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

In the Matter of:	:	
	:	**Board Docket No. 12-BD-080**
AROON R. PADHARIA,	:	**Bar Docket No. 2012-D238**
	:	
Respondent.	:	
	:	
A Suspended Member of the Bar of the District of Columbia Court of Appeals	:	
Bar Number: 470038	:	
Date of Admission: December 4, 2000	:	
	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

INTRODUCTION

This matter came on for a hearing before the Ad Hoc Hearing Committee pursuant to Rule XI of the District of Columbia of Appeals. Having heard the testimony of the witnesses at the hearing, reviewed the exhibits admitted into evidence, and considered the briefs and arguments of the parties, the Hearing Committee issues its Findings of Fact and Conclusions of Law as set forth below.

PROCEDURAL HISTORY

Before the Ad Hoc Hearing Committee, Disciplinary Counsel[1] prosecuted a single docketed matter involving thirty separate Petitions for Review that Respondent filed with the United States Court of Appeals for the Fourth Circuit. The two-count Specification of Charges

[1] This case was filed by the Office of Bar Counsel. The District of Columbia Court of Appeals charged the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We use the current title herein.

charged that Respondent knowingly made false statements of fact to, and disobeyed his obligations under the rules of, a tribunal (Rules 3.3(a) and (c)); used means that had no substantial purpose other than to delay (Rule 4.4(a)); engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation (Rule 8.4(c)); engaged in conduct that seriously interfered with the administration of justice (Rule 8.4(d)); and failed to respond to Disciplinary Counsel's lawful inquiries (Rule 8.1(b)).

The Ad Hoc Hearing Committee heard the matter on July 16-17, 2013. At the hearing, Disciplinary Counsel called only one witness, a proffered expert in the field of immigration law, Thomas Tousley, Esquire. Respondent testified in his own defense but presented no other witnesses.

Disciplinary Counsel introduced Bar Exhibits ("BX") A-D, and 1-40,[2] all of which were admitted into evidence, over Respondent's untimely objection to the authenticity of the records from the United States Court of Appeals for the Fourth Circuit.[3] Respondent did not introduce any exhibits nor did he identify any exhibits prior to the hearing, as required by the Chair's February 27, and May 22, 2013 pretrial orders.

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[2] "BX at __" refers to Disciplinary Counsel's exhibits and the Bates-stamped page number; "Tr." refers to the consecutively paginated transcript of the hearing, contained in two volumes. All testimony cited is that of Respondent, unless otherwise noted.

[3] The Chair's February 27, and May 22, 2013 prehearing orders required Respondent to object to the authenticity of Disciplinary Counsel's proposed exhibits before the hearing by a date certain, as provided for in Board Rule 7.5. Respondent failed to do so and instead raised an authenticity objection after Disciplinary Counsel finished its case-in-chief. Tr. 141-45. The Chair overruled the objection because it was untimely, and the documents to which Respondent objected were a matter of public record. Tr. 144-45.

FINDINGS OF FACT

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals by examination on December 4, 2000, and assigned Bar number 470038. BX A; BX B at ¶1; BX D at ¶1.

2. From October 2006 through April 2012, Respondent filed Petitions for Review and/or was counsel of record in 30 cases before the United States Court of Appeals for the Fourth Circuit (referred to collectively as "Fourth Circuit cases" or "the cases"). BX 1-30. All of the cases were appeals resulting from immigration decisions that were adverse to Respondent's clients. *Id.* In the majority of these cases, Respondent specified in his Entry of Appearance that he was retained counsel, not acting pro bono. *See, e.g.,* BX 19 at 21; BX 24 at 20; BX 28 at 21.

3. The Fourth Circuit ultimately dismissed all 30 cases for failure to prosecute pursuant to Local Rule 45, after warning Respondent on numerous occasions that his failure to comply with the court's rules and orders would result in such dismissals. *Id.;* BX 36 at 14 (Fourth Circuit Local Rule 45).[4]

COUNT I

4. The documentary evidence in this matter is not in dispute. Disciplinary Counsel's exhibits consist primarily of PACER docket sheets from the Fourth Circuit, as well as the underlying orders, notices, and pleadings that support each allegation contained in the Specification of Charges. BX 1-30. Disciplinary Counsel's exhibits also include copies of the applicable Federal Rules of Appellate Procedure, Fourth Circuit Local Rules, and forms used for filing Initial Submissions in each appeal. BX 36 and 37.

[4] Local Rule 45 requires the Clerk of Court "to enter an order dismissing said appeal for want of prosecution, and … issue the mandate," when an appellant fails to comply with "the rules or directives of this Court," after notification and failure to remedy the default.

5. Because of the volume of documents contained in the exhibits, the Hearing Committee has adopted, attached, and incorporates herein, a chart prepared and submitted by Disciplinary Counsel that sets forth citations to the documentary evidence by individual client matter. Appendix A. The chart compiles and cites to the relevant order, notice, filing dates and deadlines, as well as when Respondent did (or did not) file an entry of appearance form, a corporate affiliation form and a docketing statement, (collectively, the "Initial Submissions"), motions, briefs and/or appendices. The citations are by Bar Exhibit number and internal Bates-stamped page numbers.

6. The Specification of Charges addressed solely Respondent's conduct *after* filing the Petitions for Review (BX B), and not the filing of the Petitions themselves – which Respondent testified that he did as a matter of course in order to preserve his client's appellate rights. Tr. 151, 161-62, 175, 182, 191, 223, 231, 419-20, 440, 442, 448-49, 468, 504, 511, 525-26, 566.

We now address each of the cases in which Disciplinary Counsel contends that Respondent violated the Rule(s) set forth above.

Quinteros-Dubon v. Gonzales, Case No. 06-2062

7. On October 3, 2006, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, the petitioner in *Quinteros-Dubon v. Gonzales,* Case No. 06-2062. BX 1 at 5 (docket), 8-12. Respondent "immediately file[d]" the Petition for Review to preserve the client's right to proceed with the appeal, should the client wish to do so. Tr. 151:8-18.

8. On October 3, 2006, the Fourth Circuit issued a docketing notice and briefing order, which it sent to Respondent. BX 1 at 5, 8. Respondent's Initial Submissions were due to be filed on or before October 17, 2006. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by December 22, 2006. *Id.* at 5, 11.

9. The letter from the Clerk transmitting the briefing order provided that "non-compliance with jurisdictional deadlines will prevent the court from considering an appeal. Failure to meet other deadlines may result in dismissal for failure to prosecute or in imposition of sanctions. See Local rule 45, 46 (g)." BX 1 at 9. The briefing order provided as follows:

> Counsel are reminded that failure of the petitioner to timely file a brief will cause the Court to initiate the process for dismissing a case under Local Rule 45, impose discipline pursuant to Local Rule 46(g), or both. . . . Any motion for an extension of time to file a brief must be filed well in advance of the date the brief is due and must set forth the additional time requested and the reasons for the request. The Court discourages these motions, and grants extensions only when extraordinary circumstances exist. Local Rule 31 (c).

BX 1 at 12.

10. On October 17, 2006, Respondent timely filed his Initial Submissions. BX 1 at 5.

11. After he filed the Petition for Review, Respondent's practice was to evaluate the appeal, advise the client of the likelihood of success and specify additional fees and costs that would need to be paid to Respondent before he would begin working on the brief. Tr. 153:12-21; Tr. 161:22 – 162:13; Tr. 175:13 – 20. Respondent would not begin working on the brief unless and until he was paid by the client to do so. Tr. 158:15 – 159:12. If the client did not pay Respondent the fees and costs requested by Respondent, he would do no further work on the case, and allow the appeal to be dismissed by the Fourth Circuit for want of prosecution. Tr. 167:19 – 169:1.

12. On December 22, 2006, instead of filing the brief and appendix, Respondent filed a motion to extend the time to file petitioner's opening brief and joint appendix, until January 22, 2007. BX 1 at 5, 13. Although Disciplinary Counsel offered into evidence copies of the motions for extension filed by Respondent in other cases at issue here (*see*, *e.g.,* BX 4) she did not do so in this case. As a result, and as addressed at page 102 in our discussion of the charged Rule 8.4(d)

violation, we do not know what representations were made to the court by Respondent in order to obtain the requested extension. The court granted the motion on December 22, 2006, and ordered the brief and appendix to be filed by January 22, 2007. BX 1 at 13. Respondent failed to file the brief and appendix by the due date.

13. On January 23, 2007, Respondent filed an untimely second motion to extend the time to file petitioner's opening brief and joint appendix, asking that the deadline be extended until February 23, 2007. BX 1 at 5. Again, we do not know the reasons or representations proffered by Respondent to obtain the extension, because Disciplinary Counsel did not offer the motion into evidence. The court granted the motion on January 23, 2007, and ordered the brief be filed by February 23, 2007. BX 1 at 14. Respondent failed to file a brief and appendix by the due date he had requested.

14. On March 13, 2007, the court issued a Local Rule 45 notice to Respondent for the briefing default which provided that the case would be dismissed unless Respondent filed the brief and joint appendix, together with a motion for leave to file out of time, on or before March 28, 2007. BX 1 at 5, 16.

15. On March 28, 2007, Respondent failed to file the brief and appendix as directed, but instead filed a motion to rescind the original October 2, 2006 briefing order and requesting a third extension of time, until May 14, 2007, in which to file the overdue brief and appendix. BX 1 at 5. Disciplinary Counsel did not offer the motion as an exhibit. On March 29. 2007, the court granted the motion in part and ordered that the brief and appendix to be filed by April 30, 2007. *Id.* at 18.

16. Respondent failed to file the brief and appendix as ordered by the court and the court issued a second Rule 45 notice on May 21, 2007, indicating that the matter would be dismissed unless Respondent filed the brief and appendix by June 5, 2007. BX 1 at 20.

17. Respondent did not respond to the second Rule 45 notice and the court dismissed his client's appeal on June 14, 2007 for failure to prosecute. BX 1 at 23-24.

18. Respondent did not file a brief in this case because the client "never came back" to him after Respondent advised him of the cost to proceed and the likelihood of success of the appeal. Tr. 153:12-154:18. As previously noted, Disciplinary Counsel did not offer the motions for extension in this case into evidence, and thus we do not know what specific representations were made to the Fourth Circuit. Even if the representations in the motions are the same as in all of the other extension motions the Respondent filed, we do not have evidence sufficient to prove they were misrepresentations here. No evidence was offered by either party as to when Respondent advised his client of the costs to proceed and the likelihood of success on the appeal, and specifically whether this communication was made before or after the motions for extension were filed.

19. Respondent did not file a motion seeking leave to withdraw as counsel because he was concerned that the client "may come back any time asking that they may want to file a complaint against me . . . . If they come back, then we have to file a motion to reopen. Then if he says it's my failure, I'm going to admit the fact that it was my failure not pursuing the case, therefore and whatever consequences I'm going to face." Tr. 169:20 – 170:13.

20. It was Respondent's practice never to voluntarily dismiss an appeal, because that would preclude the client from later seeking to "re-open" the case if they later decided they wanted to proceed with the appeal. Tr. 154:19 – 156:10. Respondent testified that he had been told "by the clerks, mostly the managers of the courts" that his clients could later file a motion to re-open

their cases if they wanted to do so. Tr. 156:2-6. He never filed a motion to re-open a case for a client. Tr. 156:7-10.

***Rodriguez v. Gonzales*, Case No. 06-2170**

21. On November 6, 2006, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Leonardo Rodriguez, the petitioner in *Rodriguez v. Gonzales,* Case No. 06-2170. BX 2 at 4 (docket).

