity email she had received that same day, stating that she had "been trying to cancel" Niazi's plane ticket for two days. She also stated "I HAVE NOT AUTHORIZED THIS PURCHASE!" and asked Travelocity to "cancel this and credit [her] credit card with the money that has been charged." RX K-1 at 17. Travelocity confirmed receipt of this email. RX K-1 at 20.

231. Respondent's bank statement for the period July 21, 2008 through August 18, 2008 reflected, among other things, (1) an $11 Travelocity charge, labeled as "Travelocit Traveloci" and including the state abbreviation "TX", on July 29, 2008; and (2) a $1,946.80 charge labeled "Continenta Continet San Antonio Texas," on July 30, 2008. BCX C-5 at 5. These purchases were made using Respondent's 0878 Account, not the 9443 Account that Respondent used to make internet-related purchases for Batebi's friends in Iran. Respondent had exclusive control over the 0878 Account and any debit cards issued on this account were issued to her alone. BX C5 at 1; TR. 186-87, 221, 240 (Fowler).

232. As set forth above in FF 145-46, in September 2008, Respondent identified for Batebi amounts she believed he owed her, Batebi wrote the amounts on a notepad, and Respondent later disclosed Batebi's handwritten note to Ledeen and Auerbach. With respect to a $2200 amount on Batebi's handwritten note, Respondent told Ledeen and Auerbach: "This is the ticket that Tahereh Niazi Mehmani (AKA Tara Niazi) insisted on having to go back to Iran and Ahmad made me buy it for her so everyone could have peace!" BX D6 at 63; BX D7 at 30-31. At the hearing, Respondent testified that she "thought the $2,200 that [Batebi] had written

down -- means ticket, again, I was trying to figure out what that might be, and that's why I associated it with the ticket that was purchased for Ms. Niazi to return to Iran that was canceled." Tr. at 1796 (Respondent).

233. On September 6, 2008, Respondent signed a Dispute Interview Form and returned it to United Bank. She identified the $1,946.80 charge to the 0878 Account as an unrecognized transaction. She indicated that another valid user had not used her card, that she did not know who committed the fraud she was reporting, that she was in possession of her card, and that she did not know details of the fraud, except that it involved a transaction somewhere in San Antonio, Texas, "where I have never been." C7 at 15 (emphasis in original).

234. On October 6, 2008, Respondent signed a United Bank ATM/Check Card Disputed Transaction Form for the $1,946.80 charge to the 0878 Account. She checked the box indicating, "I did not authorize or participate in the above transaction." BCX C-7 at 14.

235. On October 9, 2008, Respondent signed, under penalties of perjury and before a notary, an ATM/Check Card Fraud Affidavit with United Bank in connection with the $1,946.80 charge to the 0878 Account. Tr. at 201 (Fowler); BCX C-7 at 13. She stated that she had not "given any other person authorization or permission to use [her] card to make transactions on [her] account." BCX C-7 at 12. By signing the Affidavit, Respondent swore to the following: "I have not negotiated the disputed transaction(s) nor did I authorize anyone to do so, having knowledge thereof, receive proceeds of said withdrawal or benefit therefrom, and that the transaction(s) was/were done without my knowledge or consent. I further depose and say that all the information given is true and complete, to the best of my knowledge." BCX C-7 at 13.

236. United Bank attempted to investigate the legitimacy of Respondent's fraud claim but, being unable to obtain any cooperation from Continental Airlines and being unaware that

Travelocity was involved in the transaction, the bank closed its file. Tr. 206-209 (Fowler). Consequently, based on the Affidavit signed by Respondent, United Bank refunded $1,946.80 to Respondent on October 8, which resulted in a loss of that amount to United Bank. Tr. 198-199, 209 (Fowler); BCX C-5 at 36.

237. Respondent testified that she understood Travelocity had cancelled Niazi's ticket when Respondent called Travelocity and instructed them to cancel the ticket because its purchase had not been authorized. Respondent also testified that she understood the $11 charge on her bank account, (and identified as "Travelocit Traveloci"), to be the cost of cancelling the ticket. Tr. 1435-1437, 1476-1477 (Respondent); RX K-1 at 17, 20.

238. Respondent testified that she did not identify the $1,946.80 charge on her bank statement as the cost of Niazi's plane ticket because she knew the ticket was purchased through Travelocity and she did not see Travelocity's name associated with the charge. She also testified that she did not associate "Continenta," which is the vendor listed on her bank statement for the $1,946.80 charge, with Continental Airlines, but instead assumed that it referred to a Continental Hotel in San Antonio. Tr. 1436, 1476-77 (Respondent).

239. Respondent also testified at the hearing that she had no idea how much it cost to fly to Iran from the United States (Tr. at 1436, 1795-1796 (Respondent)), and incorrectly testified that none of the emails had indicated the cost of the ticket or identified the airline on which Niazi was to fly. Tr. 1476-1477 (Respondent); RX K-1 at 2, 7.

CONCLUSIONS OF LAW

Bar Counsel has charged that Respondent violated 16 different provisions of the D.C. Rules of Professional Conduct. Bar Counsel has the burden of proving each violation by clear and convincing evidence. D.C. Bd. on Prof. Resp. Rule 11.5. "Clear and convincing evidence" means "more than a preponderance of the evidence; [it] means 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) (quotations, citations omitted).

In many instances, Bar Counsel has charged the same conduct under multiple rules, thereby requiring us to consider the conduct under each of those rules. *See In re Drew*, 693 A.2d 1127 (D.C. 1997) (per curiam).[11]

After the conclusion of the hearing, Bar Counsel chose not to pursue certain of the charged violations in the Second Amended Specification of Charges.[12] Based on the applicable rules and guidance from the Board, we are required to consider those charges as well. Pursuant

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11 In *Drew*, Bar Counsel charged the respondent with thirteen rules violations. The Hearing Committee had declined to make findings on eight of the thirteen charges, reasoning that the facts underlying those eight charges were "essentially duplicative" of facts supporting a separate rule violation. *Id*. at 1127 (quoting Hearing Committee report). The Board disagreed with the Committee's approach and pointed out that "[t]here have been numerous instances where hearing committees, the Board, and the Court of Appeals have found violations of multiple rules based upon the same conduct of the respondent." *Id*. at 1132 (appended Board report). The Board added "that the appropriate manner for a hearing committee to consider multiple violations based upon a single set of facts is to determine the weight, if any, that should be given to those circumstances in recommending the sanction to be imposed." *Id*. at 1132-33 (appended Board report).

12 Bar Counsel filed a Second Amended Specification of Charges on December 6, 2010 and a Third Amended Specification of Charges on December 23, 2010. The Third Amended Specification adds the charges relating to the United Bank matter. It also incorporates the allegations contained in the Second Amended Specification of Charges, but does not reproduce them. Consequently, this opinion will refer to both the Second and Third Amended Specification of Charges, as applicable.

to D.C. Bar R. XI, § 6(a)(3),[13] Bar Counsel may dismiss charges only with the prior approval of a Contact Member. Similarly, under D.C. Bar R. XI, § 5(c),[14] the Hearing Committee does not have the power to dismiss charges, but must make findings and recommendations to the Board. Thus, in *In re Reilly*, Bar Docket No. 102-94 (BPR July 17, 2003), the Board reasoned:

> Bar Counsel does not have authority to dismiss charges after they have been approved by a Contact Member. Bar Counsel is duty bound to press such charges before the Hearing Committee, which must then make an appropriate recommendation for disposition. Bar Counsel's decision in the middle of the hearing to abandon certain claims against Respondent . . . reflected its judgment that it would not be able to prove its case. *Hearing Committees must make findings on all charges brought by Bar Counsel.* ... If lack of the requisite evidence prevents Bar Counsel from putting on a prima facie case on particular charges, . . . the Hearing Committee may then write a report recommending dismissal. ...

Id. at 4-5 (italics added). Although there is authority suggesting that the Hearing Committee may decline to reach less serious violations where it has found that the Respondent misappropriated funds – which, by it itself, carries a sanction of disbarment – this is not such a case.[15]

After review of every charged violation in the Second and Third Amended Specification

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13 D.C. Bar R. XI, § 6(a)(3) provides, in pertinent part, that "Bar Counsel shall have the power... [u]pon prior approval of a Contact Member, to dispose of all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction of the Court, by dismissal or informal admonition or by referral of charges . . . ."

14 D.C. Bar R. XI, § 5(c) provides: "Hearing Committees shall have the power and duty: (1) Upon assignment by the Executive Attorney, to conduct hearings on formal charges of misconduct, a proposed negotiated disposition, or a contested petition for reinstatement and on such other matters as the Court or Board may direct; (2) To submit their findings and recommendations on formal charges of misconduct to the Board, together with the record of the hearing; (3) To submit their findings and recommendations to approve a negotiated disposition and their findings and recommendations in a contested reinstatement to the Court, together with the record of the hearing."

15 *See In re Bach*, Bar Docket No. 071-05 at 19 (BPR Dec. 20, 2007), 966 A.2d 350 (D.C. 2009) (adopting Board recommendation to disbar Respondent who, while serving as conservator for the estate

of Charges, the Hearing Committee unanimously concludes that Bar Counsel proved violations of Rules 1.1(a) and (b), 1.4(a) and (b), 1.6(a)(1), 1.7(b)(4), 4.2(a), 8.1(a), and 8.4(c) by clear and convincing evidence. Two of the members of the Hearing Committee conclude that Bar Counsel also proved violations of Rule 8.4(b) by clear and convincing evidence. The Hearing Committee unanimously concludes that Bar Counsel did not prove the charged violations of Rules 1.3(b)(1), 1.15(a), 1.15(b) and 8.4(d) by clear and convincing evidence

A. Alleged Violations of Rules 1.1(a). 1.1(b) and 1.3(c)

Rule 1.1(a) requires a lawyer to provide competent representation, which involves not only possession but also application of the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d at 1132 (lawyer who has requisite skill and knowledge, but who does not apply it for particular client, violates obligations under Rule 1.1(a)). It is not sufficient that the lawyer is generally experienced and skilled in a particular area of law. Attorneys who are capable of providing competent representation, but fail for some reason to do so, may violate Rule 1.1(a). *In re Bland*, BDN 245-95 (BPR Jan. 13, 1998) at 13, 714 A.2d 787 (D.C. 1998) (adopting Board recommendations); *In re Hanny*, BDN 31-97 (BPR June 13, 2000) at 8 (ordering a reprimand).

Rule 1.1(b) requires a lawyer to serve the client with the skill and care commensurate with that generally afforded clients by lawyers in similar matters. The comments to Rule 1.1 instruct that competent representation requires the "use of methods and procedures meeting the standards of competent practitioners," and "adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs." Comment [5] to

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of a 92–year–old woman, wrote himself a check from the estate for his services knowing that he was not authorized to do so without court approval, which he had not yet received).

Rule 1.1. Comment [5] further provides that "[t]he required attention and preparation are determined in part by what is at stake[.]" *Id.*

Rule 1.3(b)(1) provides that "[a] lawyer shall not intentionally…. [f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules[.]" "Intent must ordinarily be established by circumstantial evidence, and in assessing intent, the court must consider the entire context." *In re Ukwu,* 926 A.2d 1106, 1116 (D.C. 2007).

1. In the Batebi Matter, Respondent Violated Rules 1.1(a) and (b), but Did Not Violate Rule 1.3(b)(1)

Bar Counsel argues that Respondent violated Rules 1.1(a), 1.1(b) and 1.3(b)(1) in the Batebi matter by failing to file a timely, accurate and complete work authorization application with appropriate supporting documents. BC Brief at 115.

With respect to Rules 1.1(a) and (b), Bar Counsel's immigration law expert testified in a conclusory manner that Respondent failed to meet the standard of care in promptly filing a Form I-765 for Batebi. FF 129. There was no testimony about how long a competent attorney *should* take to submit a Form I-765 after a humanitarian parolee's arrival in the United States. Rather, the testimony was simply that waiting until July 18, 2008 (when Batebi had arrived on June 23, 2008) was too long. *Id*. Furthermore, Batebi's new counsel waited two weeks before filing the missing documentation after he became Batebi's counsel. FF 131. Based on this evidence, we cannot conclude by clear and convincing evidence that Respondent's 25-day "delay' in filing a Form I-765 for Batebi constituted a violation of these rules.

On the other hand, given (a) the number of errors made by Respondent (including failure to file a photocopy of Batebi's Form I-94 with the I-765 application, failure to ensure that Batebi appeared for his biometrics appointment, submission of an incomplete asylum application, and submission of an unsigned declaration in support of the asylum application (FF 128, 133)), and

(b) the expert testimony that such failures did not meet the standard of care (FF 134), we conclude that Respondent violated Rules 1.1(a) and 1.1(b) when she submitted Form I-765 and asylum applications that were rife with errors and omissions.

Although Respondent made errors that delayed the processing of the applications she filed for Batebi, there is no evidence from which we can infer that she did so intentionally. Accordingly, we conclude that Bar Counsel failed to prove a violation of Rule 1.3(b)(1).