22. At the time Respondent filed the Petition for Review, his client already had been deported to Mexico. Tr. 175:1-8. Respondent understood that the Fourth Circuit did not have jurisdiction over the case once Mr. Rodriquez was deported. Tr. 175:21 – 176:8.

23. The Fourth Circuit issued a docketing notice and briefing order, which it sent to Respondent on November 6, 2006. BX 2 at 2, 6-11. Respondent's Initial Submissions were due to be filed on or before November 20, 2006. *Id.* The Clerk's letter transmitting the briefing order, and the briefing order itself, contained the same provisions set forth in Paragraph 9, *supra*. BX 2 at 8.

24. Respondent did not timely file his Initial Submissions. On November 29, 2006, the court issued a Rule 45 notice to Respondent for his failure to file his Initial Submissions and provided that his client's appeal would be dismissed if the documents were not filed by December 14, 2006. BX 2 at 13.

25. Respondent filed his overdue Initial Submissions on December 14, 2006. BX 2 at 4.

26. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by January 25, 2007. BX 2 at 10. Respondent failed to file the brief and appendix by the due date. At the time, Mr. Rodriguez remained in Mexico. Tr. 174-177.

27. On February 6, 2007, the court issued a second Rule 45 notice to Respondent for failure to file the brief and appendix by the due date and provided that his client's appeal would be dismissed if Respondent did not cure the default by February 21, 2007. BX 2 at 16.

28. Respondent discussed the appeal with Mr. Rodriguez, and advised him that the Fourth Circuit did not have jurisdiction over the appeal. According to Respondent, Mr. Rodriquez agreed to drop the appeal.[5] Tr. 176:4 – 177:13. We find Respondent's testimony to be credible.

29. Respondent did not respond to the Rule 45 notice and the court dismissed the case on February 22, 2007. BX 2 at 18.

30. Respondent did not file a motion for voluntary dismissal of the appeal because he knew the appeal would be dismissed pursuant to the February 6, 2007 Rule 45 Notice. Tr. 177:19 – 178:10. He admitted that his failure to file a motion for voluntary dismissal in this case was "a mistake on my part." Tr. 177:19 – 178:1.

Lazo v. Gonzales, Case No. 06-2286 (Lazo I)

31. On December 8, 2006, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Jose Lazo, the petitioner in *Lazo v. Gonzales,* Case No 06-2286. BX 3 at 4 (docket).

32. On December 8, 2006, the Fourth Circuit issued a docketing notice and briefing order, which it sent to Respondent. BX 3 at 4, 6-7. Respondent's Initial Submissions were due to be filed on or before December 22, 2006. BX 3 at 6. The briefing order directed Respondent to file petitioner's opening brief and joint appendix by February 26, 2007. BX 3 at 9.

[5] Neither Disciplinary Counsel nor Respondent proffered any testimony from any of the persons represented by Respondent in any of these cases.

33. Respondent did not timely file his Initial Submissions. On January 10, 2007, the court issued a follow-up notice to Respondent indicating that if Respondent failed to file the forms by January 17, 2007, the court "may dismiss the appeal or impose sanctions." BX 3 at 12.

34. On January 18, 2007, Respondent filed his overdue Initial Submissions. BX 3 at 4.

35. Respondent initially testified that, at some unspecified point while the appeal was pending, Mr. Lazo told Respondent he no longer wanted to pursue his appeal because he was going to voluntarily leave the United States and return to his home in Belize.[6] Tr. 182:14-183:12, 184:7-17. This was the reason he did not file a brief in this appeal. Tr. 184:7-17. We find Respondent's testimony to be credible.

36. On February 5, 2007, the government filed a motion to dismiss petitioner's appeal and the court directed Respondent to file a response, even if there was no objection to the motion, by February 20, 2007. BX 3 at 4, 14. Respondent failed to file a response by February 20, 2007, as directed by the court. *Id.* at 14.

37. On March 1, 2007, the court issued a Rule 45 notice to Respondent for failing to file the brief and appendix as directed in the initial scheduling order, as well as for Respondent's failure to file a response to the motion to dismiss. BX 3 at 4, 16-19. The Rule 45 notice provided that unless Respondent filed a brief and appendix, as well as a response to the motion to dismiss, by March 16, 2007, the court would dismiss the appeal. *Id.* at 16.

38. Respondent did not respond to the Rule 45 notice and the court dismissed the case on March 16, 2007. BX 3 at 4, 20.

[6] Respondent later testified that this was incorrect; Mr. Lazo told him that he did not want to proceed with a later-filed appeal because he was going to return to El Salvador (not Belize). Tr. 227:20 – 228:13.

***Villanueva-Rodriguez v. Mukasey*, Case No. 06-1058**

39. On December 21, 2007, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Alberto Villanueva-Rodriguez, the petitioner in *Villanueva-Rodriguez v. Mukasey*, Case No. 06-1058. BX 4 at 4 (docket), 7-10. On that same day, Respondent filed his appearance of counsel form. BX 4 at 6.

40. On January 25, 2008, the Fourth Circuit issued a docketing notice and briefing order, which it sent to Respondent. BX 4 at 4, 11-2, 21-22. Respondent's Initial Submissions were due to be filed on or before February 9, 2008. BX 4 at 12. The Docketing Notice provided that:

> Counsel are responsible for ensuring that documents are timely filed by actual receipt as required in the appropriate clerk's office. Noncompliance with jurisdictional deadlines will prevent the Court from considering the case, and failure to meet other deadlines may result in dismissal for failure to prosecute or in imposition of sanctions. See Local Rules 45, 46 (g).

BX 4 at 11. The Docketing Statement Instructions provided as follows:

> . . . .
>
> 3. The Docketing statement is not a brief and should not contain argument or motions. The nature of proceedings and relief sought should be stated succinctly. The issues should be expressed in terms and circumstances of the case but without unnecessary detail. Conclusory statements such as "the findings of the administrative law judge are not supported by the law or facts" are unacceptable. Although a party will not be precluded from raising additional issues, counsel should make every effort to include in the docketing statement of all the issues that will be presented to the Court. The docketing statement will be used in any mediation conducted under Fourth Circuit Local Rule 33.
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> . . . .
>
> 5. Counsel's failure to file the docketing statement within the time set forth above will cause the Court to initiate the process for dismissal under Fourth Circuit Local Rule 45.

BX 4 at 13.

41. Respondent failed to file the Initial Submissions by February 9, 2008. On February 27, 2008, the court issued a Rule 45 notice for his failure to file the Initial Submissions and provided

that the case would be dismissed for failure to prosecute if the documents were not received by March 13, 2008. BX 4 at 4,

42. On March 12, 2008, Respondent filed the overdue Initial Submissions. BX 4 at 4.

43. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by April 14, 2008. BX 4 at 4, 21. On April 11, 2008, Respondent filed a motion to extend the time for filing his brief until May 26, 2008. *Id.* at 4, 32. Respondent stated that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id. at* 32. Respondent certified to the court that the Government consented to the motion. *Id.* at 34. The court granted the motion and ordered that the opening brief and joint appendix be filed by May 27, 2008. *Id.* at 4, 35. Respondent failed to file the brief and appendix as ordered but instead filed a motion to hold the case in abeyance on May 27, 2008. *Id.* at 4.

44. On June 10, 2008, the court issued a second Local Rule 45 notice to Respondent for his failure to file a timely brief and appendix. BX 4 at 4, 36. The notice provided that "Petitioner has filed a motion for abeyance but has not requested briefing been suspended pending resolution of the motion." *Id.* at 36. The court provided that if Respondent failed to file the opening brief and appendix by June 25, 2008, the court would dismiss the appeal for failure to prosecute. *Id.*

45. On June 25, 2008, Respondent filed a second motion to extend the time for filing a brief until June 30, 2008. BX 4 at 5, 37-39. Respondent repeated verbatim the reasons set forth in his April 11, 2008 motion for needing more time to file the brief. *Id.* at 37-38 (¶ 4). On June 26, 2008, the court deferred the motion to extend the filing time and suspended the briefing schedule

pending resolution of Respondent's motion to hold the case in abeyance, which he filed on May 27, 2008. *Id.* at 5, 40.

46. On July 23, 2008, the court denied the motion to hold the case in abeyance and issued a new briefing order, directing Respondent to file the opening brief and joint appendix by October 14, 2008. BX 4 at 5, 41-43.

47. Respondent failed to file the required brief and appendix, as ordered. The court issued a third Local Rule 45 notice on November 20, 2008, and directed that if Respondent failed to remedy the default by December 5, 2008, the court would dismiss the case for failure to prosecute. BX 4 at 5, 44.

48. Respondent did not respond to the Local Rule 45 notice and the court dismissed the case on January 5, 2009. BX 4 at 5, 45.

49. Respondent did not proceed with the appeal because his client, at some point, returned to Peru and no longer wanted to pursue the case. Tr. 186:12 – 187:7. The motions for extension were filed before he was aware of that fact, Tr. 192:18 – 193:5 and that "at times" his "workload" caused his filings to be delayed. Tr. 192:5 – 9. Respondent's motion for abeyance (the veracity of which is not questioned by Disciplinary Counsel) caused the Fourth Circuit to extend the due date of Respondent's brief to October 14, 2008, and Respondent filed no additional extension motions after that due date was established. Disciplinary Counsel offered no evidence that Respondent's representations regarding his need for extensions in this case were false when made, and we credit Respondent's testimony on this point.

Laremont v. Holder, Case No. 08-1490

50. On May 2, 2008, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Michael T. Laremont, the petitioner in *Laremont v. Holder*,

Case No. 08-1490. BX 5 at 5 (docket), 8-12. The BIA had ordered Respondent's client, who was a Lawful Permanent Resident of the United States, removed based on his conviction of an aggravated felony. *Id.* at 10-13.

51. On May 7, 2008, the Fourth Circuit issued a docketing notice and briefing order, which it sent to Respondent. BX 5 at 5, 13-18. Respondent's Initial Submissions were due to be filed on or before May 21, 2008. *Id.* at 5, 13. Respondent filed his Initial Submissions on May 22, 2008, one day after the due date. *Id.* at 5, 19-23.

52. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by July 28, 2008. BX 5 at 5, 17. On July 25, 2008, Respondent filed a motion to extend the time to file petitioner's opening brief until August 18, 2008. BX 5 at 5, 25-27. Respondent repeated verbatim from his motion in Case No. 06-1058 (*Villanueva-Rodriguez*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot he completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 25. The court granted the motion on July 28, 2008, and ordered that the brief and appendix be filed by August 18, 2008. *Id.* at 5, 28.

53. Instead of filing a brief and appendix on August 18, 2008, Respondent filed a second motion to extend the time to file petitioner's opening brief and appendix until September 8, 2008. BX 5 at 5. Disciplinary Counsel did not submit the August 18, 2008 motion as an exhibit. The court granted Respondent's motion in part on August 18, 2008, and ordered that the brief and appendix be filed by August 25, 2008. *Id.* at 5, 29. Respondent failed to file a brief and appendix by that date.

54. On August 25, 2008, Respondent filed a third motion to extend the time to file petitioner's opening brief until September 8, 2008. BX 5 at 6 (docket), 30-33. Respondent repeated verbatim the reasons set forth in his July 25, 2008 motion for needing more time. *Id.* at 30-31 (¶ 3). Respondent also stated that he had not received a compact disc with the Administrative Record (which was filed electronically with the court on June 30, 2008), which he claimed he needed to file his appendix and brief. *Id.* at 31 (¶ 4). The court granted the motion on August 27, 2008, and ordered the brief and appendix be filed by September 8, 2008. *Id.* at 6, 34. Respondent failed to file a brief and appendix by that date or seek an extension of time in which to do so.

55. On October 28, 2008, the court issued a Local Rule 46 notice to Respondent because he had failed to file the brief and appendix, and directed that he cure the default by November 12, 2008. BX 5 at 6, 36-37. The notice also provided that "Counsel's noncompliance with Court deadlines is subject to referral to the Standing Panel on Attorney Discipline pursuant to Local Rule 46(g)." *Id.* at 36.

56. On November 13, 2008, Respondent filed an untimely fourth motion to extend the time to file petitioner's opening brief until December 1, 2008. BX 5 at 6, 38-40. In support of his extension request, Petitioner repeated verbatim the reasons that he set forth in his original July 25, 2008 motion. *Id.* at 39 (¶ 3). The court granted Respondent's motion on November 14, 2008, and ordered Respondent to file the brief and appendix by December 1, 2008. *Id.* at 6, 41.

57. On December 5, 2008, Respondent filed an untimely fifth motion to extend the time to file the petitioner's opening brief and appendix until December 8, 2008. BX 5 at 6, 42-44. As justification for his extension motion, Respondent repeated verbatim the reasons set forth in his July 25, 2008 motion but added that "the counsel is working on a pro bono basis." *Id.* at 43 (¶ 3).

The court granted the motion on December 8, 2008, and ordered that the brief and appendix be filed on that same day. *Id.* at 45.

58. On December 10, 2008, Respondent filed an untimely 25-page opening brief, along with a motion to file the brief out-of-time and a motion to waive filing of the joint appendix. BX 5 at 6, 46-85. As the reasons for the late-filing, Respondent repeated verbatim the reasons set forth in his original July 25, 2008 extension motion and claimed he was working on a pro bono basis. *Id.* at 83. The court granted the motion to late-file the brief, but denied the motion to waive the filing of the joint appendix. *Id.* at 6, 86. The court directed Respondent to file four copies of the joint appendix on or before December 22, 2008. *Id.* Respondent failed to file the appendix as ordered or to seek an extension of time in which to do so.

59. On January 6, 2009, the court issued a second Local Rule 46 notice to Respondent because he had failed to file the appendix and directed that he cure the default by January 21, 2009. BX 5 at 7, 88-89. The notice also provided that Respondent's noncompliance with the court deadlines was subject to referral to the Fourth Circuit Standing Panel on Attorney Discipline pursuant to Local Rule 46(g). *Id.* at 88. Respondent did not respond to the Rule 46 notice.

60. On January 27, 2009, the court issued a Local Rule 45 notice to Respondent for his failure to file the appendix. BX 5 at 7, 90-91. The notice provided that the court would dismiss the case for failure to prosecute unless Respondent cured the default by February 11, 2009. *Id.* at 90. Respondent did not respond to the Local Rule 45 notice and the court dismissed the appeal on February 12, 2009. BX 5 at 7, 95. Respondent testified that he did not file the Joint Appendix because his client, who was incarcerated, could not pay for it. Tr. 208:4-6, 15-17; 211:3-8.

61. We were not provided with evidence sufficient to persuade us that Respondent made misrepresentations to the Fourth Circuit in the motions for extensions he filed in this case.

Disciplinary Counsel proffered no evidence regarding the "complexity" of the issues raised by the case, or evidence to refute Respondent's testimony that his caseload and status as a sole practitioner necessitated extensions. We also find Respondent's testimony regarding his need for a compact disc containing the administrative record to be credible. He also did not conceal the fact that his client's inability to pay for the joint appendix precluded him from filing the appendix when it was due. Any motion that Respondent never intended to file a brief is belied by the fact that he ultimately did so (albeit after the deadline imposed by the Court).

62. Disciplinary Counsel offered no evidence that Respondent's representations regarding his need for extensions in this case were untruthful at the time they were made, and we credit Respondent's testimony on this point.

***Morales Rodriquez v. Holder,* Case No. 08-1847**

63. On August 1, 2008, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Adrian Morales-Rodriguez, the petitioner in *Morales-Rodriguez v. Holder,* Case No. 08-1847. BX 6 at 4 (docket), 6-9. Morales-Rodriguez sought appellate review of the BIA order that he could voluntarily depart the United States or otherwise be removed as ordered by the Immigration Judge. *Id.* at 8-9.

64. On August 8, 2008, the Fourth Circuit issued a docketing notice and briefing order, which it sent to Respondent. BX 6 at 4, 10-15. Respondent's Initial Submissions were due to be filed on or before August 22, 2008. *Id.* at 4, 10. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by October 27, 2008. *Id.* at 4, 14.

65. Respondent did not timely file his Initial Submissions. On September 12, 2008, the court issued a docketing follow-up notice to Respondent for his failure to file his Initial Submissions. BX 6 at 4, 16. The notice provided that Respondent's failure to file the Initial Submissions by September 22, 2008 would result in dismissal of his client's case pursuant to Local

Rule 45, and also would lead to the initiation of disciplinary proceedings against Respondent pursuant to Local Rule 46(g). *Id.* at 16. Respondent failed to respond to the court's notice or seek an extension of time in which to do so.

66. On October 17, 2008, the court issued a Local Rule 46 notice to Respondent, directing that he file the overdue Initial Submissions by November 3, 2008, or face referral for disciplinary action based on his noncompliance with the court's filing requirements. BX 6 at 4, 17.

67. On October 30, 2008, Respondent filed his overdue Initial Submissions. BX 6 at 4, 18-22.

68. On November 19, 2008, the court issued a second Local Rule 46 notice to Respondent because he had failed to file an opening brief and appendix by October 27, 2008, as ordered, and directed that he cure the default by December 4, 2008. BX 6 at 4, 23. The notice also provided that Respondent's failure to comply with the court deadlines would be subject to referral to the Fourth Circuit Standing Panel on Attorney Discipline pursuant to Local Rule 46(g). *Id.* at 23.

69. On December 5, 2008, Respondent filed a motion to extend the time for filing his brief and appendix until January 5, 2009. BX 6 at 4, 24-26. Respondent repeated verbatim from his motions in Case No. 061058 (*Villanueva-Rodriguez*) and Case No. 08-1490 (*Laremont*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 24-25. The court granted Respondent's motion on December 8, 2008, and ordered that the brief and appendix be filed by January 5, 2009. *Id.* at 4, 27. Respondent failed to file the brief and appendix as he was ordered to do or seek an extension of time in which to do so.

70. On January 21, 2009, the court issued a Local Rule 45 notice to Respondent for his failure to file the brief and appendix as ordered to do. BX 6 at 5 (docket), 28. The notice provided that the court would dismiss the case for failure to prosecute unless Respondent cured the default by February 5, 2009. *Id.* at 28. Respondent did not respond to the Local Rule 45 notice and the court dismissed the case on February 17, 2009. *Id.* at 5, 30-31.

71. Respondent testified that he did not file a brief in this case because he concluded, after reviewing the record, that his client did not have a meritorious appeal. Tr. 219:8-18. He advised his client that it would be a waste of time and money for the client to proceed with the appeal. Tr. 219:17-18. The client agreed with Respondent's assessment and decided to drop the appeal. Tr. 220:3-17. We have no reason to question the credibility of this testimony.

72. There is no evidence in the record as to when Respondent concluded that the appeal had no merit, and when the client agreed to drop the case, or to otherwise establish that Respondent requested an extension for reasons other than as set forth in his December 5, 2008 motion. Thus, there is no evidence, much less clear and convincing evidence, to support a contention that the representations in Respondent's December 5, 2008 motion for an extension were untrue when made. As such, we credit Respondent's testimony on this point.

Lazo v. Holder, Case No. 08-1934 ("Lazo II")

73. On August 26, 2008, Respondent filed a second Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Jose Lazo, the petitioner in *Lazo v. Holder,* Case No. 08-1934. BX 7 at 5 (docket), 7-10. The BIA had ordered Lazo, who was a Lawful Permanent Resident of the United States, removed based on his conviction of an aggravated felony, and rejected Lazo's legal arguments that he was entitled to various forms of relief from removal. *Id.* at 9-10.

74. On September 8, 2008, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 7 at 5, 11-16. Respondent's Initial Submissions were due on or before September 22, 2008. *Id.* at 5, 11.

75. Respondent did not timely file his Initial Submissions. On September 30, 2008, the court issued a Local Rule 45 notice to Respondent because he failed to file his Initial Submissions. BX 7 at 5, 17. The notice provided that the court would dismiss his client's case unless Respondent filed the overdue forms by October 15, 2008. *Id.* at 17.

76. On October 16, 2008, one day after the Local Rule 45 notice due date, Respondent filed his appearance of counsel and corporate affiliations disclosure forms. BX 7 at 5, 18. Respondent failed to file the required docketing sheet.

77. On October 23, 2008, the court issued a second Local Rule 45 notice because Respondent failed to file the docketing statement as previously ordered. BX 7 at 5, 19. The notice provided that the court would dismiss his client's case unless Respondent filed the overdue form by November 7, 2008. *Id.* at 19.

78. Respondent filed an incomplete docketing statement on October 30, 2008. BX 7 at 5, 20-23. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by November 28, 2008. *Id.* at 15.

79. On December 1, 2008, Respondent filed an untimely motion to extend the time for filing his brief and appendix until January 30, 2009. BX 7 at 5, 24-26. Respondent repeated verbatim from his motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 08-1490 (Laremont) and Case No. 08-1847 (*Morales-Rodriguez*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because

Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 24-25 (¶ 3). The court granted Respondent's motion in part on December 4, 2008, and ordered that the brief and appendix be filed by December 29, 2008 (not January 30 as Respondent had requested). *Id.* at 5, 27.

80. Respondent failed to file the brief and appendix by the due date or seek an extension of time in which to do so.

81. On January 8, 2009, the court issued a third Local Rule 45 notice because Respondent failed to file the brief and appendix as ordered. BX 7 at 5, 28. The notice provided that the court would dismiss his client's case unless Respondent filed the overdue brief and appendix by January 23, 2009. *Id.* at 28. Respondent failed to file the overdue brief or appendix as ordered.

82. On February 6, 2009, Respondent filed an untimely second motion for extension of time for filing his brief and appendix until March 30, 2009. BX 7 at 5, 30-32. As justification for the second extension request, Respondent repeated verbatim the statements from his December 1, 2008 motion regarding being a sole practitioner with a heavy litigation schedule but added that "[i]n addition the Respondent's counsel has accepted this and other cases on [a] pro bono basis." *Id.* at 31 (¶ 3). The court granted Respondent's motion in part on February 9, 2009, and ordered Respondent to file the brief and appendix by March 9, 2009. *Id.* at 6 (docket), 33.

83. On March 9, 2009, Respondent filed a third motion for extension of time for filing his brief and appendix until April 10, 2009. BX 7 at 6, 34-37. As justification for the third extension request, Respondent repeated verbatim the statements from his February 6, 2009 motion for extension of time. *Id.* at 35 (¶ 3). The court granted Respondent's motion in part on March 10, 2009, and ordered Respondent to file the brief and appendix by March 30, 2009. *Id.* at 6, 41.

Respondent failed to file the overdue brief and appendix as ordered or seek an extension of time in which to do so.

84. Respondent also filed on March 9, 2009, a motion to dispense with filing of appendix, which was originally due to be filed by November 28, 2008. BX 7 at 6, 38-40. Respondent represented that he had been working pro bono and personally had paid court fees on behalf of his client in the past. *Id.* at 38. Respondent represented that he "has extended means to the maximum for this matter and cannot continue any further without the court dispensing with certain procedural formalities such as filing of the appendix in this matter." *Id.* at 39. The court denied this motion on March 10, 2009. *Id.* at 6, 42.