2. Respondent Did Not Violate Rules 1.1(a), 1.1(b) or 1.3(b)(1) in the Sanjari Matter.

Bar Counsel argues that Respondent violated Rules 1.1(a), 1.1(b) and 1.3(b)(1) by failing to file – before or at the time of the asylum interview – a brief that addressed the legal issue of whether Sanjari had firmly resettled in Norway, thereby barring asylum in the United States. BC Brief at 116.

Bar Counsel's expert testified that there was nothing negligent or incompetent about the application that Respondent submitted for Sanjari or the brief that she filed on his behalf addressing the firm resettlement issue (FF 57, 60), but she testified that Respondent fell below the standard of care by not filing the brief prior to or at the interview. However, because (a) this was a "very unique issue" as the Asylum Officer testified (FF 59), (b) Respondent had successfully filed approximately 30 asylum applications without ever filing a brief (FF 58), (c) Respondent apparently made a conscious choice not to file a brief before or at the interview (*id.*), and (d) Respondent received an opportunity to file a brief after the interview (FF 54), we cannot conclude that Respondent violated Rules 1.1 (a) and (b).

Because the alleged violations of Rules 1.1(a) and (b) are the predicate for the Rule 1.3(b)(1) charge, that charge must fail as well. Even if there were a sufficient predicate,

however, we would find that – as with the Batebi matter – there is no evidence of an *intentional* failure by Respondent to seek a lawful objective of her client Sanjari.

B. The Alleged Violations of Rules 1.4(a) and (b)

Rule 1.4(a) provides: "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Rule 1.4(b) provides: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Both rules relate to communications about the status of a "matter." Rule 1.0 defines a "matter" as "any litigation, administrative proceeding, lobbying activity, application, claim, investigation, arrest, charge or accusation, the drafting of a contract, a negotiation, estate or family relations practice issue, or any other representation, except as expressly limited in a particular rule."

"[F]ull and complete communication with the client is an essential part of the attorney's role." *In re Stanton,* 470 A.2d 272, 278 (D.C. 1983). "The guiding principle for evaluating conduct under Rule 1.4(a) 'is whether the lawyer fulfilled the client's reasonable . . . expectations for information.'" *In re Hallmark,* 831 A.2d 366, 374 (D.C. 2003) (quoting *In re Schoeneman,* 777 A.2d 259, 264 (D.C. 2001)).

1. Respondent Violated Rules 1.4(a) and (b) in the Batebi matter.

Bar Counsel argues that Respondent violated Rules 1.4(a) and (b) by failing to notify Batebi about his financial matters or provide an accounting of the funds she received and spent on his behalf. BC Brief at 117.

Although we think Respondent's failures to keep Batebi informed about his finances and provide an accounting are quite problematic and violate other rules, we have some hesitation about whether such conduct is covered by Rules 1.4(a) and (b). We believe that the pertinent question, for purposes of Rules 1.4(a) and (b), is whether the scope of the representation was

broad enough to cover assisting Batebi with his financial matters. There was no direct testimony or other evidence addressing the scope of the Respondent's representation of Batebi. Moreover, the mixed personal and professional nature of the relationship between Respondent and Batebi makes it somewhat difficult to infer the scope of the representation by reviewing the things that Respondent actually did for Batebi. However, the Hearing Committee believes it is appropriate to consider the scope of the representation from the point of view of Batebi. *Cf. In re Sofaer*, 728 A.2d 625, 628 (citing Rule 1.2(c), "A lawyer may, of course, limit the objectives of a representation *with* client consent.") (emphasis added). To that end, we note that Batebi, a torture survivor who was unfamiliar with U.S. law and society, entrusted a wide range of matters to Respondent beyond assistance with his immigration applications. FF 76, 79, 82, 85. Respondent handled a wide range of matters on his behalf, had no engagement letter with her *pro bono* client, and made no effort to delineate a more limited scope of the representation, despite her obligation under Rule 1.2(c) to obtain the client's informed consent before she could limit the objectives of the representation. FF 4. Under the circumstances here, we think it would be reasonable for a client in Batebi's position to believe that Respondent was acting as his lawyer when she advised him on and handled his financial matters while he "got on his feet." Accordingly, we conclude that Respondent's failures to inform Batebi about his financial matters and provide an accounting are covered by Rules 1.4(a) and (b).

We have no such hesitations with respect to Respondent's failure to notify Batebi that she had filed two asylum applications on his behalf. FF 132, 138. This is information at the core of Respondent's professional relationship with Batebi, and we conclude that her failure to notify him about those filings violates Rules 1.4(a) and (b).

2. Respondent Violated Rules 1.4(a) and (b) in the Sanjari Matter.

Bar Counsel argues that Respondent violated Rules 1.4(a) and (b) by failing to communicate with Sanjari about the substance and status of his immigration case. BC Brief at 117. We agree.

To be sure, Bar Counsel's expert testified that understanding the procedural posture of Sanjari's matter would have been challenging for most clients. FF 61. However, by May 2008, the personal relationship between Respondent and Sanjari had become acrimonious, and it had clearly affected their professional communications. FF 47, 52. In addition, Bar Counsel's expert testified that to the extent there were language problems, it was Respondent's responsibility to ensure that she communicated effectively – either by using the services of a translator or, at a minimum, putting communications in writing so that Sanjari could have them translated. FF 61. We conclude that Respondent failed in her duty to keep Sanjari reasonably informed about the status of his case in violation of Rules 1.4(a) and (b), and that such failure resulted from a combination of the difficulties in their personal relationship, not the complexity of the situation. To that end, we note that Respondent was apparently able to communicate effectively with Sanjari about other legal matters prior to May 2008.

D. The Alleged Violations of Rules 1.6(a)(1), (a)(2) and (a)(3)

Rule 1.6(a) provides: "[A] lawyer shall not knowingly: (1) reveal a confidence or secret of the lawyer's client; (2) use a confidence or secret of the lawyer's client to the disadvantage of the client; (3) use a confidence or secret of the lawyer's client for the advantage of the lawyer or of a third person." Rule 1.6(b) defines "confidence" and "secret" as follows:

> '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.

Id. (emphasis added). "The lawyer's obligation to preserve the client's confidences and secrets continues after termination of the lawyer's employment." Rule 1.6(g). Comment [4] to Rule 1.6 underscores the importance of the lawyer's obligation to protect client confidences and secrets: "A fundamental principle in the client-lawyer relationship is that the lawyer holds inviolate the client's secrets and confidences." Comment [5] instructs: "Proper concern for professional duty should cause a lawyer to shun indiscreet conversations concerning clients." Comment [10] provides: "[I]nformation acquired by the lawyer in the course of representing a client may not be used to the disadvantage of that client even after the termination of the lawyer's representation of the client."

1. Respondent Violated Rules 1.6(a)(1), (a)(2) and (a)(3) in the Batebi Matter.

Bar Counsel has alleged several disclosures of confidences and/or secrets in the Batebi matter.

First, when Batebi escaped from Iran to Iraq, he instructed Respondent not to disclose his location to anyone, not even his friend Sanjari. FF 78. Notwithstanding this instruction, Respondent told Sanjari that Batebi had escaped to Iraq. *Id*. We conclude that her disclosure to Sanjari of information that Batebi requested be held inviolate is a clear violation of Rules 1.6(a)(1), (a)(2) and (a)(3).

Second, Respondent had a series of communications with Auerbach and the Ledeens regarding Batebi's bank account and financial situation. FF 118-22, 124, 126. Regardless of whether Respondent was truthful or accurate in those communications, her conduct in disseminating, discussing, and characterizing Batebi's private and personal financial information demonstrates a complete lack of regard for the confidentiality of her communications with Batebi and loyalty to her client. Because such information was "gained in the professional

relationship" (*supra* at 93-94) and its disclosure "would be embarrassing, or would be likely to be detrimental to" Batebi (*see* FF 78), we conclude that Respondent violated Rules 1.6(a)(1), (a)(2) and (a)(3).

Third, Respondent identified Batebi as a client on her website without Batebi's permission. FF 160-62. "Disclosure of a client's identity falls within the scope of Rule 1.6(a)(1)." *In re Hager*, 812 A.2d 904, 920 (D.C. 2002) (citing D.C. Bar Opinion 124) ('"Rule 1.6(a) applies 'whenever a client requests nondisclosure of the fact of representation, or circumstances suggest that such disclosure would embarrass or detrimentally affect any client.'"). We understand that Respondent's representation of Batebi was public knowledge. For example, she was identified in the *New York Times* and on immigration forms as Batebi's attorney. FF 76, 79, 87. However, unlike the definition of client "confidences," there is nothing in the definition of client "secrets" that requires that the information must otherwise be non-public. A client may desire and request that his or her lawyer not further disseminate already public information. *In re Gonzales*, 773 A.2d 1026, 1031 (D.C. 2001) (internal citations, quotations omitted) ("An attorney's duty of confidentiality applies not only to privileged 'confidences,' but also to unprivileged secrets; it 'exists without regard to the nature or source of the information or the fact that others share the knowledge.'") Thus, once Batebi requested that Respondent remove his name from her website – and we find that he did make that request (FF 161-62) – Respondent had an obligation to do so. Accordingly, we conclude the Respondent violated Rules 1.6(a)(1), (a)(2) and (a)(3).

2. Respondent Violated Rules 1.6(a)(1), (a)(2) and (a)(3) in the Sanjari Matter.

When Sanjari terminated Respondent's representation, Respondent maliciously and intentionally attempted to damage his reputation when she sent correspondence between herself

and Sanjari to three parties. One of the communications violated Rules 1.6(a)(1), (a)(2) and (a)(3); the other two did not.

While the Asylum Officer ("AO") was still considering whether to approve Sanjari's asylum application, Respondent sent the AO a copy of the termination letter she sent to Sanjari. FF 65. In the May 30, 2008 termination letter (also denoted as "Notice of Withdrawal"), Respondent lambasts Sanjari for his dishonesty and denounces his character. FF 64. Whether or not her statements were accurate, Respondent obtained the information in the termination letter during the course of her representation of Sanjari. Her actions were also intentional. We do not find credible Respondent's testimony that she sent the termination letter to the AO accidentally (FF 66), especially since the letter ends by stating that she would be forwarding the letter to "appropriate agencies." FF 64. While disclosure of the termination letter did not affect the outcome of Sanjari's legal matter (FF 68), it caused him distress (FF 65) and, at the time, certainly could have significantly prejudiced his case. Accordingly, we conclude that Respondent violated Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3).

Also, for no apparent reason other than to malign Sanjari, Respondent sent Jason Guberman, one of the organizers of the Iran Freedom Concert, and Kathryn Lurie, a Foreign Affairs Officer employed by the U.S. State Department, an e-mail exchange about a potential speaking engagement for Sanjari and suggested that Sanjari was involved with individuals and activities linked to the Mujahadin. FF 70. Such an accusation could have damaged Sanjari's reputation as a human rights activist and his status in the U.S. and caused Sanjari embarrassment. The underlying communications that Respondent forwarded were among Sanjari and other parties, which Sanjari forwarded without any comment to Respondent in February 2008. Although Respondent received the forwarded email communications while she was Sanjari's

lawyer, we cannot conclude by clear and convincing evidence that she received the information "in the professional relationship." Accordingly, although Respondent's conduct was appalling, we hold that it does not violate Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3).

E. Respondent Violated Rule 1.7(b)(4) in the Sanjari Matter.

Rule 1.7(b)(4) provides: "[A] lawyer shall not represent a client with respect to a matter if…. [t]he lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by . . . the lawyer's own financial, business, property, or personal interests." Comments [37] through [39] to Rule 1.7 specifically address "Sexual Relations Between Lawyer and Client." Comment [37] advises that a sexual relationship with a client "generally is imprudent even in the absence of actual violation of these Rules." Comment [38] states: "Especially when the client is an individual, the client's dependence on the lawyer's knowledge of the law is likely to make the relationship between lawyer and client unequal." Comment [38] also cautions: "[S]uch a relationship presents a significant risk that the lawyer's emotional involvement will impair the lawyer's independent professional judgment."

Respondent started an intimate, and sometimes erotic, relationship with Sanjari before he entered the United States, and admitted to having physical sexual relations with Sanjari after he arrived in the United States. FF 28-33. We have no trouble concluding that her failed personal relationship with Sanjari adversely affected her judgment. Indeed, we can see no other plausible explanation in the record for her sudden difficulties in communicating with Sanjari (FF 55), her forwarding the termination letter to the AO (FF 65), and her forwarding emails to Guberman and Lurie with disparaging remarks (FF 70). Accordingly, based on this conduct, we conclude that Respondent violated Rule 1.7(b)(4).

F. Respondent Did Not Violate Rule 1.15(a) in the Mahdavi Matter.

The Specification of Charges alleges that Respondent violated Rule 1.15(a) in the Mahdavi matter, by failing to hold the donations for Mahdavi separate from her own property and misappropriating the funds she collected for her own personal use. Rule 1.15(a) expressly applies to funds held by a lawyer "in connection with a representation." In its Brief, Bar Counsel states that it is not pursuing violations of Rule 1.15(a) because it did not establish by clear and convincing evidence that Respondent held funds "in connection with a representation." BC Brief at 2, n. 2. We agree. There was no evidence presented that Respondent represented anyone in the Mahdavi matter. FF 166. Accordingly, we conclude that Respondent did not hold the donations in connection with a representation and, therefore, did not violate Rule 1.15(a).

G. Respondent Did Not Violate Rule 1.15(b) in the Mahdavi Matter.

The Second Amended Specification of Charges also alleges that Respondent violated Rule 1.15(b)[16] by failing to promptly deliver funds that a third person was entitled to receive and/or by failing to promptly render a full accounting regarding such property by failing to deliver the funds to Mahdavi, and/or by failing to return the funds to individual donors when the funds could not be disbursed for Mahdavi's benefit. In its Brief, Bar Counsel states that it is not pursuing violations of Rule 1.15(b) because the underlying conduct is considered to be a violation of Rules 8.4(b) and 8.4(c). As noted above, however, we are nonetheless required to consider the alleged violation. *Supra* at 1-2.

16 Rule 1.15 was amended effective August 1, 2010. The old Rule 1.15(b) is now codified as Rule 1.15(c) with minor changes. Only the old Rule 1.15 is applicable as to the charges against Respondent because the underlying conduct upon which the charges are based occurred before the Rule was amended. Therefore, all citations herein are to the old Rule 1.15 and not the amended Rule 1.15.

Rule 1.15(b) provides, in relevant part, that "a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request, shall promptly render a full accounting regarding such property, subject to Rule 1.6." Unlike Rule 1.15(a), there is no express language in Rule 1.15(b) limiting it to funds held "in connection with a representation."

We have not located any decisions in this jurisdiction that have considered the scope of Rule 1.15(b). Courts in other jurisdictions have held that similar language in their states' rules applies to *any* property held by an attorney on behalf of third persons – not just funds held "in connection with a representation." *See, e.g., Attorney Grievance Comm. of Md. v. Johnson*, 976 A.2d 245, 257-58 (Md. 2009) ("Rule 1.15(a)…[is] specific to a lawyer's duties 'in connection with a representation' while Rule 1.15(b) refers generally to a lawyer's duty to act with the care of a professional fiduciary for *any property held by an attorney on behalf of third persons*…. Because MRPC 1.15(b) has been interpreted by this Court to apply 'generally' to the fiduciary duties connected with an attorney's holding of 'any property[,]' *the practice of law is not a prerequisite for an attorney to have violated MRPC 1.15(b).*") (emphasis added); *see also, People v. Rishel*, 50 P.3d 938 (Colo. O.P.D.J. 2002) (lawyer who belonged to a group that pooled funds to purchase baseball tickets violated Rule 1.15(b)); *In re McCann*, 894 A.2d 1087 (Del. Super. Ct. 2005) (lawyer disciplined under Rule 1.15(b) for, among other things, failing to pay firm payroll taxes).

Absent clear guidance from our Court of Appeals, we are reluctant for several reasons to embark on an expansion of Rule 1.15(b) beyond the professional services context on the basis of these opinions from other jurisdictions. First, Comment 2 to Rule 1.15 provides that "[t]he obligations of a lawyer under this rule are independent of those arising from activity *other than*

rendering legal services" – suggesting that Rule 1.15 is intended to cover obligations arising from rendering legal services. Second, all of the other subsections within Rule 1.15 apply to the practice of law, and Rule 1.15(b) should be read in that context. Third, the Maryland Court of Appeals in *Johnson* relied, in part, on language in the Preamble to the Maryland Rules of Professional Responsibility that does not appear in the District of Columbia Rules.[17] Fourth, the courts in *Rishel* and *McCann* arrived at their conclusions that the attorneys had violated their states' versions of Rule 1.15(b) without any discussion of the scope of that rule.

Accordingly, we conclude that Respondent did not violate Rule 1.15(b) because the donations for Mahdavi were not obtained in connection with a representation. In any event, determination of this legal issue does not affect the sanction we impose, as the conduct violates other charged violations of the rules.

H. Respondent Violated Rule 4.2(a) in the Batebi Matter

Rule 4.2(a) provides in pertinent part: "During the course of representing a client, a lawyer shall not communicate . . . about the subject of the representation with a person known to be represented by another lawyer in the matter." Batebi terminated Respondent's representation and obtained successor counsel, Husketh, in his immigration matter. FF 140. Husketh also represented Batebi in his financial disputes with Respondent. FF 149. Batebi testified that he terminated Respondent's representation, first by phone sometime between August 25 and 27, 2008, and then by email on September 3, 2008. FF 116, 123. Batebi did not testify, however, that he told Respondent during the telephone conversation that occurred sometime between August 25 and 27, 2008 that he was represented by new counsel, and he did not do so in his

17 *Johnson*, 976 A.2d at 258 (citing preamble: "[a] lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs.")

September 3, 2008 email, either. However, once Husketh contacted Respondent and directed her to have no further contact with Batebi, she was clearly on notice of the successor representation. FF 144. Notwithstanding, Respondent continued communicating directly with Batebi after receiving such direction from Husketh. FF 152. Accordingly, we conclude that Respondent violated Rule 4.2(a).

I. The Alleged Violations of Rules 8.1(a) and 8.4(d)

Rule 8.1(a) provides in pertinent part: "[A] lawyer . . . in connection with . . . a disciplinary matter, shall not . . . knowingly make a false statement of fact . . . ."

Rule 8.4(d) provides: "It is professional misconduct for a lawyer to . . . (d) engage in conduct that seriously interferes with the administration of justice …." In order to violate Rule 8.4(d), the lawyer's conduct must (1) be "improper"; (2) "bear directly upon the judicial process (*i.e.*, the 'administration of justice') with respect to an identifiable case or tribunal"; and (3) "taint the judicial process in more than a *de minimis* way." *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996); *In re Uchendu*, 812 A.2d 933, 936 (D.C. 2002). A Rule 8.4(d) violation does not require an actual interference with judicial decision-making, but rather requires only that the conduct "taint" the process or "potentially impact upon the process to a serious and adverse degree." *Hopkins*, 677 A.2d at 61. Comment [2] provides: "The cases under paragraph (d) include acts by a lawyer such as: failure to cooperate with Bar Counsel; failure to respond to Bar Counsel's inquiries or subpoenas; [and] failure to abide by agreements made with Bar Counsel[.]"

1. Respondent Did Not Violate Rules 8.1(a) and 8.4(d) in the Sanjari Matter.

Bar Counsel alleges that Respondent made two misrepresentations in her March 31, 2009 response to Bar Counsel regarding the Sanjari matter: (a) that she was not in direct and frequent contact with Sanjari when he arrived in Norway, and (b) that she never had or suggested an

inappropriate sexual relationship with Sanjari. BC Brief at 108. Bar Counsel has not proven either allegation by clear and convincing evidence.

With respect to the first allegation, Respondent's actual statement was that she "was not in direct and frequent contact with Mr. Sanjari ***during that period***." FF 18. The period to which this statement refers is September 2007. *Id.* On the same page of her response, Respondent differentiates this period from later periods by stating: "In October 2007, however, I began to communicate with Mr. Sanjari on a more regular basis." *Id*. While there was evidence of many direct contacts with Sanjari while he was in Norway, there was no evidence of "direct and frequent" contact with Sanjari in September 2007. Indeed, as support for this alleged falsehood, Bar Counsel cites to communications that took place later in 2007 and in 2008. *See* BC Brief at 108 (citing PFF 174 (October and November 2007 emails) and PFF 175 (citing November 2007 through March 2008 emails). In short, Bar Counsel's allegation is both unsupported and taken out of context.

Context is again important in considering the second alleged falsehood in the March 31, 2009 response. In the complaint that Sanjari submitted to Bar Counsel, he alleged that Respondent expected sex from him in lieu of payment for legal services. FF 34. In response to Sanjari's allegation, Respondent stated: "Never did I ask him to be paid for my services, never did I ask him for any sort of sexual favors in return, and never did I have or suggest an ***inappropriate*** sexual relationship at any time." FF 35. Respondent did not state that she never had a sexual relationship with Sanjari. And, as a response to the specific allegation made by Sanjari in his complaint, Respondent's statement is not false.

Because we are unable to conclude that Respondent violated Rule 8.1(a) in the Sanajari matter, there is no basis for finding a violation of Rule 8.4(d) in the Sanjari matter either.

2. Respondent Violated Rule 8.1(a) in the Mahdavi Matter.

Bar Counsel alleges that Respondent made four misrepresentations in her June 17, 2009 response to Bar Counsel. Again, we need to deal with the actual alleged misstatements, rather than Bar Counsel's paraphrasing of them.

(a) Bar Counsel alleges that Respondent falsely stated that Akram Mahdavi's supporters suggested that Respondent open a PayPal account, when in fact, it was Respondent who told the group about PayPal and offered to open an account. BC Brief at 107. It is true that Respondent initially suggested using a PayPal account to collection donations. FF 169. But the actual statement in the response to Bar Counsel is: "Explaining that Iranian's living inside the country did not have access to PayPal, she [an activist] asked me to open an account that could be used to collect donations from supporters…." FF 170. It also true that an activist did – subsequent to Respondent's initial suggestion – ask Respondent to set up the PayPal account. FF 169. Accordingly, Respondent's statement in her response to Bar Counsel was not false.

(b) Bar Counsel alleges that Respondent stated that she learned that she could not transfer funds to Iran when she first attempted to transfer funds, when in fact, Respondent had known from before she opened the PayPal account that she could not transfer funds directly to Iran. BC Brief at 107. In her response to Bar Counsel, Respondent stated: "when I attempted to transfer the restored funds from PayPal to Ms. Jafari, I learned that economic sanctions barred direct transfers of funds from a financial accounting this country to the account of an Iranian citizen in Iran." FF 214. In fact, Respondent knew this prior to her attempt to transfer funds to Jafari. FF 168. That is why Respondent suggested, in March 2008, prior to collecting any donations, that she would have a family member in Iran deposit money into an Iranian account. FF 169. At the hearing, Respondent made no attempt to explain or justify her statement. We conclude that Respondent violated Rule 8.1(a) when she made this misstatement.

(c) Bar Counsel alleges that Respondent falsely stated that she found it "most puzzling" that Jafari insisted on receiving $2,000 in donations, when in fact, Respondent knew that she had advised Jafari and the group that she had collected $2,000 in donations. BC Brief at 107. In her response to Bar Counsel, Respondent also stated: "What was most puzzling was Ms. Jafari's insistence that I transfer exactly $2000.00 despite the fact that I sent her daily (sometimes hourly) updates of the PayPal transfers and transactions. I tried repeatedly to explain PayPal's transaction fees and charges to no avail. She was set on receiving $2000.00 without explanation." FF 221. This should not have been puzzling to Respondent, however, because Respondent had sent Jafari an email stating that $2000 would be available for someone to take to Iran. FF 183. Jafari's subsequent communications refer to the collected $2000 without demanding an exact amount – which would have been inconsistent with her repeated requests for an accounting. FF 185-86. Accordingly, we conclude that Respondent violated Rule 8.1(a) when she told Bar Counsel that she was puzzled by the request from Jafari.

(d) Bar Counsel alleges that Respondent falsely claimed that individuals and/or entities illegally and/or without her permission used donations in her 9443 Personal Account to purchase numerous internet-related services, when in fact, record evidence conclusively established that Respondent authorized at least one of the transactions she had falsely claimed were unauthorized. BC Brief at 107. It is not entirely clear which statement in Respondent's June 17, 2009 response Bar Counsel has in mind. The closest we have found is the following: "I learned that the bank account containing the funds was used illegally and without my authorization to purchase numerous internet-related services, including domain names and servers." In fact, the record reflects, and we have so found, that purchases were made without Respondent's authorization. FF 100-02. The fact that Respondent authorized one or more such

purchases does not mean that no unauthorized purchases were made. We conclude that Respondent's statement in her response to Bar Counsel regarding unauthorized purchases does not violate Rule 8.1(a).

3. Respondent Violated Rule 8.4(d) in the Mahdavi Matter.

Bar Counsel argues that the violations of Rule 8.1(a) in the Mahdavi matter also violate Rule 8.4(d). We concluded above that Respondent committed two violations of Rule 8.1(a) in the Mahdavi matter. Whether those two violations also violate Rule 8.4(d) is a close question. When discussing an appropriate sanction for the respondent in the case of *In re Boykins*, 999 A.2d 166 (D.C. 2010), the Court of Appeals recited – with no discussion but with apparent approval – the conclusion of the Board that Boykins had violated Rule 8.4(d) by making false statements in correspondence with Bar Counsel. *Id*. at 172. In its Report, the Board in *Boykins* reasoned – following *Hopkins* – that false statements to Bar Counsel in a disciplinary investigation would violate Rule 8.4(d) when they tainted the judicial process in which Bar Counsel was engaged in more than a *de minimis* way. *Boykins*, Bar Docket No. 325-02 at 47-48 (BPR July 31, 2008). There was no evidence presented at the hearing as to how these two misstatements by Respondent tainted Bar Counsel's investigation. Nor is it obvious to us how Respondent's statements – about being "puzzled" and about precisely when she knew that economic sanctions barred direct transfers of funds to accounts in Iran – would have affected Bar Counsel's investigation of the Mahdavi matter, which was focused on Respondent's failure to timely deliver and return donations. Left to speculate, we cannot conclude that Respondent's two violations of Rule 8.1(a) also violated Rule 8.4(d).

J. The Charged Rule 8.4(b) Allegations

Rule 8.4(b) provides: "It is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. . . ."