85. On April 10, 2009, the court issued a fourth Local Rule 45 notice because Respondent failed to file the brief and appendix as ordered. BX 7 at 6, 43. The notice provided that the court would dismiss his client's case unless Respondent filed the overdue brief and appendix by April 27, 2009. *Id.* at 43. Respondent failed to file the overdue brief or appendix as ordered.

86. On May 1, 2009, Respondent filed an untimely fourth motion for extension of time for filing his brief and appendix until June 1, 2009. BX 7 at 6, 44-47. As justification for the fourth extension request, Respondent repeated verbatim the statements from his February 6, and March 9, 2009 motions for extension of time (both of which relied primarily on the same reason proffered in his original December 1, 2008 motion). *Id.* at 45 (¶ 3). The court granted Respondent's motion on May 4, 2009, and ordered Respondent to file the brief and appendix by June 1, 2009. *Id.* at 6, 48. Respondent failed to file the overdue brief or appendix as ordered.

87. On June 2, 2009, the court issued a fifth Local Rule 45 notice because Respondent failed to file the brief and appendix as ordered. BX 7 at 6, 49. The notice provided that the court

would dismiss his client's case unless Respondent filed the overdue brief and appendix by June 17, 2009. *Id.* at 49.

88. On June 2, 2009, Respondent filed a fifth motion for extension of time for filing his brief until July 6, 2009. BX 7 at 6, 50-53. As justification for the fifth extension request, Respondent repeated verbatim the statements from his February 6, March 9, and May 1, 2009 motions for extension of time (which all relied primarily on the same reason proffered in his original December 1, 2008 motion). *Id.* at 51 (¶ 3). The court denied Respondent's motion on June 3, 2009, and directed that the brief and appendix be filed on June 17, 2009. *Id.* at 6, 54.

89. Respondent testified that Mr. Lazo, at some unspecified time, advised him that he intended to return home to El Salvador and thus no longer wanted to proceed with the appeal. Tr. 225:1-11. As a result, Respondent took no further action on the case. *Id*.

90. Respondent failed to file his opening brief and appendix by June 17, 2009, as he was directed to do by the court's fifth Local Rule 45 notice on June 2, 2009. BX 7 at 54. The court dismissed the case for failure to prosecute on June 29, 2009. *Id.* at 6, 55-56.

91. There is no evidence sufficient to persuade us that Respondent made misrepresentations in the extension motions filed on December 1, 2008, February 9, 2009 and March 9, 2009. However, we find that the extension motions filed on May 1, 2009 and June 2, 2009 did not accurately set forth the reasons proffered by Respondent for not filing his brief by the specified due date.

92. As previously noted on March 9, 2009, Respondent represented to the Court that he was not being paid for his work on the case and could not "continue any further" unless that issue was addressed. The Court denied this motion the following day. Respondent did not proceed further on the case, consistent with his practice of not working on a brief unless and until he received

payment from his client. *See* ¶¶ 84 and 88, *supra*. In his May and June 2009 motions for extensions, Respondent resorted to his "boilerplate" assertions regarding the "complexity of the case" and "busy schedule." We find that the reason why Respondent did not file a brief on the specified due dates was not because of his caseload, or the "complexity" of the issues; it was because he refused to work on the brief unless and until satisfactory financial arrangements were in place.

93. We also reject Respondent's testimony that he allowed Mr. Lazo's appeal to be dismissed because Mr. Lazo told him that he was returning to El Salvador and thus did not want to proceed with the appeal. Respondent was unable to specify when he had this communication with his client, and he was confused about which country Mr. Lazo said he was returning to, initially testifying that it was Belize. More to the point, Respondent made the same claim to justify the March 2007 dismissal by the Fourth Circuit of another appeal he was handling for Mr. Lazo. We do not find Respondent's testimony on this point to be credible.

***Alvarenza-Reyes v. Holder*, Case No. 09-1029 ("Alvarenza-Reyes I")**

94. On January 5, 2009, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Roque Alonso Martinez Alvarenza-Reyes, the petitioner in *Alvarenza-Reyes v. Holder,* Case No. 09-1029. BX 8 at 5 (docket), 8-11. The BIA upheld the Immigration Judge's denial of Alvarenza-Reyes's request for continuance of his removal proceedings in order to seek post-conviction relief that might make him eligible to apply for cancellation of removal. *Id.* at 11.

95. On January 9, 2009, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 8 at 5, 12-17. Respondent's Initial Submissions were due to be filed on

or before January 23, 2009. *Id.* at 5, 12. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by March 30, 2009. *Id.* at 5, 16.

96. Respondent failed to file his required Initial Submissions and on January 29, 2009, the court issued a follow-up notice to Respondent for his failure to file his Initial Submissions. BX 8 at 5, 18. The notice provided that Respondent's failure to file the Initial Submissions by February 10, 2009, would result in dismissal of his client's case pursuant to Local Rule 45 and also lead to initiation of disciplinary proceedings against Respondent pursuant to Local Rule 46(g). *Id.* at 18.

97. Respondent filed his Initial Submissions on February 10, 2009. BX 8 at 5, 20-24.

98. On March 31, 2009, one day after the brief and appendix were to be filed, Respondent filed an untimely motion for extension of time until May 4, 2009. BX 8 at 6 (docket), 29-31. Respondent repeated verbatim from his initial motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 08-1490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), and Case No. 08-1934 (*Lazo*), that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 29. The court granted the motion and ordered Respondent to file the opening brief and appendix by May 4, 2009. *Id.* at 6, 35.

99. On May 5, 2009, Respondent filed a second motion for extension of time to file the opening brief and appendix until June 1, 2009. BX 8 at 6, 36-38. As justification for the extension request, Respondent repeated verbatim the reasons set forth in his March 31, 2009 motion. *Id.* at 36. The court granted the motion on May 5, 2009, and ordered Respondent to file the opening brief and appendix by June 1, 2009. *Id.* at 6, 39. Respondent failed to file the brief or appendix as ordered.

100. On June 2, 2009, Respondent filed an untimely third motion for extension of time to file the opening brief and appendix until July 6, 2009. BX 8 at 6, 40-42. As justification for the extension request, Respondent repeated verbatim the reason set forth in his March 31, and May 5, 2009 motions. *Id.* at 40. The court granted the motion on June 3, 2009, and ordered Respondent to file the opening brief and appendix by July 6, 2009. *Id.* at 6, 43.

101. On July 6, 2009, Respondent filed a fourth motion for extension of time to file the opening brief and appendix until August 7, 2009. BX 8 at 6, 44-46. As justification for the extension request, Respondent repeated verbatim the reason set forth in his March 31, May 5, and June 2, 2009 motions. *Id.* at 44. The court granted the motion on July 6, 2009, and ordered Respondent to file the opening brief and appendix by August 7, 2009. *Id.* at 6, 47.

102. On August 7, 2009, Respondent filed a fifth motion to extend the time to file the opening brief and appendix until September 4, 2009. BX 8 at 6, 48-50. As justification for the extension request, Respondent repeated verbatim the reason set forth in his March 31, May 5, June 2, and July 6, 2009 motions. *Id.* at 48. The court granted the motion in part on August 7, 2009, and ordered Respondent to file the opening brief and appendix by August 24, 2009. *Id.* at 6, 51. The court also stated that: "*No further request for an extension of time in which to file the opening brief and joint appendix shall he filed.*" *Id.* at 51 (emphasis in original). Respondent failed to file the opening brief and appendix as ordered.

103. On September 3, 2009, the court issued a Local Rule 45 notice to Respondent indicating that the court would dismiss his client's case unless Respondent cured his default and filed the brief and appendix on or before September 18, 2009. BX 8 at 6, 52.

104. On September 18, 2009, Respondent filed a sixth motion for extension of time to file the opening brief and appendix until October 5, 2009. BX 8 at 7 (docket), 53-56. In that motion,

Respondent represented that a few weeks after the BIA's December 5, 2008 removal order, Alvarenza-Reyes was removed from the United States. *Id.* at 53. Respondent indicated that he "was not contacted regarding the Pending Petition for review" and "is making attempts to contact the Petitioner or his relatives as he intends to withdraw from the case." *Id.* at 53-54. Respondent asked the court to grant an extension until October 5, 2009, in order to permit him to contact Alvarenza-Reyes in El Salvador. *Id.* at 54.

105. On September 21, 2009, the court granted the extension request for filing the brief and appendix until October 5, 2009, and terminated the Local Rule 45 notice. BX 8 at 7, 57. Respondent failed to file a brief and appendix by the due date or seek to withdraw as counsel from the case.

106. On October 15, 2009, the court issued a second Local Rule 45 notice indicating that the court would dismiss the case for failure to prosecute unless Respondent cured his default and filed the brief and appendix on or before October 30, 2009. BX 8 at 7, 58. Respondent did not respond to the Rule 45 notice and the court dismissed the case on November 6, 2009. *Id.* at 7, 59-60.

107. Respondent ultimately was told by his client's sister that Mr. Alvarenza-Reyes, now living in El Salvador, no longer wanted to proceed with the appeal. Tr. 241:20 – 242:8. There is no evidence in the record as to specifically when Respondent was told this, although it appears that it was at or about the time Respondent filed his September 18, 2009 motion for extension, in which he first advised the court that Mr. Alvarenza-Reyes had been removed from the United States. Respondent's testimony on this point was credible. Disciplinary Counsel offered no evidence that Respondent learned this information at an earlier time.

***Alvarenza-Reyes v. Holder*, Case No. 09-1260 ("Alvarenza-Reyes II")**

108. On March 9, 2009, Respondent filed another Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Roque Martinez Alvarenza-Reyes, the petitioner in *Alvarenza-Reyes v. Holder,* Case No. 09-1260. BX 10 at 4 (docket), 6-8. The BIA denied Alvarenza-Reyes's motion to reconsider its prior decision, in which it upheld the Immigration Court's denial of a request for a continuance to permit Alvarenza-Reyes to seek a modification of his sentence in a criminal matter. *Id.* at 7.

109. On March 10, 2009, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 10 at 4, 9-14. The briefing order consolidated the matter with Case No. 09-1029 (*Alvarenza-Reyes I*) and adopted the briefing order in that case. *Id.* at 13-14. The briefing order also deemed the entry of appearance and disclosure statements filed in Case 09-1029 to be filed in Case 09-1260. *Id.* at 14. Respondent, however, was obligated to file a docketing statement in Case No. 09-1260 by March 24, 2009.

110. On March 30, 2009, Respondent filed an untimely docketing statement. BX 10 at 4, 15-18.

111. As set forth in ¶¶ 98-106, Respondent filed numerous motions for extension in these consolidated cases, both of which were ultimately dismissed for Respondent's failure to file his opening brief and appendix. BX 10 at 4-5, 46-47.

***Diagana v. Holder*, Case No. 09-1067**

112. On January 12, 2009, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Demba Diagana, the petitioner in *Diagana v. Holder,* Case No. 09-1067. BX 9 at 5 (docket), 6-9. The BIA upheld the Immigration Judge's decision to

order Diagana removed from the United States based on his conviction of aggravated felonies and a serious crime involving moral turpitude.

113. On January 15, 2009, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 9 at 5, 10-15. Respondent's Initial Submissions were due to be filed on or before January 29, 2009. *Id.* at 5, 10. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by April 6, 2009. *Id.* at 5, 14.

114. Respondent failed to file his required Initial Submissions and on February 5, 2009, the court issued a docketing forms follow-up notice to Respondent for his failure to file his Initial Submissions. BX 9 at 5, 17. The notice provided that Respondent's failure to file the Initial Submissions by February 18, 2009, would result in dismissal of his client's case pursuant to Local Rule 45 and could also lead to the initiation of disciplinary proceedings against Respondent pursuant to Local Rule 46(g). *Id.* at 17.