Bar Counsel alleges that Respondent engaged in five different criminal acts:

- forgery, when she signed Batebi's name on two checks in the Batebi matter;
- making material false statements to a federal agency in violation of 18 U.S.C. § 1001, when she submitted forms to USCIS in the Batebi matter;
- larceny, when she took funds from a third party in the Mahdavi matter;
- larceny, when she obtained $1,946.80 from United Bank in the United Bank matter;
- perjury, when she submitted a false affidavit in the United Bank matter;

and that those criminal acts are the predicates for five violations of Rule 8.4(b). BC Brief at 95-103.

"In construing the phrase 'criminal act' for purposes of Rule 8.4 (b), this court may look to the law of any jurisdiction that could have prosecuted respondent for the misconduct." *See In re Gil*, 656 A.2d 303, 305 (D.C. 1995). Although some events took place in the District of Columbia, the vast majority took place in Virginia. Mostly significantly, Respondent lived in Virginia, maintained an office in Virginia, and opened the bank accounts at issue at United Bank in Virginia. *See In re Slattery*, 767 A.2d 203, 212 (D.C. 2001) ("The Account was opened and maintained at a bank in Washington, D.C., and we therefore look to District of Columbia law"). Furthermore, both Bar Counsel and Respondent urge us to consider Virginia law to determine whether there have been violations of Rule 8.4(b) in this disciplinary matter. Accordingly, we will consider the forgery, larceny and perjury allegations under Virginia law. Federal law applies to the alleged false statements offenses under 18 U.S.C. § 1001.

In the criminal justice system, conviction of a criminal offense ordinarily requires proof beyond a reasonable doubt. For purposes of Rule 8.4(b), however, Bar Counsel must prove the criminal act by clear and convincing evidence. *See Slattery*, 767 A.2d at 207 ("A finding by clear and convincing evidence that the conduct at issue was a criminal act that merits disciplinary sanction is something altogether different than a finding beyond a reasonable doubt that the conduct merits conviction and criminal penalty.").

1. Respondent Violated Rule 8.4(b) When She Committed Forgery in the Batebi Matter.

Common-law forgery in Virginia is "the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy." *Fitzgerald v. Commonwealth*, 227 Va. 171, 173 (Va. 1984) (emphasis added). The elements of forgery are: (1) false making or materially altering; (2) with intent to defraud; (3) with apparent legal efficacy of the writing. "[A] fact is material when it influences a person to enter into a contract, when it deceives him and induces him to act, or when without it the transaction would not have occurred." *Beiler v. Commonwealth*, 243 Va. 291, 295 (Va. 1992) (Holding that "Beiler's fraudulent alterations were material because they induced the tellers to pay the larger amounts shown on the checks.").

It is undisputed that Respondent signed Batebi's name on two checks and deposited them into the 9443 Account. FF 92, 94. The only dispute seems to be whether she acted with fraudulent intent when she did so. Endorsement of a check without authority is clearly fraudulent. *Muhammad v. Commonwealth*, 13 Va. App. 194, 198 (Va. Ct. App. 1991) ("when appellant filled in the check without authority and endorsed it, he made a false writing which represented that he was the payee of the instrument. When he endorsed the check, he fraudulently warranted that he had title to the instrument and that it had not been altered.").

Respondent argues that she could not have had fraudulent intent because she had been permitted by Batebi to sign other important documents, she deposited the money in the 9443 Account, and Batebi spent the proceeds. Resp. Brief at 33. The majority of the Hearing Committee would have been more receptive to such an argument if Respondent had actually told Batebi that she received and deposited the checks. However, Respondent never even told Batebi that she had received two checks for him. FF 92, 94. Given that salient fact, the majority has little difficulty concluding that Respondent committed forgery under Virginia law. And because forgery constitutes criminal conduct that reflects adversely on a lawyer's honesty, the majority concludes that Respondent violated Rule 8.4(b). *See In re Slaughter*, 929 A.2d 433, 445 (D.C. 2007) (attorney forged the signature on an agreement of representation letter); *In re Asher*, 772 A.2d 1161, 1169 (D.C. 2001) (without his clients' knowledge or consent, attorney forged his clients' names on settlement checks and deposited the funds in his checking accounts).

2. Respondent Did Not Violate 18 U.S.C. § 1001 in the Batebi Matter.

18 U.S.C. § 1001 provides, in pertinent part:

> (a) [W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, ***knowingly and willfully*** –
>
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
>
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
>
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
>
> shall be fined under this title, imprisoned not more than 5 years. . . or both.

Bar Counsel alleges that Respondent engaged in prohibited conduct under 18 U.S.C. § 1001 when she filed an asylum application accompanied by a G-28 Form. According to Bar Counsel, submission of the application was an implicit representation that she still represented

Batebi, when he had terminated the representation, and the G-28 falsely listed Respondent's office address as the address for Batebi. BC Brief at 100-01.

With respect to the filing of the application, we think the chronology is instructive. Batebi had signed the application on August 8, 2008 (FF 132), Respondent submitted it to USCIS on August 26, 2008 (*id.*), USCIS returned the application to Respondent on September 3, 2008 (FF 137), and Respondent resubmitted it on September 8, 2008 without changing Batebi's place of residence. (FF 138). Between the first and second submissions, Batebi terminated the representation (FF 123) and moved out of Respondent's parents' home to stay with a friend. FF 138. Under these circumstances, we are unable to conclude by clear and convincing evidence that the resubmission of an application to provide missing information establishes the *mens rea* necessary to constitute the crime of making a material false statement to a federal agency.

In support of its position, Bar Counsel relies on *In re Thompson*, 538 A.2d 247, 248 (1987). In *Thompson*, the Court of Appeals considered the proper disciplinary sanction for an attorney who had been indicted under 18 U.S.C. § 1001 for aiding and abetting his client's false statements to the Immigration and Naturalization Service (the predecessor to USCIS) that the clients lived and worked in Maryland and Virginia when, in fact, they lived and worked in Pennsylvania. The few facts recited in the *Thompson* opinion do not reveal whether, as here, there existed facts consistent with inadvertence, as opposed to knowing and willful fraudulent intent required for a violation of 18 U.S.C. § 1001.

With respect to the G-28 Form, the evidence does not permit a conclusion by clear and convincing evidence that Respondent attempted to deceive USCIS about Batebi's real address. As stated above, the G-28 Form submitted with Batebi's asylum application was the same G-28 Form that had been submitted in connection with the successful application for humanitarian

parole. FF 135. Although Respondent should have obtained a new G-28 Form to accompany the asylum application (FF 135), at most that shortcoming was negligent.

3. Respondent Did Not Commit Larceny in the Mahdavi Matter.

In Virginia, larceny is a common law crime that is defined "as the wrongful or fraudulent taking of another's property without his permission and with the intent to permanently deprive the owner of that property." *Britt v. Commonwealth*, 276 Va. 569, 574 (Va. 2008), (citing *Tarpley v. Commonwealth*, 261 Va. 251, 256 (Va. 2001) (citations omitted)).[18] "Intent is the purpose formed in a person's mind ***at the time an act is committed***." *Commonwealth v. Taylor*, 256 Va. 514, 519 (1998) (emphasis added). For larceny, one must prove that the original taking was trespassory. *Maye v. Commonwealth*, 213 Va. 48, 49 (1972).

The record establishes that Respondent made repeated and genuine efforts to transfer the donations that she had collected for Mahdavi to Iran – through a family member, through "B.K.". through Kamal Abid, by wire transfer to a bank account in Sweden, and through an individual named Fariba Davoodi. FF 177, 197-98. Such efforts are inconsistent with an intention to permanently deprive at the time that Respondent obtained the donations. Accordingly, we cannot conclude that Respondent committed larceny as a predicate for a violation of Rule 8.4(b). To be sure, Respondent lied about the immediate availability of the money, exercised insufficient diligence to deliver it, and then simply held on to the donations until she retained counsel in this disciplinary proceeding, rather than take immediate steps to return the money to its rightful owners. Such conduct falls within the scope of other Rules violations, but does not violate Rule 8.4(b) predicated on the commission of larceny.

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18 The District of Columbia has similar proscriptions against theft. *See* D.C. Code § 22-3211(b).

Bar Counsel ignores these undisputed efforts by Respondent, and instead focuses on the fact that Respondent spent the donations collected. We cannot agree that her use of the donations in May-June 2008 evinces an intent to permanently deprive, especially when she thereafter took steps to transfer funds equal to the amount of the donations to Iran.

4. Respondent Violated Rule 8.4(b) in the United Bank Matter

The definition of grand larceny has been set forth above.

Va. Code Ann. §18.2-434 defines the criminal act of perjury in pertinent part as follows:

> [I]f any person in any written declaration, certificate, verification, or statement under penalty of perjury pursuant to Sec. 8.01-4.3 willfully subscribes as true any material matter which he does not believe is true, he is guilty of perjury, punishable as a Class 5 felony.

Va. Code Ann. § 8.01-4.3 provides:

> If a matter in any judicial proceeding or administrative hearing is required or permitted to be established by a sworn written declaration, verification, certificate, statement, oath, or affidavit, such matter may, with like force and effect, be evidenced by the unsworn written declaration, certificate, verification, or statement, which is subscribed by the maker as true under penalty of perjury, and dated, in substantially the following form: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.'

When Respondent signed the United Bank Affidavit, she attested to the statement: "I further depose and say that all the information given is true and complete, to the best of my knowledge." FF 235. This statement is substantially the same as the statement set out in Va. Code Ann. § 8.01-4.3. Respondent argues that she cannot have committed perjury in Virginia because she did not swear before a person with the legal authority to administer the oath. Resp. Brief 43. This argument has no merit. Virginia law provides that "[p]roof that a written oath was signed and acknowledged before a notary public is sufficient to prove that a person swears under penalty of perjury to the truth of his [sworn statement.]" *Waldrop v. Commonwealth*, 478 S.E. 2d 723, 729 (Va. App. 1996).

The statements in the Affidavit to which Respondent swore include the following: (1) that she had not "given any other person authorization or permission to use [her] card to make transactions on [her] account"; (2) that she "had not negotiated the disputed transaction(s) nor did [she] authorize anyone to do so"; and (3) that "the transaction(s) was/were done without [her] knowledge or consent." FF 234-35. For purposes of the Rule 8.4(b) charge against her, the question for us is whether Respondent knew these statements to be untrue when she made them and, consequently, violated Va. Code Ann. § 18.2-434. We conclude that she did.

Respondent was certainly aware that her check card was used to purchase an airline ticket for Niazi. She admitted that, during an automobile ride with Batebi when she was driving, she heard Niazi tell Batebi by phone that Niazi wanted to return to Iran. FF 225. Respondent testified that she then handed her wallet to Batebi, saw him remove a check card and heard him provide an individual that Respondent had phoned with the numbers on the card that Respondent knew would be used to purchase a ticket for Niazi. *Id.*

In light of these admitted facts, in order for us to conclude that Respondent's sworn statements were not knowing misrepresentations made under oath, we would have to believe that Respondent's testimony that she did not associate the $1,946.80 charge she disputed with the purchase of the ticket for Niazi that she had admittedly authorized. For several reasons, the majority of the Hearing Committee cannot accept that testimony.

Respondent received emails from Travelocity identifying Niazi as the passenger, the airlines and times of her flights, the cost of the ticket, and changes in the itinerary. FF 226-28. She responded to Travelocity at least once by email to cancel the ticket. FF 230. She contacted Batebi via chat asking questions about the changes to the itinerary, demonstrating that she had read the emails from Travelocity regarding Niazi's travel to Iran. FF 229. She also testified that

she understood the $11 charge on her bank statement to be the cost of cancelling the flight. FF 237. Thus, the evidence in the record demonstrates that – at least as of late July 2008 – Respondent received and was informed about the details of Niazi's itinerary, including, most importantly, the cost of the flight, was actively engaged in questioning aspects of the flight, and was instrumental in cancelling the flight.

Respondent claims that she also did not associate the $1,946.80 charge with Niazi's flight to Iran because she had no idea how much a flight to Iran cost. But she knew how much the flight cost when she received the Travelocity emails in July 2008. She also testified that she associated the $2,200 ticket listed on Batebi's handwritten note listing amounts he owed to Respondent as the cost for Niazi's flight to Iran. In September 2008, she identified this line item to Ms. Auerbach and Ms. Ledeen as the cost of Niazi's flight to Iran. FF 232. Thus, by her own admission, she had some general understanding of the cost of a flight to Iran within days of submitting her affidavit to United Bank.

Respondent also made a contemporaneous misstatement to Travelocity that undermines her credibility about this matter. Almost immediately after receiving emails from Travelocity July 29, 2008, Respondent told Travelocity that she had not authorized the purchase of the ticket. FF 230. By her own admission, however, she had authorized the purchase one day earlier. This blatant and unexplained misstatement to Travelocity undermines her credibility and makes it more likely, in the view of the majority, that her later, similar statement to United Bank about not authorizing the purchase was made knowingly.