115. On February 18, 2009, Respondent filed his appearance of counsel and disclosure of corporate affiliations forms but failed to file the required docketing statement. BX 9 at 5, 18.

116. On February 19, 2009, the court issued a Local Rule 45 notice to Respondent for his failure to file the docketing statement. BX 9 at 5, 19. The notice provided that the court would dismiss his client's ease for failure to prosecute unless Respondent filed the docketing statement by March 6, 2009. *Id.* at 19. Respondent failed to file the docketing statement as directed and the court dismissed the case on March 13, 2009.

117. On the same day that the court dismissed the case, Respondent filed the overdue docketing statement. BX 9 at 5, 20-25.

118. Respondent had difficulty obtaining the administrative record from Mr. Diagana's predecessor attorney, who refused to turn over the client's case file because he had not been paid.

Tr. 251:2-22. When he finally did obtain the record, and reviewed it, he concluded that Mr. Diagana did not have a viable appeal, because the principal issue on appeal had not been raised in the underlying proceedings. Tr. 252:11-253:16.

119. Respondent advised Mr. Diagana that he did not have a strong case on appeal, and that he should not pursue it. Tr. 254:1-13. The client ultimately consented to dropping the case. Tr. 256:18-257:5. According to Respondent, this is why he did not file a brief in the appeal. Tr. 257:17-20. We have no reason to question Respondent's testimony, and find it to be credible.

120. The record suggests that the appeal was dismissed by the Fourth Circuit before Respondent and his client had decided to drop the case. As noted above, the Fourth Circuit dismissed the case on March 13, 2009. That same day, Respondent filed his overdue docketing statement. Thus, as of this date, Respondent presumably still intended to proceed with the appeal, and was unaware of the order of dismissal; otherwise he would not have filed the docketing statement.

Mata v. Holder, Case No 09-1487

121. On April 27, 2009, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Carlos Mata, the petitioner in *Mata v. Holder,* Case No 09-1487. BX 11 at 5 (docket), 6-9. The BIA denied Mata's untimely motion to reconsider its prior decision, in which it affirmed the Immigration Court's denial of Mata's request for benefits under NACARA (providing statutory relief for certain Central American nationals) that might have served as a basis for overturning his removal order resulting from his convictions of aggravated felonies. *Id.* at 9.

122. On April 28, 2009, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 11 at 5, 15-20. Respondent's Initial Submissions were due to be filed on

or before May 12, 2009. *Id.* at 5, 15. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by July 17, 2009. *Id.* at 5, 19.

123. On May 11, 2009, Respondent filed his appearance of counsel and corporate affiliations forms. BX 11 at 5, 21. He failed to file the docketing statement at that time but instead filed it late on June 19, 2009. *Id.* at 5, 22-24.

124. Respondent failed to file the opening brief and appendix by the July 17, 2009 deadline or request an extension of time in which to do so.

125. On August 17, 2009, the court issued a Local Rule 45 notice to Respondent for his failure to file the opening brief and appendix. BX 11 at 5, 26. The notice provided that the court would dismiss his client's case for failure to prosecute unless Respondent filed the brief and appendix by September 1, 2009. *Id.* at 26. Respondent did not respond to the Local Rule 45 notice and the court dismissed the case on September 8, 2009. *Id.* at 5, 27-28.

126. After the Petition for Review was filed, Mr. Mata informed Respondent that he wanted to return to El Salvador and drop the appeal. Tr. 265:9-13, 266:16-21. Respondent's testimony was credible, and we have no reason to question its veracity.

Rasheed v. Holder, Case No. 09-1643

127. On June 5, 2009, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Massaud Rasheed, the petitioner in *Rasheed v. Holder,* Case No. 09-1643. BX 12 at 4 (docket). The BIA reversed the Immigration Judge's decision that Rasheed was entitled to a grant of asylum.

128. On June 8, 2009, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 12 at 4, 7-12. Respondent's Initial Submissions were due to be filed on or before June 23, 2009. *Id.* at 4, 7.

129. Respondent failed to file his required Initial Submissions and on June 29, 2009, the court issued a docketing forms follow-up notice to Respondent for his failure to file his Initial Submissions. BX 12 at 4, 13. The notice provided that Respondent's failure to file the Initial Submissions by July 10, 2009, would result in dismissal of his client's case pursuant to Local Rule 45 and also would lead to initiation of disciplinary proceedings against Respondent pursuant to Local Rule 46(g). *Id.* at 13.

130. On July 7, 2009, Respondent filed his overdue appearance of counsel and corporate affiliations disclosure forms. BX 12 at 4, 14. He filed his overdue docketing statement on July 10, 2009. *Id.* at 4, 15-17.

131. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by August 27, 2009. BX 12 at 4, 11. On August 28, 2009, a day after the opening brief and appendix were due, Respondent filed a motion for extension of time until October 1, 2009. *Id.* at 4, 19-21. Respondent repeated verbatim from his initial motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 081490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), Case No. 08-1934 (*Lazo*), and consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "had to contend with and balance a heavy litigation schedule." *Id.* at 19. The court granted the motion and ordered the brief and appendix be filed by October 1, 2009. *Id.* at 4, 22. Respondent failed to file the brief and appendix as ordered or timely seek an extension of time in which to do so.

132. On October 13, 2009, the court issued a Local Rule 45 notice to Respondent for his failure to file the opening brief and appendix. BX 12 at 4, 23. The notice provided that the court

would dismiss his client's case for failure to prosecute unless Respondent filed the brief and appendix by October 28, 2009. *Id.* at 23.

133. On October 22, 2009, Respondent filed a second motion for extension of time to file the opening brief and appendix until November 30, 2009. BX 12 at 5, 24-26. As justification for the second extension request, Respondent stated that the government inadvertently had included additional documents in the Administrative Record that did not pertain to the case and, as a result, Respondent "is unable to timely submit his Opening Brief and Joint Appendix." *Id.* at 24. The government previously had filed the Administrative Record on July 27, 2009. *Id.* at 4. The court granted the motion on October 22, 2009, and ordered that the brief and appendix must be filed by November 30, 2009. *Id.* at 5, 27. Respondent failed to file the brief or appendix as ordered.

134. On November 30, 2009, Respondent filed a third motion for extension of time to file the opening brief and appendix until December 31, 2009. BX 12 at 5, 28-30. As justification for the third extension request, Respondent repeated verbatim the statement pertaining to additional documents having been included in the Administrative Record and stated that he contacted the government's counsel on November 30, 2009 (the due date for Respondent's overdue brief and appendix), regarding this issue. *Id.* at 28. Respondent stated that counsel advised him "to proceed with filing the Joint Appendix by excluding the documents that are not pertinent to the [case] before the Circuit." *Id.* Respondent stated further that he "intends to proceed with the filing as advised by the Respondent [government]" and asked for an additional 30-day extension in which to do so. *Id.* at 29. The court granted the motion on November 30, 2009, and ordered the brief and appendix be filed by December 31, 2009. *Id.* at 5, 31. Respondent failed to file the brief and appendix as ordered or timely seek an extension of time in which to do so.

135. On January 6, 2010, the court issued a second Local Rule 45 notice to Respondent for his failure to file the opening brief and appendix. BX 12 at 5, 32. The notice provided that the court would dismiss his client's case for failure to prosecute unless Respondent filed the brief and appendix by January 21, 2010. *Id.* at 32.

136. On January 15, 2010, Respondent filed a fourth motion for extension of time to file the opening brief and appendix until April 1, 2010. BX 12 at 5, 33-35. As justification for the fourth extension request, Respondent repeated that the government had inadvertently included extra documents in the Administrative Record that was filed in July 2009, which Respondent stated precluded him from filing a timely brief and appendix. *Id.* at 33. Respondent also repeated verbatim the additional reasons set forth in his August 28, October 22, and November 30, 2009 motions and added that he would be out of the country from January 26 to March 3, 2010. *Id.* at 33-34. The court granted Respondent's motion in part and ordered him to file the opening brief and appendix by March 12, 2010. *Id.* at 5, 36. Respondent failed to file the brief and appendix as ordered or seek an extension of time in which to do so.

137. On March 17, 2010, the court issued a third Local Rule 45 notice to Respondent for his failure to file the opening brief and appendix. BX 12 at 5, 37. The notice provided that the court would dismiss his client's case for failure to prosecute unless Respondent filed the brief and appendix by April 1, 2010. *Id.* at 37. Respondent did not respond to the Local Rule 45 notice and the court dismissed the case on April 6, 2010, for failure to prosecute. *Id.* at 5, 38-39.

138. We find that respondent misrepresented to the Fourth Circuit the reasons for extensions set forth in each of the extension motions filed in this appeal. Respondent testified that, after he filed the Petition for Review, his client "never came back to me," and that he told the client's sister that if Mr. Rasheed did not contact Respondent, the appeal would be dismissed. Tr.

273:7-11. Mr. Rasheed's sister told Respondent that Mr. Rasheed would not "be back," and Respondent told the sister he could not proceed with the appeal. *Id.* We find that the reason Respondent could not, and did not, file the brief when due was not because of the "complexity" of the issues or his busy schedule, but rather because his client never made arrangements to pay for the work. Respondent's practice was not to begin work on a brief unless and until he had received payment from his client. Here, Respondent testified that arrangements for payment never were made. Respondent's claim that he needed extensions because the Government designated irrelevant documents for the Joint Appendix is implausible, and we do not find that testimony to be credible. To the contrary, we find that extensions were requested because Respondent did not start work on the appeal because he never was paid by his client.

Dennis v. Holder, Case No. 09-1896

139. On August 7, 2009, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Austin Dennis, the petitioner in *Dennis v. Holder,* Case No. 09-1896. BX 13 at 4 (docket), 5-9. Dennis appealed the Immigration Court's denial of his request for a waiver to prevent his removal from the United States based on his conviction of a drug-related offense. *Id.* at 8-9.

140. On August 11, 2009, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 13 at 4, 10-15. Respondent's Initial Submissions were due to be filed on or before August 26, 2009. *Id.* at 4, 10.

141. Respondent failed to file his Initial Submissions and on September 16, 2009, the court issued a docketing follow-up notice to Respondent that provided that Respondent's failure to file the Initial Submissions by October 1, 2009, would result in dismissal of his client's case pursuant to Local Rule 45. BX 13 at 4, 16.

142. Respondent filed his overdue Initial Submissions on September 25, 2009. BX 13 at 4, 17-21.

143. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by October 30, 2009. BX 13 at 4, 14.

144. Respondent failed to file the opening brief and appendix by October 30, 2009, nor did he seek an extension of time in which to do so, and the court dismissed the appeal on December 8, 2009, for failure to prosecute. BX 13 at 4, 22-23.

145. Respondent did not file the brief on October 30, 2009, as ordered because the administrative record – a necessary component of the appellate record – had not yet been filed. Tr. 280:6-20. In fact, the case docket shows that the administrative record had not been filed as of December 8, 2009, the date on which the appeal was dismissed by the Fourth Circuit. BX 13. Respondent contacted the court's case manager to explain that the administrative record was not filed, and she told him he could file a motion to reopen the case. Tr. 282:2-9. Respondent discussed this with his client, and his client did not want to proceed further with the appeal, because he had been released from custody, and did not have the funds to pay for further proceedings in the appeal. Tr. 282:2-9, 284:4-11. We find Respondent's testimony to be credible on this point.

***Simiusca v. Holder*, Case No. 09-2107**

146. On June 5, 2009, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Mihai Simiusca, the petitioner in *Simiusca v. Holder,* Case No. 09-2107. BX 14 at 4 (docket), 6-9. The BIA affirmed the Immigration Court's decision to reopen Simiusca's case in order to revoke his asylum and order him removed based on his criminal conviction for second-degree assault. *Id.* at 8-9.