Respondent further undermined her credibility when she testified at the hearing that she assumed the reference to "Continenta" on her bank statement referred to a Continental Hotel in San Antonio. Even if we were to believe that Respondent forgot the information contained in the

emails from Travelocity, there is no reason for her to assume the line item on her bank account must have referred to a hotel in San Antonio. The majority believes that Respondent stretched to provide the Hearing Committee with an explanation for something that needed explaining, and that by providing this improbable explanation, which the majority does not accept, she further undermined her credibility.

Finally, Respondent appears to have paid attention to her bank statements. With respect to the Batebi matter, Respondent knew exactly which charges to the 9443 Account were not authorized, and made efforts to recover those amounts from Batebi and his friends in Iran. FF 100, 104. There was no evidence suggesting that Respondent gave lesser attention to the statements for her 0878 Account.

If Respondent believed that she was entitled to a refund of the $1,946.80 because she had cancelled the ticket with Travelocity, she could have said so in her Affidavit. Instead, she swore before a notary public that she had not authorized or given permission to anyone to use her credit card to make the $1,946.80 transaction, that she had not negotiated the transaction or authorized anyone else to do so, and that the transaction was done without her consent. The majority of the Hearing Committee concludes that when she made these statements, she committed perjury in violation of Va. Code Ann. § 18.2-434 and, as a result, violated Rule 8.4(b) in the United Bank Matter.

The same conduct establishes that Respondent committed larceny of $1,946.80 from United Bank, because it constitutes "the wrongful or fraudulent taking of another's property without his permission and with the intent to permanently deprive the owner of that property." *Britt v. Commonwealth*, 276 Va. at 574. Accordingly, this is an additional basis for concluding that Respondent violated Rule 8.4 in the United Bank Matter.

K. The Charged Rule 8.4(c) Violations

Rule 8.4(c) provides that it is professional misconduct for a lawyer to: "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Dishonesty is the broadest of these four terms, having been defined by the Court of Appeals as "conduct evincing 'a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness…."' *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (quoting *Tucker v. Lower*, 434 P.2d 320, 324 (Kan. 1967)). Dishonesty includes not only affirmative misrepresentations but also failure to disclose information when there is a duty to do so. "Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation." *In re Reback*, 487 A.2d 235, 239 (D.C. 1985) (citation omitted), *vacated on grant of pet'n for reh'g en banc*, 492 A.2d 267 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226, 229 (D.C. 1986) (*en banc*); *see also In re Carlso*n, 745 A.2d 257, 258 (D.C. 2000) (dishonesty may consist of failure to provide information where there is a duty to do so).

Rule 8.4(c) does not require that a respondent act intentionally. If a respondent acts in reckless disregard of the truth, she has violated Rule 8.4(c). *In re Ukwu*, 926 A.2d 1106, 1113-14 (D.C. 2007); *see also In re Cleaver-Bascombe*, 892 A.2d 396, 404 (D.C. 2006) ("*Cleaver-Bascombe I*"); and *see In re Rosen*, 570 A.2d 728, 729 (D.C. 1989). The rule contains no caveats or exemptions for conduct outside the practice of law. *In re Scanio*, 919 A.2d 1137, 1145 (D.C. 2007) (quoting *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994)) ("A lawyer is held to a high standard of honesty, no matter what role the lawyer is filling: acting as lawyer . . . or conducting the private affairs of everyday life."). Moreover, the Court of Appeals has said that "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *Ukwu*, 926 A.2d at 1113; *see also Hager*, 812 A.2d at 916 ; and *see Cleaver-Bascombe I*, 892 A.2d at 404.

1. The Dishonesty Charges Based on Other Predicate Offenses

Bar Counsel charged that the same conduct upon which it based its charges under Rules 8.1(a) and 8.4(b) also violates Rule 8.4(c).

Of the six alleged violations of Rule 8.1(a) for misrepresentations in Respondent's responses to Bar Counsel, we concluded that Bar Counsel established two of them by clear and convincing evidence. *Supra* at 13-15. We conclude that the conduct establishing those two violations also establishes two violations of Rule 8.4(c).

With respect to the five alleged violations of Rule 8.4(b) for commission of criminal acts, we concluded that Bar Counsel did not establish that Respondent made false statements to the Government in the Batebi matter or that she committed larceny in the Mahdavi matter but that Bar Counsel did establish that Respondent committed forgery in the Batebi matter and grand larceny and perjury in the United Bank Matter. *Supra* at 109-16. We also conclude that the conduct establishing those three Rule 8.4(b) violations establishes three violations of Rule 8.4(c).

2. All Other Alleged Instances of Dishonesty

Bar Counsel also alleged that Respondent committed additional instances of dishonesty in violation of Rule 8.4(c). Below, we list the various additional instances of dishonesty alleged by Bar Counsel and address each of them one-by-one.

a. Threats to Deport Sanjari (Sanjari Matter)

Sanjari testified that Respondent threatened him with deportation if he did not accompany her to Sacred Heart University. FF 41. The Committee appreciates that there may be a fine line between, on the one hand, informing a client that he could be deported if he does not scrupulously adhere to the conditions of his visa and, on the other hand, threatening a client with deportation to affect his conduct. But the Committee believes that Sanjari testified credibly that Respondent's statements amounted to threats, especially in light of (a) the troubled personal

relationship between them (FF 38-39); (b) the timing of the statements, coming just after Sanjari told Respondent that he did not want to travel and share a hotel room with her (FF 40), and (c) the fact that Batebi testified that Respondent made similar threats against him (FF 86). Making threats to a client about his immigration status, especially when those threats are made by the client's immigration lawyer, constitutes dishonest conduct in violation of Rule 8.4(c). *See, e.g.*, *In re Orci*, 974 A.2d 891 (D.C. 2009) (Respondent engaged in fraudulent and dishonest conduct directed at his mother, who was Respondent's principal client, and used legal proceedings as a threat to gain personal economic benefits); *see also In re Youmans*, 588 A.2d 718 (D.C. 1991) (Respondent suspended for, *inter alia*, threatening criminal prosecution when client stops payment).

b. Threats to Deport Batebi (Batebi Matter)

Batebi testified that Respondent told him the U.S. government had granted him entry based on her reputation and connections, and if he did not listen to her and do as she instructed, she had the authority to have him deported. FF 86. The Committee believes that Batebi testified credibly that Respondent's statements amounted to threats, especially in light of (a) the troubled personal relationship between them (FF 81, 107-126); (b) the fact that other witnesses provided hearsay corroboration (FF 86); and (c) the fact that Sanjari testified that Respondent made similar threats against him (FF 41). As with the threats to Sanjari, the threats to Batebi violate Rule 8.4(c) for the same reasons.

c. Concealment of Receipt of Funds (Batebi Matter)

Respondent received checks for Batebi in the amount of $3000 from Amnesty International and $50 from Pam Mitchell. FF 90, 94. Although she may have used the money on Batebi's behalf and/or made it available to him, she did not tell him that she received it. To the contrary, she forged his name on both checks. FF 92, 94. Batebi was in the United States,

living in Respondents' parents' home and available to sign the checks. FF 80. Respondent's decision to forge his name shows her intent to hide from Batebi her receipt of the checks. The majority of the Hearing Committee thinks it is beyond question that such conduct constitutes dishonesty.

Respondent also obtained $24,000 from Satter to use on Batebi's behalf. Respondent's testimony and documentary evidence show that Satter did not want Batebi to know about the gift and wanted Respondent to control the use of the funds. FF 88. Accordingly, she never revealed the fact of the gift to Batebi. We find credible Batebi's testimony that Respondent told him she was receiving money from the sale of his photographs and his speaking engagements. FF 84. But Respondent testified that she did not actually receive any such money (FF 95), and she gave no explanation for why she told Batebi that she had received such money. The majority of the Hearing Committee concludes that her fabrication of the source of the funds is dishonest, and would come to the same conclusion even if she had testified expressly that she did so to comply with Satter's wishes.

d. Requests for Repayment of Funds (Batebi Matter)

Bar Counsel alleges that Respondent acted dishonestly when she "pursued and harangued" Batebi for repayment of a debt that she claimed he owed to her, causing him distress. BC Brief at 105. Putting aside the characterizations of Respondent's conduct, if Respondent claimed that Batebi owed her money when she knew that he did not actually owe her money, or acted in reckless disregard of the truth of her claims, she acted dishonestly. *Ukwu*, 926 A.2d at 1113-14 (Reckless disregard of truth violates Rule 8.4(c)); *see also Rosen*, 570 A.2d at 729 (D.C. 1989) (same, but under the prior version of the Rules).

To sort out this issue, we find two documents to be helpful.

First, Appendix E to Bar Counsel's Brief is a chart of the funds deposited by Respondent into the 9443 Account, and the purchases/withdrawals from the account from August 19-26, 2008 using the 0037 debit card issued to Batebi. The deposits – checks from Amnesty, Satter and Mitchell – total $27,050.00. The purchases/withdrawals total $23,209.86. The difference is $3,840.14, which is the amount that Batebi is entitled from this account.

Second, Page 66 of BX D6 is a translation of a handwritten note in Farsi (BX D6 at 65), which Batebi testified at the hearing represents Respondent's contention of how much money Batebi owed her. FF 146. It includes certain amounts that Respondent and/or her family spent for Batebi and/or his girlfriend, Ms. Niazi. After deducting $3000 for the Amnesty contribution (and, for some reason, another $400 for beverages), the total the Respondent claimed to be owed was $6,800. FF 145.

We recognize that Respondent and her family made other expenditures on Batebi's behalf. Some of these expenditures may have been gifts; some may have been legitimate debts. Indeed, Batebi accepted responsibility for repayment of certain sums to Respondent, such as the amounts charged to Respondent's debit card by his friends in Iran. But Respondent did not keep track of any such expenditures that may have been legitimate debts, was unable to do so at the hearing, and did not attempt to do so in her post-hearing briefs. FF 151, 156-57. Yet, at the same time, Respondent made a demand for a specific amount – $6,800.00. We conclude that Respondent acted in reckless disregard of the truth, and therefore dishonestly, when she demanded repayment of that amount from Batebi. There was no testimony about how Respondent arrived at this amount. And, based on the evidence presented, she made no effort to further specify the amounts that she claimed that Batebi owed her. Indeed, she never provided the requested accounting despite multiple requests from Batebi's successor counsel. FF 151,

154-57. Moreover, at the time that Respondent claimed to be owed $6,800, $3,840.14 of the $27,050.00 that had been deposited into the 9443 account was unspent. Respondent apparently made no effort to credit that amount to Batebi, and there was no explanation for why she did not do so.

A lawyer violates Rule 8.4(c) when she "consciously disregard[s] the risk that [s]he might be improperly charging h[er] client." *In re Anderson*, 778 A.2d 330, 339 (D.C. 2001). Based on the facts above, we find that Respondent acted with reckless disregard for the accuracy of her demand that Batebi repay a $6,800 debt and, therefore, violated Rule 8.4(c).

e. Refusal to Provide An Accounting (Mahdavi Matter)

The Group on whose behalf Respondent was collecting donations for Mahdavi asked Respondent multiple times for an accounting of the funds she had received, but Respondent never provided the requested accounting. It is puzzling why Respondent never did so, when she could have easily obtained the information through PayPal. FF 176. We conclude below in subsections (h) and (i) that Respondent made a number of misrepresentations to *delay* having to transfer the funds to Iran until she received a cash infusion from Satter on July 25, 2008. However, we do not find her failure to provide the requested accounting to be dishonest. Respondent did, in fact, tell the Group approximately how much she had received – at various times, saying that the total was $1,702.58, $1,952.88 and $2,000. FF 183, FF 199, FF 204. Although this was not the requested accounting, it is inconsistent with an intent to conceal the amount of the donations from the Group. Moreover, as stated above, Respondent did make genuine attempts to transfer the funds – first in May 2008 and again after she received funds from Satter. Accordingly, we conclude that Bar Counsel did not establish by clear and convincing evidence that Respondent's failure to provide an accounting to the Group violates Rule 8.4(c).

f. Representation Regarding the Status of Respondent's Bank Account (Mahdavi Matter)

Respondent told the Group that her bank account had been frozen. FF 193. But there was no evidence presented at the hearing that it had, in fact, been frozen. We believe that this misstatement by Respondent was intentional because (a) there is no evidence in the record on which Respondent could have formed a mistaken, good faith belief, and (b) it is part of a series of misstatements that Respondent made to conceal the fact that she did not have funds available for transfer to Iran in the amount of the donations received. Accordingly, Respondent's conduct violated Rule 8.4(c).

g. Representation Regarding Bounced Checks (Mahdavi Matter)

Respondent told Boniadi that the unauthorized use of funds had resulted in 10 checks being bounced and hundreds of dollars of bank fees. FF 187. But the evidence presented at the hearing established merely that her account went into overdraft status on June 13, 2008 and that $99 in fees had been assessed. FF 188. We are not inclined to view this statement by Respondent as hyperbole because it is part of a series of misstatements that Respondent made to conceal the fact that she did not have funds in the amount of the donations available for transfer to Iran. Instead, we conclude that this conduct constitutes dishonesty, in violation of Rule 8.4(c).

h. Representation Regarding Batebi's Involvement with the Donations (Mahdavi Matter)

Respondent told Boniadi in an email that Batebi knew and would explain what happened to the donations that she had collected for Mahdavi. FF 187. However, there is no evidence that Batebi knew anything about the donations or ever discussed the matter with Respondent. Moreover, Respondent had transferred the donations into the 9443 Account and spent them before Batebi became a joint accountholder and received a debit card for the 9443 Account. This representation was made on June 30, 2008, after Respondent spent the donations and before she

received a cash infusion from Satter on July 25, 2008. It is another in a series of misrepresentations that Respondent made to delay having to transfer funds in the amount of the donations to Iran. And it is another dishonesty violation in contravention of Rule 8.4(c).

i. Representations Regarding Status of the Donations (Mahdavi Matter)

Respondent told the Group in an email dated July 21, 2008 that the Mahdavi donations had been transferred into "an account that I use for that sort of thing." FF 193. In fact, the donations had been transferred into a personal checking account and had been spent by that date. *Id*. We conclude that this statement was made with the intent to lull the Group into believing that the donations were safe and available for transfer and, therefore, violated Rule 8.4(c).

On August 27, 2008, Respondent told BK by email that the money for Mahdavi "as it has always been, is ready to be transferred." FF 199. Although the money may have been ready for transfer on that date, it had not always been ready for transfer. Indeed, it had been spent before July 23, 2008, and Respondent did not have funds in her accounts equal to the amount collected for Mahdavi until she deposited the checks from Satter on July 23, 2008. This is an additional misrepresentation that violates Rule 8.4(c).

j. Representations Regarding Police Report (Mahdavi Matter)

Bar Counsel alleges that Respondent falsely wrote an email to Kouyyar.g@gmail.com on July 21, 2008 that the police had investigated the illegal use of funds and a police report was available. FF 101. However, there is documentary evidence that Respondent did bring her computer to the FBI for analysis. FF 105. If she would bring her computer to the FBI, we find no reason to doubt Respondent's testimony that she first brought her computer to the police and that the police told her to bring it to federal law enforcement authorities. *Id*. Accordingly, we

conclude that Bar Counsel did not establish by clear and convincing evidence that Respondent acted dishonestly when she made the representation regarding the police report.

k. Failure to Inform Hosny (Mahdavi Matter)

Hosny had contributed $300 by check for Mahadavi. FF 175. Respondent deposited the check. But when Respondent was unable to transfer the funds to Iran, she never told Hosny and never returned the $300 to Hosny – even though Hosny and Respondent worked in the same office. FF 216. We believe that Respondent had an obligation to do so, and her failure to do so constitutes dishonesty. *Carlso*n, 745 A.2d at 258 (dishonesty may consist of failure to provide information where there is a duty to do so); *In re Austern*, 524 A.2d 680, 683-84 (D.C. 1987) (lawyer held to have acted dishonestly by failing to disclose that client's check funding the escrow account was worthless).

l. Ledeen (Mahdavi Matter)

Bar Counsel alleges that Respondent falsely told Barbara Ledeen that she had collected approximately $1,600 in donations when, by that date, she had already collected $1,998.28 (net). BC Brief at 106. In the email that Bar Counsel cites to support this allegation, Respondent states that the amount is "approximately $1600." FF 200. This approximation is not so far off the mark that it constitutes dishonesty, and there is no evidence suggesting that Respondent attempted to deceive the Group or Ledeen as to the amount that she had collected. Accordingly, we conclude that Bar Counsel did not establish this violation by clear and convincing evidence.

L. Respondent's Constitutional Challenge

Respondent argues that "any finding of misconduct or sanction which is predicated, in whole or in part upon, [Respondent's communications with Sanjari, Batebi, as well as various other individuals] would violate (i) her right to free speech under the First Amendment to the

Constitution of the United States and (ii) her Fifth Amendment right to the equal protection of the law." Resp. Brief at 45. This argument is entirely without merit.

The First Amendment does not operate as a shield from discipline for lawyers who violate their ethical obligations to the courts, to their clients, and to the public by misrepresentating facts and engaging in dishonest behavior. *In re Benjamin*, 698 A.2d 434, 441 (D.C. 1997) ("Even if an attorney's statement of a legal position may be entitled to First Amendment protection, a deliberate misstatement of fact to a court surely is not protected, just as obscenity or 'fighting words' are not protected.") (citation omitted); *In re Stanton*, 757 A.2d 87, 90 (D.C. 2000) ("These obligations to the client override the lawyer's First Amendment interests where the lawyer is expected to give voice in court to the client's decision to plead guilty, not to express his or her own opinion."); *In re Banks*, 805 A.2d 990, 1001 (D.C. 2002) (lawyer had no First Amendment right to engage in "commercial speech" calculated to deceive or mislead prospective clients by misrepresenting his qualifications).

Accordingly, we find that Respondent may not take refuge in the First Amendment to avoid discipline for misrepresentations to this tribunal, to her clients, and to others which rise to the level of a violation of the Rules.

M. Summary of Violations

The following is a summary of the violations alleged by Bar Counsel and the conclusions reached by the majority of the Hearing Committee:

Rule	Matter	Conclusion
1.1(a), 1.1(b)	Sanjari	No
1.1(a), 1.1(b)	Batebi	Yes
1.3(b)(1)	Sanjari	No
1.3(b)(1)	Batebi	No
1.4(a), 1.4(b)	Sanjari	Yes

1.4(a), 1.4(b)	Batebi	Yes
1.6(a)(1), (a)(2), (a)(3)	Sanjai	Yes
1.6(a)(1), (a)(2), (a)(3)	Batebi	Yes (3)
1.7(b)(4)	Sanjari	Yes
1.15(a)	Mahdavi	No
1.15(b)	Mahdavi	No
4.2(a)	Batebi	Yes
8.1(a)	Sanjari	No
8.1(a)	Mahdavi	Yes (2)
8.4(b), 8.4(c)	Batebi	Yes (1)
8.4(b), 8.4(c)	Mahdavi	No
8.4(b), 8.4(c)	United Bank	Yes
8.4(c)	Sanjari	Yes (1)
8.4(c)	Batebi	Yes (3)
8.4(c)	Mahdavi	Yes (6)
8.4(d)	Sanjari	No
8.4(d)	Mahdavi	No

SANCTION

For the reasons stated below, the majority of the Hearing Committee recommends that Respondent should be disbarred with restitution of $3,241.92, plus interest at the legal rate. In a separate dissenting statement, one member of the Hearing Committee recommends that Respondent should be suspended for three years with a fitness requirement.

A. The Factors to be Considered

In determining the appropriate sanction, the factors to be considered include: (1) the seriousness of the misconduct, (2) the presence of misrepresentation or dishonesty, (3) Respondent's attitude toward the underlying misconduct, (4) prior disciplinary violations, (5) mitigating circumstances, (6) whether counterpart provisions of the Rules of Professional Conduct were violated, and (7) prejudice to the client. *In re Peek,* 565 A.2d 627, 632 (D.C. 1989) (citations omitted); *In re Jackson,* 650 A.2d 675, 678 (D.C. 1994); *In re Hill,* 619 A.2d 936, 939 (D.C. 1993); *In re Knox,* 441 A.2d 265 (D.C. 1982). The discipline imposed in a matter, although not intended to punish the lawyer, should serve to maintain the integrity of the legal profession, protect the public and courts, and deter future or similar misconduct by the respondent-lawyer and other lawyers. *In re Hutchinson,* 534 A.2d 919, 924 (D.C. 1987) *(en banc); In re Reback,* 513 A.2d 226, 231 (D.C. 1986) *(en banc).* Further, the sanction imposed must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1) (2008).

1. Seriousness of the Misconduct

Respondent's misconduct is unquestionably serious. It includes conduct that, in the view of the majority, amounts to offenses of forgery in the Batebi matter and larceny and perjury in the United Bank matter. In the Mahdavi matter, although we concluded that Respondent did not commit larceny when she collected the funds for Mahdavi, within a few months she gave up

trying to transfer the money to Iran. FF 205. Thereafter, she simply kept the money until she retained counsel in this disciplinary matter and then took some steps to return it. FF 219. *See Slattery*, 767 A.2d at 219 ("Slattery reimbursed the funds he appropriated only after he was found out"). Some of the funds that she collected are still in her possession.

Moreover, although we concluded that Respondent did not misappropriate client funds, she did act in the nature of a fiduciary with respect to the donations she collected in the Mahdavi matter. The donors entrusted money to Respondent with the expectation that their money would be used for the intended purpose. Her failure to return money that did not belong to her is further serious misconduct warranting a significant sanction. As the Court of Appeals explained in *Slattery*,

> The *Addams* presumption in favor of disbarment for misappropriation of funds has not been extended to cases not involving client funds, but there is a structural similarity between the attorney-client fiduciary relationship sought to be protected in *Addams* and the trustee relationship of Slattery to [his fraternal organization]. … At the very least, the near automatic rule of disbarment of *Addams* signals the seriousness with which the disciplinary system should deal with [the] deliberate taking of fiduciary funds to convert them to a personal use.

767 A.2d at 216.[19]

Finally, Respondent's clients were torture survivors with limited English language skills who were new to this country and depended on Respondent to an unusual degree – making her dishonesty towards them particularly egregious.

2. Misrepresentation or Dishonesty

Testifying falsely under oath is a an aggravating circumstance. *Cleaver-Bascombe*, 892 A.2d 396, 413, *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200. Bar Counsel apparently contends

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19 *In re Kanu*, 5 A.3d 1 (D.C. 2010), the Court of Appeals requested briefs on whether the *Addams* presumption of disbarment for non-negligent misappropriations cases should be extended to the conduct of Kanu. Ultimately, however, the Court did not reach the issue because it held that the respondent engaged in dishonesty "of a flagrant kind," that warranted disbarment. *Id.* at 17.

that Respondent testified falsely throughout the hearing, providing "examples" of alleged false testimony at the hearing. BC Brief at 120-21. Many of these examples are simply denials of misconduct that we have concluded Bar Counsel was unable to prove by clear and convincing evidence. We believe, however, that Respondent was attempting to cover up her misconduct when she testified that she accidentally forwarded to the AO her termination letter to Sanjari, and when she testified that she believed the charge from ""Continenta" on her bank statement was a hotel in San Antonio and that she did not associate the charge with the ticket purchased for Niazi.

As discussed *supra* at 117-26, the Committee has concluded that Respondent committed multiple acts of dishonesty.

3. Respondent's Attitude Toward Underlying Misconduct

With one exception,[20] Respondent took no responsibility for her actions. She does not seem to understand that she created the situation in which she now finds herself. She blurred the lines between her personal and professional relationships and let those personal relationships affect her judgment, thereby leading her to have impermissible contacts with a represented party, to reveal client secrets and to commit acts of dishonesty. She failed to safeguard and return funds that she held as a fiduciary for the Mahdavi donors and Batebi, and failed to deal with Batebi in a transparent and straightforward way with respect to his finances, thereby leading to additional dishonest acts.

Respondent considered herself a victim, rather than the cause of her problems. For example, when questioned about the efforts of Batebi's successor counsel to resolve her failure to provide Batebi with an accounting of the amounts that she claimed that Batebi owed her,

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20 The one issue for which Respondent took responsibility was the disclosure of her termination letter to the AO in the Batebi matter. FF 66. Even here, however, Respondent claimed that her actions were inadvertent. However, as indicated above, the Committee does not believe the explanation

Respondent testified: "At that point it seemed like every day there was a request from individuals who I – one of them had not even passed the Bar yet, and another one was a low-level junior associate who seemed to be engaging in this kind of drama and trying to make my life as miserable as possible, for reasons I cannot understand." Tr. 1765-66. We believe that this response is a good example of Respondent's lack of understanding of the level of care and communication that is required of lawyers representing clients in this jurisdiction.

4. Prior Discipline

Respondent has incurred no prior discipline.

5. Mitigating Circumstances

Respondent adduced no evidence of mitigating circumstances after the Hearing Committee's preliminary, non-binding determination that Bar Counsel had proven an ethical violation, and did not argue in her brief that any of the evidence presented during the first phase of the hearing demonstrates mitigating circumstances.

6. Prejudice to the Clients

Batebi and Sanjari both testified to the distress that Respondent's actions caused them. FF 71, 161, 163. Moreover, Respondent's actions could have adversely affected Sanjari's asylum application because credibility of the applicant is important and the allegations contained in the letter that she forward her actions undermined his credibility.

In the Mahdavi matter, the record was not sufficiently developed to determine whether Respondent's actions had any adverse impact on the effort to save the life of Mahdavi. The donors, however, were clearly prejudiced. They made donations with an expectation that their money would be used for Mahdavi. Some of the donors were deprived of their money until at least January 2010; others never recovered the amounts they donated. FF 219.

Finally, United Bank was prejudiced when it credited $1,946.80 to Respondent's account based on a false affidavit.

7. Violations of Multiple Rules

Respondent committed 23 violations of the Rules of Professional Conduct. Although some of those violations are a result of the way that Bar Counsel charged this matter (with the same conduct often charged under several different Rules), there are enough distinct incidences of dishonesty towards her clients and others, and enough different types of misconduct beyond the dishonesty-type offenses (such as allowing personal relationships to interfere with client representations, disclosure of secrets, failure to adequately communicate with her clients, and incompetence) that the number of violations should be considered a significant aggravating factor.