147. On September 29, 2009, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 14 at 4, 10-15. Respondent's Initial Submissions were due to be filed on or before October 13, 2009. *Id.* at 4, 10.

148. Respondent failed to file his required Initial Submissions and on October 22, 2009, the court issued a docketing follow-up notice to Respondent for his failure to file his Initial Submissions. BX 14 at 4, 17. The notice provided that Respondent's noncompliance with the court's Initial Submissions filing requirements by November 2, 2009, would result in dismissal of his client's case pursuant to Local Rule 45 and also lead to initiation of disciplinary proceedings against Respondent pursuant to Local Rule 46(g). *Id.* at 17.

149. On October 22, 2009, after the court issued the docketing follow-up notice, Respondent filed his overdue appearance of counsel and corporate affiliations forms. BX 14 at 4, 18-23. He failed to file the Docketing Statement at that time or by November 2, 2009, as directed by the docketing follow-up notice.

150. The court issued a Local Rule 45 notice on November 3, 2009, because of Respondent's failure to file the required docketing statement. BX 14 at 4, 24. The notice provided that if Respondent failed to file the required docketing sheet by November 18, 2009, the court would dismiss his client's case pursuant to Local Rule 45 and initiate disciplinary proceedings against Respondent pursuant to Local Rule 46(g). *Id.* at 24.

151. On November 30, 2009, Respondent filed an untimely and incomplete docketing statement. BX 14 at 4, 26-29.

152. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by November 9, 2009. BX 14 at 4, 14.

153. The court issued a second Local Rule 45 notice on December 3, 2009 because Respondent failed to file the opening brief and appendix by the due date. BX 14 at 4, 30. The notice provided that if Respondent failed to file the brief and appendix by December 18, 2009, the court would dismiss his client's case pursuant to Local Rule 45. *Id.* at 30.

154. On January 19, 2010, Respondent filed an untimely motion for extension of time to file the opening brief and appendix until April 16, 2010. BX 14 at 4, 31-33. Respondent repeated verbatim from his motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 08-1490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), Case No. 08-1934 (*Lazo*), consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*), and Case No. 09-1643 (*Rasheed*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 31. Respondent also stated that he planned to travel from January 26 through March 3, 2010. *Id.* The court granted the motion in part and ordered Respondent to file the opening brief and appendix by March 12, 2010. *Id.* at 4, 34. Respondent failed to file the brief and appendix as ordered or timely seek an extension of time in which to do so.

155. The court issued a third Local Rule 45 notice on April 8, 2010, because Respondent failed to file the opening brief and appendix by the due date. BX 14 at 5 (docket), 35. The notice provided that if Respondent failed to file the brief and appendix by April 23, 2010, the court would dismiss his client's case pursuant to Local Rule 45. *Id.* at 35.

156. On April 22, 2010, Respondent filed a second motion for extension of time to file the opening brief by April 16, 2010 (which had already passed). BX 14 at 5, 36-38. The court

denied the motion to extend the filing time and stated that it would dismiss the appeal unless Respondent filed the opening brief and appendix by May 7, 2010. BX 14 at 5, 39. Respondent did not respond to the court's order and the court dismissed his client's appeal on May 12, 2010. *Id.* at 5, 40-41.

157. This appeal was based on the contention that the second degree felony assault conviction on which Respondent's client's removal was based did not contain the level of "force" necessary to constitute an "aggravated felony" under immigration law. Tr. 286:8-17. However, Respondent subsequently was provided information by his client that convinced Respondent he could no longer ethically proceed with the appeal. Tr. 286:18-287:16. Respondent testified that he did not learn this information until after his last motion for an extension had been filed. Tr. 288:4-289:3. Disciplinary Counsel did not cross-examine Respondent on this point, or offer other evidence to prove that Respondent's testimony was untruthful. We credit Respondent's testimony.

Andrade v. Holder, Case No. 10-1086

158. On January 20, 2010, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Jose Herber Andrade, the petitioner in *Andrade v. Holder,* Case No. 10-1086. BX 15 at 5 (docket), 7-11. The BIA denied Andrade's motion to reconsider its previous decision affirming the Immigration Court's denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 10-11. The BIA also denied Andrade's motion for stay of the Immigration Court's order of removal based on his conviction as an accessory after the fact in an offense involving obstruction of justice. *Id.*

159. On January 21, 2010, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 15 at 5, 12-15. Respondent's Initial Submissions were due to be filed on or before February 5, 2010. *Id.* at 5, 12.

160. Respondent failed to file his required Initial Submissions and on February 23, 2010, the court issued a docketing follow-up notice to Respondent for his failure to file his Initial Submissions. BX 15 at 5, 18. The notice provided that Respondent's noncompliance with the court's Initial Submissions filing requirements by March 5, 2010, would result in dismissal of his client's case pursuant to Local Rule 45 and could also lead to the initiation of disciplinary proceedings against Respondent pursuant to Local Rule 46(g). *Id.* at 18.

161. The court issued a Local Rule 45 notice on March 9, 2010, because Respondent failed to file his Initial Submissions by the due date. BX 15 at 5, 19. The notice set forth that if Respondent failed to file the Initial Submissions by March 24, 2010, the court would dismiss his client's case pursuant to Local Rule 45. *Id.* at 19.

162. On March 15, 2010, Respondent filed his overdue appearance of counsel and corporate affiliations forms. BX 15 at 5, 20. He failed to file the overdue docketing statement until March 24, 2010. *Id.*at 5, 22-25.

163. The Fourth Circuit's briefing order directed Respondent to file the petitioner's opening brief and joint appendix by April 12, 2010. BX 15 at 5, 16-17.

164. On April 22, 2010, Respondent filed an untimely motion for extension of time to file the opening brief until May 24, 2010. BX 15 at 5, 26-28. Respondent repeated verbatim from his motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 08-1490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), Case No. 08-1934 (*Lazo*), consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*), Case No. 09-1643 (*Rasheed*), and Case No. 09-2107 (*Simiusca*) that he

needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." BX 15 at 26. The court granted the motion in part on April 22, 2010, and ordered that the brief and appendix be filed May 12, 2010. BX 15 at 5, 29. Respondent failed to file the brief and appendix as ordered or seek an extension of time in which to do so.

165. On May 19, 2010, the court issued a second Local Rule 45 notice to Respondent, this time due to his failure to file the opening brief and appendix as ordered. BX 15 at 5, 30-31. The notice warned that if Respondent failed to file the brief by June 3, 2010, the court would dismiss the appeal for failure to prosecute pursuant to Local Rule 45. *Id.* at 30.

166. On June 4, 2010, Respondent filed an untimely second motion for extension of time to file the opening brief until July 5, 2010. BX 15 at 6 (docket), 32-34. Respondent represented to the court that his client had filed a writ of *coram nobis* seeking to reopen his criminal case. *Id.* at 32. Respondent testified that if Mr. Andrade could get his conviction reduced from a felony to a misdemeanor, it would enhance his likelihood of success on appeal. Tr. 339:3-11. The court granted the motion and ordered Respondent to file the opening brief and appendix by July 6, 2010. BX 15 at 6, 35. Respondent failed to file the brief and appendix as ordered.

167. On July 21, 2010, the court issued a third Local Rule 45 notice to Respondent, again due to his failure to file the opening brief and appendix as ordered. BX 15 at 6, 36. The notice warned that if Respondent failed to file the brief and appendix by August 5, 2010, the court would dismiss the appeal for failure to prosecute pursuant to Local Rule 45. *Id.* at 36. Respondent did not

respond to the Local Rule 45 notice and the court dismissed his client's appeal on August 6, 2010. BX 15 at 6, 37-38.

168. Respondent testified that Mr. Andrade had been removed from the United States while his appeal was pending, and that he subsequently was apprehended when he attempted to enter the country illegally. Tr. 344:7-19. Respondent testified that the illegal entry would render Mr. Andrade's pending appeal "futile." Tr. 344:17-19. As a result, Respondent did not file a brief, and the appeal was dismissed for want of prosecution. Tr. 349:7-9.

169. Disciplinary Counsel offered no evidence to show that Respondent had learned about Mr. Andrade's arrest for illegally reentering the country prior to filing the motions for extension in this case, or that the representations in those motions were untruthful. We find Respondent's testimony about this appeal to be credible.

***Ali v. Holder*, Case No. 10-1429**

170. On April 15, 2010, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Shafaqat Ali, the petitioner in *Ali* v. *Holder,* Case No. 10-1429. BX 16 at 4 (docket), 6-10. The BIA denied Ali's appeal of the Immigration Court's order that he be removed because of his conviction of an aggravated felony. *Id.* at 8-10.

171. On April 16, 2010, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 16 at 4, 11-14. Respondent's Initial Submissions were due to be filed on or before April 30, 2010. *Id.* at 4, 11.

172. Respondent failed to file his required Initial Submissions and on May 12, 2010, the court issued a docketing follow-up notice to Respondent for his failure to file his Initial Submissions. BX 16 at 4, 17. The notice provided that Respondent's failure to file the Initial Submissions by May 24, 2010, would result in dismissal of his client's case pursuant to Local Rule

45 and also lead to initiation of disciplinary proceedings against Respondent pursuant to Local Rule 46(g). *Id.* at 17.

173. On May 24, 2010, Respondent filed his overdue appearance of counsel and corporate affiliations forms. BX 16 at 4, 18. He failed to file the overdue docketing statement.

174. On June 1, 2010, the court issued a Local Rule 45 notice to Respondent due to his failure to file the docketing statement. BX 16 at 4, 19. The notice warned that if Respondent failed to file the docketing statement by June 16, 2010, the court would dismiss the appeal for failure to prosecute pursuant to Local Rule 45. *Id.* at 19. Respondent failed to file the docketing statement by the date directed but rather filed it on June 21, 2010. *Id.* at 4, 20-23.

175. The Fourth Circuit's briefing order directed Respondent to file the petitioner's opening brief and joint appendix by July 6, 2010. BX 16 at 4, 15-16.

176. Respondent failed to file the opening brief and appendix by July 6, 2010, nor did he seek an extension of time in which to do so. As a result, on July 21, 2010, the court issued a second Local Rule 45 notice to Respondent and warned that if he failed to file the overdue brief and appendix by August 5, 2010, the court would dismiss the case for failure to prosecute. BX 16 at 4, 24.

177. Respondent failed to file the overdue brief and appendix by August 5, 2010, and did not timely seek an extension of time in which to do so. Instead, on August 9, 2010, Respondent filed an untimely motion to extend the time for filing the opening brief and appendix until September 6, 2010. BX 16 at 4, 25-29. Respondent repeated verbatim from his motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 08-1490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), Case No. 08-1934 (*Lazo*), consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*), Case No. 09-1643 (*Rasheed*), Case No. 09-2107 (*Simiusca*), and Case No. 10-1086

(*Andrade*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 25-26. The court granted the motion on August 10, 2010, and ordered Respondent to file the opening brief and appendix by September 7, 2010. *Id.* at 4, 28.

178. On September 6, 2010, Respondent filed a second motion for extension of time to file his brief until October 11, 2010. BX 16 at 4, 29-31. As justification for the motion, Respondent repeated verbatim the statements that he made in his original August 9, 2010 motion. *Id.* at 29 (¶ 2). The court granted Respondent's motion in part and ordered the brief and appendix be filed by October 7, 2010. *Id.* at 5 (docket), 32. Respondent failed to file the opening brief and appendix by that date or seek an extension of time in which to do so.

179. On October 15, 2010, the court issued a third Local Rule 45 notice to Respondent and warned that if Respondent failed to file the overdue brief and appendix by November 1, 2010, the court would dismiss the case for failure to prosecute. BX 16 at 5, 33. Respondent did not respond to the Local Rule 45 notice and the court dismissed his client's appeal on November 9, 2010. *Id.* at 5, 34-35.

180. Respondent admitted that he did not file a brief in this appeal because he did not receive a payment from Mr. Ali to proceed with the appeal. Tr. 356:2-17. He received a $450 check from a friend of Mr. Ali, to pay for the fee to file the Petition for Review, but the friend stopped payment on the check. Tr. 353:16-354:4. Respondent's bank mailed the check to Respondent on June 2, 2010 indicating that the check was being returned because the issuer had stopped payment on it. Tr. 547:9-19; 549:9-12. Respondent admitted that he knew, by no later

than June 21, 2010, that payment had been stopped, Tr. 550:14-17, and that he told Mr. Ali, the following weekend, that he would no longer work on the appeal. Tr. 360:14-361:14. Respondent nevertheless filed two motions for extensions, in August and September 2010. BX 16 (representing to the court that he intended to file a brief, but could not do so within the existing filing deadline due to his workload and the complexity of the case, using his standard "template" motion).

181. When asked why he filed the August and September motions for extensions when he had already decided, and communicated to Mr. Ali, that he would not proceed with the appeal, Respondent testified that he had received an "assurance" from Mr. Ali's father, in Pakistan, that he would "send some money to [his] son" (Tr. 262:7 – 22), and that "the motions are also based on my workload." *Id*. We do not find Respondent's testimony to be credible on this point. He did not reference the purported offer of the father to "send money" until he was asked to explain the inconsistency in his position. He did not indicate whether the father made the purported offer to him, or someone else, or specify when the alleged premise was made. No corroborating evidence was proffered by Respondent. No money was sent by the father. Nor did Respondent advise the Fourth Circuit that his request for an extension was necessitated by the fact that he was awaiting their purported payment from the father before he would proceed to prepare the brief.

182. We thus find, by clear and convincing evidence, that Respondent intentionally misrepresented the reasons he needed extensions to the Fourth Circuit in the motions he filed in August and September 2010. The reason he needed the extensions was because he was unwilling to work on the appeal unless and until he received payment from his client, which he had not received as of the dates the motions were filed. He intentionally withheld this information from the court because he understood that if he had disclosed the actual reasons, he would have had to file a motion to withdraw as counsel. Tr. 363:3-11.

***Ruiz v. Holder*, Case No. 10-1477**

183. On April 15, 2010, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Santos Gladis Ruiz, the petitioner in *Ruiz v. Holder,* Case No. 10-1477. BX 17 at 5 (docket), 6-10. The BIA affirmed the Immigration Court's denial of Ruiz's application for cancellation of removal to El Salvador based upon a finding that she had entered the United States unlawfully. *Id.* at 8-10.

184. On April 28, 2010, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 17 at 5, 11-16. Respondent's Initial Submissions were due to be filed on or before June 12, 2010. *Id.* at 5, 11. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by July 19, 2010. *Id.* at 15.

185. Respondent failed to file his Initial Submissions or his brief when due, and on August 12, 2010, the court issued two Local Rule 45 notices that warned if Respondent failed to file the overdue Initial Submissions and cure his briefing default by August 27, 2010, the court would dismiss his client's appeal for failure to prosecute. BX 17 at 5, 17-18.

186. On August 20, 2010, Respondent filed his overdue Initial Submissions. BX 17 at 5, 19-23.

187. On August 23, 2010, the court issued a third Local Rule 45 notice to Respondent because he failed to file the opening brief and appendix that were due on July 19, 2010. BX 17 at 5, 24. The notice warned Respondent that it would dismiss his client's appeal if Respondent failed to file the brief and appendix by September 7, 2010. *Id.* at 24.

188. On September 6, 2010, Respondent filed a motion to extend the time for filing the opening brief and appendix until November 8, 2010. BX 17 at 5, 25-27. Respondent stated that Ruiz had filed a motion to reconsider with the BIA and submitted an application for Temporary

Protected Status. *Id.* at 25. The court granted the motion in part on September 7, 2010, and ordered Respondent to file the opening brief and appendix by October 7, 2010. BX 17 at 5, 28. Respondent failed to file the brief and appendix by that date or seek an extension of time in which to do so.

189. On October 12, 2010, the court issued a fourth Local Rule 45 notice to Respondent because he failed to file the overdue opening brief and appendix. BX 17 at 5, 29. The notice warned Respondent that it would dismiss his client's appeal if Respondent failed to file the brief and appendix by October 27, 2010. *Id.* at 29.

190. On October 27, 2010, Respondent a second motion to extend the time for filing the opening brief and appendix until November 29, 2010. BX 17 at 5, 30-32. Respondent's motion was identical to his September 6, 2010 motion except that he changed the number of days and extension date requested. On October 28, 2010, the court denied Respondent's motion and dismissed his client's appeal for failure to prosecute pursuant to Local Rule 45. *Id.* at 5, 33-35.

191. The basis for Respondent's appeal in this case was the claim that the Immigration Judge abused his discretion in ruling upon Ms. Ruiz's petition for relief. Respondent subsequently reviewed the entire record in the case, concluded that there was no abuse of discretion, and advised Ms. Ruiz that the appeal in the Fourth Circuit should not be pursued. Tr. 373:19 – 374:10; 377:21 – 378:19. Based on Respondent's advice, Ms. Ruiz agreed to dismiss her appeal. Tr. 380:12 – 381:3. We found Respondent's testimony to be credible.

192. Disciplinary Counsel proffered no evidence as to when Respondent came to his conclusion about the viability of the appeal, and his client's decision to dismiss the appeal. Thus, we have no basis to determine whether the reasons proffered by Respondent for the motions for extension he filed on September 6 and October 27, 2010 were untrue when made.

193. Even though Respondent ultimately believed the appeal to be without merit, and advised his client to forego further proceedings (advice accepted by the client), Respondent did not file a motion for Voluntary Dismissal, pursuant to Fed. R. App. P. 42.

Singh v. Holder, Case No. 10-1767 ("Singh I")

194. On July 6, 2010, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Aniel Waydanand Singh, the petitioner in *Singh v. Holder,* Case No. 10-1767. BX 18 at 5 (docket), 7-12. The BIA granted DHS's appeal to vacate the Immigration Court's termination of Singh's removal proceedings based on his conviction of an aggravated felony, as well as the Immigration Court's order granting Singh's release on bond. *Id.* at 9-12.

195. On July 8, 2010, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 18 at 5, 13-18. Respondent's Initial Submissions were due to be filed on or before July 22, 2010. *Id.* at 5, 13. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by September 27, 2010. *Id.* at 5, 17.

196. Respondent failed to file his Initial Submissions and on July 29, 2010, the court issued a Local Rule 45 notice that warned if Respondent failed to file the overdue Initial Submissions by August 9, 2010, the court would dismiss his client's appeal for failure to prosecute pursuant to Local Rule 45 and initiate disciplinary proceedings against Respondent pursuant to Local Rule 46(g). BX 18 at 5, 19.

197. Respondent failed to file his Initial Submissions as directed and on August 12, 2010, the court issued a second Local Rule 45 notice that warned if Respondent failed to file the overdue Initial Submissions by August 27, 2010, the court would dismiss his client's appeal for failure to prosecute. BX 18 at 5, 20.

198. Respondent filed his overdue appearance of counsel and corporate affiliations disclosure forms on August 24, 2010. BX 18 at 5, 21. Respondent filed his overdue docketing statement on August 26, 2010. *Id.* at 5, 22-25.

199. When Respondent failed to file the opening brief and appendix by the September 27, 2010 deadline, the court issued a third Local Rule 45 notice on September 30, 2010, that warned if Respondent failed to file the overdue opening brief and appendix by October 15, 2010, the court would dismiss his client's appeal for failure to prosecute. BX 18 at 6 (docket), 28.

200. On October 17, 2010, Respondent filed an untimely motion to extend the time for filing the opening brief and appendix until November 15, 2010. BX 18 at 6, 29-31. In his motion, Respondent repeated verbatim from his motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 081490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), Case No. 08-1934 (*Lazo*), consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*), Case No. 09-1643 (*Rasheed*), Case No. 09-2107 (*Simiusca*), Case No. 10-1086 (*Andrade*), and Case No. 10-1429 (*Ali*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." BX 18 at 29-30. Respondent added that he had filed a motion for reconsideration with the BIA that would determine if the Fourth Circuit proceedings should continue. *Id.* at 29.

201. Respondent believed he had a meritorious appeal on the underlying issue (whether the criminal conviction of his client constituted an "aggravated felony"). He prevailed on this issue before the Immigration Board, Tr. 384:3-20, and the Board dismissed the case. Tr. 384:21-385:4.

202. Counsel for the government advised Respondent that she would be filing a motion to dismiss the appeal, on the ground that there was no appealable order of removal once the Immigration Board dismissed the case. Tr. 386:16-21.

203. Respondent was still "debating" whether the government's position was correct, and ultimately concluded that it was. Tr. 398:10-399:14. He subsequently told government counsel that he consented to the case being dismissed. Tr. 386:16-387:10; 391:8-16; 407:9-408:9. Disciplinary Counsel offered no evidence challenging the truthfulness of Respondent's testimony, and we find that testimony to be credible.

204. According to the docket sheet (BX 18 at 5-6), no motion to dismiss was filed by the government, and the appeal was dismissed for want of prosecution. BX 18 at 34.

Singh v. Holder, Case No. 10-2408 ("Singh II")

205. On December 16, 2010, Respondent filed a second Petition for Review on behalf of Aniel Waydanand Singh, this time of the BIA's denial of Singh's motion for reconsideration. *Singh v. Holder,* Case No. 10-2408. (*See Singh v. Holder,* Case No. 10-1767 above.). BX 20 at 4 (docket), 5-8. The BIA dismissed Singh's motion to reconsider its decision that Singh's conviction was a crime of violence that rendered him removable from the United States. *Id.* at 7-8.

206. On December 20, 2010, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 20 at 4, 9-16. Respondent's Initial Submissions were due to be filed on or before January 4, 2011. *Id.* at 4, 9. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by March 10, 2011. *Id.* at 4, 15.

207. Respondent filed an untimely appearance of counsel and corporate affiliations forms on January 7, 2011. BX 20 at 4, 17.

208. Respondent failed to file his docketing statement as directed and, on January 10, 2011, the court issued a docketing forms follow-up notice that warned if Respondent failed to file the overdue docketing statement by January 20, 2011, the court would dismiss his client's appeal for failure to prosecute pursuant to Local Rule 45 and initiate disciplinary proceedings against Respondent pursuant to Local Rule 46(g). BX 20 at 4, 18. On January 20, 2011, Respondent filed his overdue docketing statement. *Id.* at 4, 62-65.

209. On January 11, 2011, the government filed a motion to dismiss the appeal for lack of jurisdiction. BX 20 at 4, 19-60. That same day, the court directed Respondent to file a response to the motion by January 24, 2011. *Id.* at 4, 61.

210. On January 24, 2011, Respondent filed a motion for an extension of time in which to respond to the motion to dismiss until February 14, 2011. BX 20 at 4, 66-68. In his motion, Respondent repeated verbatim from his motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 08-1490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), Case No. 08-1934 (*Lazo*), consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*), Case No. 09-1643 (*Rasheed*), Case No. 092107 (*Simiusca*), Case No. 10-1086 (*Andrade*), Case No. 10-1429 (*Ali*), and Case No. 10-1767 (*Singh*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 66. The court granted the motion and directed Respondent to file the response by February 14, 2011. *Id.* at 4, 69.