B. Recommended Sanction

1. Respondent Should Be Disbarred

Bar Counsel contends that Respondent committed egregious misconduct and should be disbarred, relying principally on *Slatttery* and *Gil.* BC Brief 122-24. Respondent does not address the issue of an appropriate sanction because she contends that she did not engage in any misconduct. Resp. Brief at 46.

In *Slattery*, the respondent was president of the local chapter of a fraternal organization, but never functioned as its counsel. He had signatory authority over the organization's account, withdrew funds from the account for his personal use, and gave false testimony at a deposition about his use of the funds. Once his use of the funds was detected, he reimbursed the organization. No criminal charges were ever filed against him. The Board recommended that Slattery be suspended for three years, but the Court of Appeals disagreed, holding that disbarment was appropriate even though Slattery had not misappropriated clients funds. The

Court focused on the seriousness of the offense, Slattery's fiduciary relationship with respect to the funds, his subsequent dishonesty, and his prior disciplinary record of two prior informal admonitions.

In *Gil*, the respondent used a false document to withdraw funds from the bank account of a friend who had temporarily left the country, and used the funds to pay personal obligations and purchase an automobile. When his friend returned, he confessed to withdrawing the funds, provided a promissory note for the principal and interest, and repaid the principal. The Court of Appeals adopted the Board's recommendation that the respondent be disbarred, quoting the Board's observation that "respondent's betrayal of the trust of [a] friend … shows him to be so wanting in his fundamental awareness of right and wrong that his continued membership in the Bar undermines its integrity and poses a threat to future clients." 656 A.2d at 306 (internal quotes and citations omitted).

While the conduct in *Slattery* and *Gil* bears some resemblance to the Mahdavi matter, in both cases the respondents used the funds for their own personal benefit, returning the funds only when they were detected. As we have found, Respondent here did not have such fraudulent intent, as demonstrated by the fact that she made efforts to transfer to Iran the amounts donated for Mahdavi *before* she spent any of the money, replenished the money when she obtained a cash infusion from Satter, and then made additional efforts to transfer the money to Iran. Moreover, unlike Slattery, Respondent had no prior discipline. On the other hand, Respondent's misconduct is more extensive, as it includes multiple other violations in the Sanjari, Batebi and United Bank matters.

Because Respondent's misconduct includes serious violations involving larceny, forgery and dishonesty, we have also considered the cases imposing sanctions for those violations, as they will be the primary determinant of the severity of the sanction in this proceeding.

Most of the cases involving larceny result from criminal convictions. In such case, the Court simply considers whether the conduct underlying the criminal conviction constitutes moral turpitude requiring disbarment pursuant to D.C. Code § 11-2503(a). *See e.g. In re Sluys*, 632 A.2d 734 (D.C. 1993) (disbarment); *In re Boyd*, 593 A.2d 183 (D.C. 1991) (disbarment). Even though the inquiry in such cases is different from the inquiry in this case, they reflect the seriousness with which larceny is treated in the disciplinary system. *Gil*, discussed above, involved conduct amounting to larceny, without a conviction. There, too, the Court ordered that the respondent be disbarred.

We find three of the cases involving forgery to be instructive of the seriousness with which this jurisdiction deals with such misconduct. The respondent in *In re Kline*, 11 A.3d 261 (D.C. 2011) failed to make crucial litigation filings, resulting in a default judgment being entered against his client. He negotiated a settlement agreement with the opposing parties, forged his client's signature on the settlement agreement, presented the forged agreement to them as a valid settlement agreement, and paid the settlement consideration from his own funds. The respondent also commingled and negligently misappropriated client funds. The Court of Appeals rejected the Board's recommended sanction of 18 months because it understated the gravity of the misconduct, rejected Bar Counsel's argument that respondent should be disbarred, and ordered that the respondent be suspended for three years. *Id*. at 265-66. The Board had considered it important that the respondent's misconduct stemmed from weakness, rather than malice, and that the means he used to extricate himself from his predicament were self-destructive, not vile or

predatory. The Court of Appeals credited the Board's sympathetic view of the respondent, but stated that "the fact remains that his actions were among the gravest misconduct the Rules of Professional Conduct prohibit." *Id.* at 267.

In re Shurtz, NO. 09-BG-617, 2011 D.C. App. LEXIS 443, was a reciprocal discipline case in which Virginia imposed an 18 month suspension. The respondent in *Shurtz* admitted to ignoring calls from his client, failing to update her on the status of her case, and failing to inform her of settlement offers; signing his client's name to an authorization to release medical records; accepting a settlement without his client's authorization; signing her name to a settlement agreement; instructing two of his employees to sign as witnesses to the client's signature; and notarizing the client's signature, falsely attesting that she had "personally appeared" before him and had executed the document. *Id.* at *7. The Court of Appeals imposed the same sanction as imposed by Virginia, but noted that "[w]ere this misconduct before us as a matter of original discipline, it is far from clear that a suspension for eighteen months would be an adequate sanction." *Id.*

In *Slaughter*, 929 A.2d 433, the respondent misrepresented to his law firm that the State of Arkansas had hired him on a contingent fee basis to prosecute an environmental lawsuit, and forged the signature of the Arkansas assistant attorney general on an engagement letter to convince his firm that he had been hired by the state. The Court of Appeals noted that the respondent's conduct was part of a scheme of dishonesty entailing falsification of two settlement agreements, aggravated further by negligent misappropriation of client funds that approached (but did not reach) recklessness. It suspended the respondent for three years, but noted that it would not have hesitated to disbar him if Bar Counsel had requested that sanction." *See also In re Lopes*, 770 A.2d 561 (D.C. 2001) (six month suspension where attorney repeatedly forged

clients' signatures on affidavits and pleadings). *In re Uchendu*, 812 A.2d 933 (D.C. 2002) (30-day sanction where respondent improperly signed, and in some cases notarized, documents over a two year period).

Here, Respondent did not engage in forgery for personal financial gain, as the checks on which she forged Batebi's name were deposited into the 9443 Account to which Batebi had access and the funds were apparently spent by Batebi or used on his behalf. Nonetheless, her conduct was still deceitful, as it was accompanied by dishonesty intended to conceal from Batebi that she had received the checks made out to him. The above cases from our Court of Appeals demonstrate that such conduct, by itself, would warrant a substantial sanction even in the absence of personal benefit.

Finally, we also looked for guidance to cases imposing sanctions for dishonesty violations. The Court's opinion in *In re Guberman*, 978 A.2d 200 (D.C. 2009), contains a catalogue of dishonesty cases in which sanctions ranged from 30-day suspensions to disbarment. Given this wide range of outcomes and fact patterns, it is difficult to extract consistent principles from these cases. However, at the high end of the range, the Court noted that disbarment in dishonesty cases has only been ordered "in two types of dishonesty cases: '(1) intentional or reckless misappropriation … and (2) dishonesty of the flagrant kind' and cases 'in which the attorney was in a position of trust and 'took fiduciary funds for his own personal use.'" *Id.* at 206 (citing *In re Pelkey*, 962 A.2d 268, 281 (D.C. 2008)).

With respect to the type of dishonesty deemed to be flagrant, the Court of Appeals held that the respondents' conduct in both *In re Kanu*, 5 A.3d 1 (D.C. 2010) and *In re Cleaver-Bascombe*, 986 A.2d 1191 (D.C. 2010) constituted flagrant dishonesty. In *Kanu*, the respondent received advanced legal fees from her clients and promised to refund the fees if she was not able

to obtain the benefits they sought. When she realized that she was unable to do what she had promised, she evaded her clients' requests for information and she then compounded her misconduct by lying to her clients and to Bar Counsel about the status of her efforts to make good on the refund obligation. *Kanu,* 5 A.3d at 17. In *Cleaver-Bascombe*, the respondent submitted vouchers seeking compensation for telephone calls and visits to her client in the jail, knowing that she did not make such calls or visits, and testified falsely at the hearing that the vouchers were accurate. 986 A.2d 1199. As examples of other flagrant dishonesty, the Court cited *In re Berryman*, 764 A.2d 760 (D.C.2000) (attorney paid herself fees from a probate estate without prior court authorization); *In re Utley*, 698 A.2d 446 (D.C. 1997) (attorney paid herself fees from conservatorship funds without prior court approval), *In re Gil*, which is discussed above, and *In re Goffe*, 641 A.2d 458 (D.C. 1994) (submitting false statements and manufactured documents to the IRS and lying to the Tax Court).

Based on the totality of the conduct in these combined proceedings, the majority concludes that Respondent's conduct warrants the sanction of disbarment. The majority comes to that conclusion with some initial hesitation, as Respondent's actions arose out of her commendable human rights work and *pro bono* representations for deserving individuals, and she was not motivated by personal financial gain. However, Respondent's ethical violations are simply too serious, too numerous, and adversely affected too many people. Indeed, portions of her misconduct – if considered in isolation – would warrant either lengthy suspension or even disbarment (e.g., if her submission of the false affidavit in the United Bank matter is considered to be flagrant dishonesty). When considered in combination, and when further considered in light of the purposes of discipline to maintain the integrity of the legal profession and to protect

the public and the profession, the majority readily concludes that disbarment is the appropriate sanction.[21]

2. A Fitness Requirement Should Be Imposed.

The primary reasons for the imposition of a fitness requirement are to ensure that an attorney "has the moral qualifications, competency, and learning in the law required for readmission" after suspension, and that "the resumption of the practice of law by the attorney will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive to the public interest." D.C. Bar R. XI, § 16(d)(1)(a), (b) (2008). In *In re Cater,* 887 A.2d 1, 24 (D.C. 2005), the Court agreed with the Board that a fitness requirement should be imposed if the record contains clear and convincing evidence that raises a serious doubt as to the attorney's continuing fitness to practice law. *See also In re Chisholm,* 679 A.2d 495, 505 (D.C. 1996) (Court imposed a fitness requirement where attorney represented client in a single immigration matter and violated numerous disciplinary rules, engaged in protracted and continuing dishonesty, refused to accept responsibility for his actions, and lacked contrition).

For a number of reasons, the Hearing Committee unanimously recommends that a fitness condition be imposed in this matter. First, Respondent has engaged in multiple acts of dishonesty, and engaging in more than a single act of dishonesty is a factor that suggests the need for a fitness requirement. *See In re Berger,* 737 A.2d 1033, 1042 (D.C. 1999). Second, as explained above at 131, Respondent considers herself a victim, demonstrating a shocking lack of appreciation for the extent to which her own actions put her in the situation she now faces. Third, based on Respondent's professed naivety regarding the business of running a law practice

[21] If we had concluded, as Hearing Committee Member Fox does in his separate dissenting statement, that Respondent did not commit forgery in the Batebi matter, did not commit perjury/larceny in the United Bank matter, and was not dishonest with Batebi when she told him that she received funds

and her inability to provide even a rudimentary accounting to Batebi or to the Group, Respondent seems ill-prepared to handle client funds in the future. Accordingly, if Respondent seeks reinstatement, she should demonstrate either that she is not handling client funds or that she has taken continuing legal education addressing the handling of client funds.

3. Restitution Should Be Ordered

To date, Respondent has not returned $1,295.12 of the $2,232.23 (net of PayPal fees) that she collected for Mahdavi. FF 215-220 (BC Brief App. A). Although Respondent testified to certain efforts she made and challenges encountered in trying to return amounts to donors around the world (FF 219), we question the diligence with which she tried to do so. Indeed, as of the date of the hearing, Respondent had not even returned $300 to Jennifer Hosny, nor taken any steps to do so. Accordingly, as an additional condition of reinstatement, Respondent should be required to return all of the $1,295.12 in her possession and provide documentation of her efforts. If the court determines that she was unable to do so despite using appropriate diligence, any unreturned remainder should be disgorged. We suggest that any such unreturned remainder be donated to a recognized human rights organization that focuses on Iran and/or women's issues.

Respondent should also be required to return $1,946.80 to United Bank, which is the amount that she wrongfully obtained from United Bank through her false statements.

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from his interviews and the sale of his photographs, we would have considered recommending a three-year suspension instead of disbarment.

CONCLUSION

For the foregoing reasons, the majority Committee finds that Respondent violated Rules 1.1(a) and (b), 1.4(a) and (b), 1.6(a)(1), 1.7(b)(4), 4.2(a), 8.1(a), 8.4(b) and 8.4(c), and should be disbarred with reinstatement conditioned on demonstration of fitness and restitution with interest at the legal rate, as stated above. We also direct Respondent to familiarize herself with the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. See D.C. Bar R. XI, § 16(c).

Hearing Committee Member Fox files a separate statement, dissenting from the conclusions of law as to Rule 8.4(b) and the recommended sanction of disbarment, but otherwise concurring with the foregoing.

AD HOC HEARING COMMITTEE

/RAS/
Robert A. Salerno
Chair

/BLS/
Billie L. Smith
Public Member

/EF/
Eric Fox
Attorney Member

DISTRICT OF COLUMBIA COURT OF APPEALS

BOARD ON PROFESSIONAL RESPONSIBILITY

AD HOC HEARING COMMITTEE

In the Matter of:	:	
LILY MAZAHERY, ESQUIRE,	:	No. 2009-D217
	:	No. 2009-D280
Respondent,	:	No. 2009-D092
A Member of the Bar of the District of Columbia Court of Appeals Bar Number: 480044 Date of Admission: December 2, 2002	:	

DISSENTING REPORT OF AD HOC HEARING

COMMITTEE MEMBER, ERIC R. FOX

As noted in the introductory statement of the Report and Recommendation of the Ad Hoc Hearing Committee, the undersigned dissents from four of the findings of the other two members of the Committee.

First Dissent: Respondent Did Not Commit Forgery When She Endorsed Two Checks Made Out to Batebi.

As pointed out in the Committee's report (p. 109), a key element of the crime of forgery is "the intent to defraud." Merely signing another's name to a legal instrument is not forgery absent this intent. The other members of the Committee rely heavily on the fact that Respondent did not tell Batebi of the checks made out in his name (p. 110). No doubt, it would have been wiser for Respondent to have done so but, in the opinion of the undersigned, this failure is not the equivalent of the intent to defraud, given the fact that the other members of the Committee agree that Respondent did not personally benefit from her endorsements of the two checks in

issue (p. 100). The Committee's report specifically states that the proceeds of the two checks in issue allowed "Bastebi to spend the proceeds." The other members of the Committee assert that Bar Counsel has proved by clear and convincing evidence that Respondent committed forgery when endorsing two checks made out to Batebi. This is one of three crimes the other members of the Committee rely on to recommend the disbarment of Respondent. The undersigned does not believe disbarment is warranted for an inappropriate action that did not benefit Respondent or harm her client, Batebi, in any manner.

Second And Third Dissents: Respondent Did Not Commit Grand Larceny Or Perjury In The United Bank Matter.

In its third amended specification of charges, Bar Counsel has charged that Respondent violated Rules 8.4(b) and 8.4(c) of the Rules of Professional Conduct. Rule 8.4(b) states that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trust-worthiness, or fitness as a lawyer in other respects." Rule 8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Bar Counsel alleged that both rules were violated as the result of Respondent's filing a perjured affidavit with United Bank claiming that she had no knowledge of a $1,946.80 charge on her bank credit card. United Bank refunded the $1,946.80 to Respondent based on the affidavit.

In connection with this count, Bar Counsel called as a witness, Erica Fowler, a security officer at United Bank. Bar Counsel also questioned Batebi. Respondent provided testimony with respect to this issue on direct examination and cross examination. Both Bar Counsel and Respondent submitted exhibits bearing on the facts alleged.

The undersigned would present the facts of this matter as follows:

1. In 1996 or 1997, Batebi, was condemned to death at age 18 or 19 by the Iranian government for being a student agitator against the regime. Tr. 979-980.

2. Shortly after being sentenced to death, Iran's leader commuted Batebi's sentence to 15 years in prison. Tr. 980.

3. While incarcerated in Iran, Batebi became ill and was granted a furlough from prison. Tr. 981.

4. Batebi took the opportunity of his furlough to escape to Iraq. Tr. 982.

5. While still in Iran, a fellow teenage prisoner, Sanjari, had given Batebi Respondent's name as a lawyer in the United States who could help him. Tr. 981.

6. Either while still in Iran or upon arriving in Iraq, Batebi made contact with Respondent, and requested that she provide him with legal representation. Tr. 981-982.

7. With the help of Respondent and others, Batebi managed to come to the United States. Tr. 982-984.

8. When Batebi first came to the United States in the summer of 2008, he was invited to stay at Respondent's father's house. Tr. 985-986, 991.

9. About a week after Batebi arrived in the United States, his girlfriend, Niazi, arrived and joined him in Respondent's father's house. Tr. 986.

10. Although the relationship between Batebi and Respondent started as one of client and attorney, they developed a closer personal relationship due to Respondent's family's generosity and the fact that they treated him as a member of the family.

11. During the summer in which Batebi arrived in the United States, he and Niazi moved out of Respondent's father's house for two reasons; first, Batebi believed he would be

taking advantage of Respondent's father's hospitality if he stayed longer, and second, he and Niazi began having arguments that disturbed Respondent's family. Tr. 1005-1006.

12. When Batebi and Niazi moved out of Respondent's father's house, Batebi rented a room for Niazi in Virginia and Batebi moved in with friends in Maryland. Tr. 1005-1006.

13. At some point either while still living in the Mazahery household or after Batebi and Niazi had moved out of Respondent's father's house, Niazi told Batebi that she did not like the United States and wanted to return to Iran. Tr. 1013-1014.

14. Batebi then told Respondent that Niazi wanted to return to Iran. Tr. 1014.

15. Batebi testified that he did not ask Respondent to buy Niazi a plane ticket and that later on Respondent told Batebi that Respondent had purchased a ticket for Niazi. Tr. 1014-1015.

16. Batebi testified that Niazi never used any ticket that might have been purchased because she was currently still in the United States. Tr. 1015.

17. Batebi also testified that he had not made a plane reservation for Niazi because his English was not good enough to do that and because he then had no access to a bank account or bank credit card. Tr. 1015-1016.

18. Respondent testified that she did not buy a ticket to Tehran for Niazi. Tr. 1429.

19. Respondent then testified that she and Batebi were in a car together driving to the White House when Batebi received "another hysterical call from Ms. Niazi, making various demands." Tr. 1429-1430.

20. Respondent testified that Batebi then said to Niazi, "okay, you want to go to Iran? Fine, go back." Tr. 1430.

21. Respondent testified that she then called her colleague, Jason Tankel, who purchased a plane ticket for Niazi with credit card information provided by Batebi from a check card taken from Respondent's wallet which Respondent had handed to Batebi. Tr. 1430-1431; 1785-1786.

22. On July 27 or 28, 2008, an e-mail was sent to Respondent by Travelocity advising her that an airplane ticket had been purchased for Niazi to fly on July 28, 2008, from Washington Dulles to London Heathrow on CO 8242, operated by Virgin Atlantic, and then from London Heathrow to Dubai on EK 2 on July 29, 2008 and finally from Dubai to Tehran on EK 971 on July 30, 2008, all at a cost of $1,946.80. BX K-1, p. 7.

23. On July 29, 2008, Respondent sent Travelocity an e-mail stating that she had "been trying to cancel" Niazi's plane ticket for two days. Travelocity confirmed receipt of this e-mail. BX K-1, pp. 17, 20.

24. Respondent's bank statement for the period July 21, 2008. through August 18, 2008, reflected, among other charges, an $11 Travelocity charge and a $1,946.80 charge labeled "Continenta Continent San Antonio Texas." BX C-5, p.5.

25. Respondent testified that she understood the $11 Travelocity charge to be the cost of cancelling Niazi's plane ticket which she understood Travelocity had done when Respondent called Travelocity and told them to cancel the ticket because its purchase had not been authorized. Tr. 1435-1437, 1786; BX K-1, pp. 17, 20.

26. Respondent testified that she did not identify the $1,946.80 charge as the cost of Niazi's plane ticket as Respondent had no idea what it cost to fly to Iran from the United States. Respondent also testified that she did not associate the $1,946.80 charge with Niazi's plane ticket because she knew the ticket was purchased through Travelocity and she did not see Travelocity's

name associated with that charge, and that she assumed Continenta referred to Continental Hotel in San Antonio. Tr. 1436, 1476-1477.

27. Respondent testified incorrectly that none of the Travelocity e-mails had indicated the cost of the ticket or identified the airline on which Niazi was to fly. Tr. 1477; BX K-1, p. 7.

28. On October 8, 2008, Respondent filed an ATM/Check Card Fraud Affidavit with United Bank under the penalties of perjury claiming that she knew nothing of the $1,946.80 charge on her bank statement and that she had not authorized the charge. Tr. 199-201; BX C-7, pp. 12-13.

29. Based on this affidavit, United Bank refunded $1,946.80 to Respondent on October 8. Tr. 198-199; BX C-5, p. 36.

30. United Bank attempted to investigate the legitimacy of Respondent's fraud claim but, being unable to obtain any cooperation from Continental Airlines, closed its file. Tr. 206-209.

The undersigned would present the conclusions of law in this matter as follows:

Bar Counsel has charged that Respondent violated two provisions of the Rules of Professional Conduct, 8.4(b) and 8.4(c). Both violations are premised on the accusation that Respondent knowingly filed a false fraud claim with United Bank stating that a charge of $1,946.80 appearing on her bank statement was not authorized by her and that she had no knowledge of it. Before addressing the question of whether the cited rules were violated, the first question to be answered is whether a determination supported by clear and convincing evidence can be made that Respondent knowingly filed a false fraud claim as alleged by Bar Counsel.

There is no doubt that Respondent was aware that her check card was used to purchase an airline ticket for Niazi. She admitted that, during an automobile ride with Batebi when she was driving, she heard Niazi tell Batebi by phone that Niazi wanted to return to Iran. Respondent admitted that she then handed her wallet to Batebi, saw him remove a check card and heard him provide an individual that Respondent had phoned with the numbers on the card that Respondent knew would be used to purchase a ticket for Niazi. These facts are not inconsistent with Batebi's testimony that he did not purchase a ticket for Niazi.

Shortly thereafter, Respondent received an e-mail from Travelocity confirming the purchase of this ticket. Respondent sent a reply e-mail claiming that she had taken steps to cancel this ticket, alleging that its purchase had not been authorized. Although the statement that the purchase had not been authorized was false, there is no doubt that Respondent did make an effort to cancel the airline ticket she had purchased for Niazi. Respondent testified that Travelocity told her by phone that the ticket was cancelled but that there would be an $11 charge for the cancellation. A Travelocity charge for $11, dated July 29, 2008, appeared on Respondent's bank statement. There is no evidence in the record contradicting Respondent's assertion about the $11 charge.

Given the conclusion that Respondent believed she had cancelled the charge for the airline ticket she had authorized, which is buttressed by the fact that Niazi never used the ticket and was still in the United States at the time of the hearings in this case, it is also reasonable to believe that Respondent would not have identified the $1,946.80 charge on her bank statement as being the cost of Niazi's ticket.

While it is true that Travelocity had communicated this price to Respondent, there is no reason to conclude that Respondent had committed the number to memory. One can take

judicial notice of the fact that airline prices for similar trips vary enormously, depending on how far in advance the booking is made, the season in which travel is undertaken, the routing, available discounts, etc. Thus, respondent cannot be reasonably charged with reason to know that the $1,946.80 charge on her credit card was the cost of Niazi's cancelled airline ticket. Furthermore while Travelocity had also communicated Niazi's flight details to Respondent, Continental Airlines was identified only by the letters CO, and there is no reason to conclude that Respondent knew that the cost of Niazi's airline ticket would appear on Respondent's bank statement as a Continental Airlines charge rather than a Travelocity charge, particularly when the bank statement dropped the l from Continental and made no mention at all of an airline. Furthermore, there is no reason to conclude that Respondent would have paid any attention at all to Niazi's flight details when Respondent's principal interest in dealing with Travelocity was to cancel Niazi's ticket.

One can certainly speculate that Respondent could have made an effort to investigate the $1,946.80 before filing her fraud claim with United Bank, but such speculation is not the equivalent of clear and convincing evidence that Respondent committed either fraud or perjury in filing her claim. The other members of the Committee point to facts suggesting that Respondent should have known what the disputed charge was for (p. 90), but the facts that the undersigned finds controlling are that Respondent had every reason to believe she had cancelled the charge for Niazi's flight, regardless of the fact that she may have lied to Travelocity to accomplish this. Thus, Respondent could legitimately believe that a poorly described charge on her credit card was not one she was responsible for, particularly when the charge that is in issue was incurred with Travelocity, and the description of the biller could in no way represent a Travelocity charge. Accordingly, the undersigned does not find that Bar Counsel has proved by

clear and convincing evidence that Respondent violated either Rule 8.4(b) or 8.4(c) of the Rules of Professional Conduct. These two charges form the two remaining legs of the recommendation to disbar Respondent, and the undersigned simply is unwilling to recommend disbarment when the Respondent has a reasonable exculpatory explanation for her actions.

Fourth Dissent: Respondent Did Not Behave Dishonestly In Concealing The Receipt Of Funds For Batebi's Benefit.

The other two members of the Committee charge Respondent with dishonesty in concealing the receipt of funds for Batebi's benefit from him (p.93). This charge first applies to the two checks in the total amount of $3,050 that Respondent endorsed without Batebi's knowledge. No doubt this action on Respondent's part can be viewed as a failure to keep her client informed of material matters, but it does not amount to dishonesty because Respondent did not benefit from her actions. Nothing in the record indicates that the funds in question were used by Respondent for her own benefit.

The charge of dishonesty with respect to the $24,000 received from Satter is entitled to even less weight than the charge with respect to the $3,050. Satter undeniably asked Respondent not to tell Batebi about this gift. That she fabricated a story about receiving funds from a non-existent source to hide the truth about the source of the Satter funds does not amount to sanctionable dishonesty. Once again, there is nothing in the record that Respondent fabricated her story to benefit herself or to deny Batebi the benefit of the $24,000.

Conclusion.

As stated in the Conclusion of the Ad Hoc Hearing Committee's Report, the undersigned does not agree to the recommendation of disbarment of Respondent for the reasons stated above. The undersigned would agree to suspension for three years if the other members of the

Committee would so agree, along with the requirement to demonstrate fitness and make restitution as conditions of reinstatement.

Respectfully submitted

/EF/

Eric R. Fox