211. Respondent failed to file the required response to the motion to dismiss and, on February 15, 2011, the court issued a follow-up notice that required Respondent to remedy his

default by February 25, 2011, and warned that his failure to do so may result in initiation of disciplinary proceedings against him pursuant to Local Rule 46(g). BX 20 at 4, 70.

212. On February 24, 2011, Respondent filed a response indicating that Singh did not oppose the government's motion to dismiss. BX 20 at 4, 71. The court granted the motion to dismiss the appeal on March 2, 2011. *Id.* at 4, 73.

Singh v. Holder, Case Nos. 11-2067 and 12-1102 ("Singh III" and "Singh IV")

213. On September 30, 2011, Respondent filed a third Petition for Review with the Fourth Circuit on behalf of his client, Aniel Waydanand Singh, the petitioner in *Singh v. Holder,* Case No. 11-2067 ("*Singh III*"). BX 23 at 4 (docket), 6-10. The BIA affirmed the Immigration Court's denial of Singh's motion for a continuance to seek relief from a final removal order. *Id.* at 9.

214. On October 4, 2011, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 23 at 4, 11-17. Respondent's Initial Submissions were due to be filed on or before October 18, 2011. *Id.* at 4, 10. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by December 23, 2011. *Id.* at 16.

215. Respondent failed to file his Initial Submissions and on December 15, 2011, the court issued a docketing follow-up notice that warned Respondent if he failed to file the overdue documents by December 20, 2011, the court would initiate disciplinary proceedings against him pursuant to Local Rule 46(g) and dismiss his client's appeal pursuant to Local Rule 45. BX 23 at 4, 18.

216. On December 20, 2011, Respondent filed his overdue appearance of counsel and corporate affiliations forms, but failed to file his overdue docketing statement. BX 23 at 4, 19.

217. On December 20, 2011, Respondent also filed a motion to hold the matter in abeyance pending a ruling on Singh's motion to reconsider that he filed with the BIA. BX 23 at 4, 20-22. The government opposed the motion and the court denied the motion on December 28, 2011. *Id.* at 4, 23-28, 30-31. The court issued an updated briefing schedule and ordered Respondent to file the opening brief and appendix by January 11, 2012. *Id.* at 30.

218. Respondent failed to file the brief and appendix as ordered and on January 20, 2012, the court issued a Local Rule 45 notice that warned Respondent if he did not cure his default by February 6, 2012, the court would dismiss his client's appeal. BX 23 at 4, 32.

219. On January 18, 2012, Respondent filed an additional Petition for Review with the Fourth Circuit on behalf of his client, Aniel Waydanand Singh, the petitioner in *Singh v. Holder,* Case No. 12-1102 ("*Singh IV*"). BX 27 at 4 (docket), 5-8. The BIA denied Singh's motion for reconsideration of its prior decision dismissing his appeal. *Id.* at 8. On January 25, 2012, the court consolidated Case No. 12-1102 (*Singh IV*) with Case No. 12-1102 (*Singh III*) and reset the deadline for Respondent to file the opening brief and appendix until February 24, 2012. *Id.* at 4, 14-17.

220. On January 25, 2012, the court issued a docketing notice and briefing order in Case No. 12-1202, which it sent to Respondent. BX 27 at 4, 16-17. Respondent's Initial Submissions in that case were due to be filed on or before February 8, 2012. *Id.* at 4.

221. Respondent failed to file the opening brief and appendix or docketing statement as ordered and on March 5, 2012, the court issued a second Local Rule 45 notice that warned Respondent if he failed to file the overdue opening brief and appendix, as well as his overdue docketing statement, by March 20, 2012, the court would dismiss his client's appeal. BX 27 at 4, 18.

222. On March 20, 2012, Respondent filed a motion to extend the time for filing the opening brief and appendix until May 7, 2012. BX 27 at 4, 20-22. Respondent repeated verbatim from his initial motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 08-1490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), Case No. 08-1934 (*Lazo*), consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*), Case No. 09-1643 (*Rasheed*), Case No. 09-2107 (*Simiusca*), Case No. 10-1086 (*Andrade*), Case No. 10-1429 (*Ali*), Case No. 10-1767 (*Singh I*) and Case No. 10-2408 (*Singh II*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 20-21.

223. The court granted Respondent's motion in part and ordered that he file the opening brief and appendix by April 3, 2012, and further ordered that: "*A*ny *further request for an extension of time in which to file the opening brief and joint appendix will not be granted.*" BX 27 at 4, 23 (emphasis in original order).

224. On April 6, 2012, Respondent filed his overdue docketing statement. BX 27 at 4, 24-27.

225. Respondent failed to file the opening brief and appendix as ordered and, on April 17, 2012, the court issued a third Local Rule 45 notice that warned Respondent if he failed to file the overdue opening brief and appendix by May 2, 2012, the court would dismiss his client's appeal. BX 27 at 4, 28. Respondent did not respond to the Local Rule 45 notice and the court dismissed his client's consolidated appeals on May 3, 2012. *Id.* at 4, 29-31.

226. Respondent testified that he allowed the cases to be dismissed because his client told him that he had decided to leave the United States and return to his homeland. Tr. 412:19-

413:4. We find this testimony to be credible. Disciplinary Counsel offered no evidence to prove when this decision was made, and thus did not prove that the representations made by Respondent in his motions for extension were false.

***Lizarraga v. Holder,* Case No. 10-1868**

227. On July 29, 2010, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his clients, Carlos and Melfa Grosbina Ramirez De Lizarraga, the petitioners in *Lizarraga v. Holder,* Case No. 10-1868. BX 19 at 5 (docket), 6-11. The BIA dismissed the Lizarraga's appeal of the Immigration Court's denial of their motion for a continuance of their removal proceedings based on Mr. Lizarraga's pending labor certification application. *Id.* at 9-11.

228. On July 30, 2010, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 19 at 5, 12-19. Respondent's Initial Submissions were due to be filed on or before August 13, 2010. *Id.* at 5, 12. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by October 18, 2010. *Id.* at 18.

229. Respondent failed to file his Initial Submissions as directed and, on September 8, 2010, the court issued a Local Rule 45 notice that warned if Respondent failed to file the overdue Initial Submissions by September 23, 2010, the court would dismiss his client's appeal for failure to prosecute. BX 19 at 5, 20.

230. Respondent filed an untimely appearance of counsel and corporate affiliation forms on September 24, 2010, but failed to file his overdue docketing statement. BX 19 at 5, 21.

231. On September 27, 2010, the court dismissed the appeal for failure to prosecute pursuant to Local Rule 45. BX 19 at 5, 22-23.

232. Respondent filed a Motion for Reconsideration with the Immigration Board at the same time he filed his Petition for Review with the Fourth Circuit. Tr. 414:12-17. The Motion for Reconsideration was granted, Tr. 415:1-2; and as a result, Respondent did not pursue the appeal. *Id*. Disciplinary Counsel offered no evidence challenging the truthfulness of Respondent's testimony, and we credit his testimony on this point.

***Bian v. Holder*, Case No. 11-1727**

233. On July 12, 2011, Respondent filed a Petition for Review of a decision issued by the BIA with the Fourth Circuit on behalf of his client, Tajvinder Bian, the petitioner in *Bian v. Holder,* Case No. 11-1727. BX 21 at 4 (docket), 5-9. The BIA affirmed the Immigration Court's denial of Bian's motion to terminate his removal proceedings based upon his conviction of an aggravated felony. *Id.* at 8-9.

234. On July 15, 2011, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 21 at 4, 10-16. Respondent's Initial Submissions were due to be filed on or before July 29, 2011. *Id.* at 4, 10-11. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by October 3, 2011. *Id.* at 4, 15.

235. Respondent failed to file his Initial Submissions and, on August 12, 2011, the court issued a docketing follow-up notice that warned Respondent if he failed to file the overdue documents by August 22, 2011, the court would initiate disciplinary proceedings against him pursuant to Local Rule 46(g) and dismiss his client's appeal pursuant to Local Rule 45. BX 21 at 4, 17.

236. On August 26, 2011, Respondent filed his overdue Initial Submissions. BX 21 at 4, 18-22.

237. Respondent failed to file the opening brief and appendix by the October 3, 2011 deadline or seek an extension of time in which to do so or request to withdraw as counsel of record.

238. On November 8, 2011, the court issued a Local Rule 45 notice that warned Respondent if he failed to file the overdue opening brief and appendix by November 22, 2011, the court would dismiss his client's appeal. BX 21 at 4, 23. Respondent did not respond to the Local Rule 45 notice and the court dismissed his client's appeal on December 1, 2011. *Id.* at 4, 24-25.

239. Mr. Bian's uncle paid the fee necessary to file the Petition for Review with the Fourth Circuit. Tr. 415:6-18. After the Petition was filed, Mr. Bian told Respondent that he did not want to pursue the appeal, because he had been told that he was going to be released from custody. Tr. 415:6-416:11. Accordingly, Respondent allowed the appeal to be dismissed for want of prosecution. *Id*. Disciplinary Counsel offered no evidence challenging the truthfulness of Respondent's testimony, and we credit his testimony on this point.

Mushi v. Holder, Case No. 11-1813 ("Mushi I")

240. On July 27, 2011, Respondent filed a Petition for Review of a decision issued by the BIA with the Fourth Circuit on behalf of his client, Margareth S. Mushi, the petitioner in *Mushi v. Holder,* Case No. 11-1813. BX 22 at 4 (docket), 5-8. The BIA affirmed the Immigration Court's denial of Mushi's motion to reopen her removal proceedings that resulted from her overstaying her visa. *Id.* at 8.

241. On August 3, 2011, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 22 at 4, 9-16. Respondent's Initial Submissions were due to be filed on or before August 17, 2011. *Id.* at 4, 9-10. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by October 24, 2011. *Id.* at 4, 15.

242. Respondent failed to file his Initial Submissions and, on August 25, 2011, the court issued a docketing follow-up notice that warned Respondent if he failed to file the overdue documents by September 6, 2011, the court would initiate disciplinary proceedings against him pursuant to Local Rule 46(g) and dismiss his client's appeal pursuant to Local Rule 45. BX 22 at 4, 17.

243. On September 9, 2011, Respondent filed his overdue Initial Submissions. BX 22 at 4, 18-22.

244. Respondent failed to file the opening brief and appendix by the October 24, 2011 deadline or seek an extension of time in which to do so.

245. On November 4, 2011, the court issued a Local Rule 45 notice that warned Respondent if he failed to file the overdue opening brief and appendix by November 21, 2011, the court would dismiss his client's appeal. BX 22 at 4, 23. Respondent did not respond to the Local Rule 45 notice and the court dismissed his client's appeal on November 30, 2011. *Id.* at 4, 24-25.

246. According to Respondent, the initial appeal he filed for Ms. Mushi was dismissed because he had subsequently filed a Motion for Reconsideration with the Board of Immigration Appeals, raising new arguments. The Second Petition for Review (Mushi II, *infra*.) arose out of the denial of his Motion for Reconsideration. Tr. 424:18-425:3.

***Mushi v. Holder, Case No. 12-1230* ("Mushi II")**

247. On February 17, 2012, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Margareth S. Mushi, the petitioner in *Mushi v. Holder,* Case No. 12-1230 ("*Mushi II*"). BX 29 at 4 (docket), 5-8. The BIA denied Mushi's motion for reconsideration of the BIA's dismissal of her appeal from the Immigration Court's denial of her motion to reopen her removal proceedings. *Id.* at 8.

248. On February 23, 2012, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 29 at 4, 9-15. Respondent's Initial Submissions were due to be filed on or before March 9, 2012. *Id.* at 4, 9-10. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by May 14, 2012. *Id.* at 4, 14.

249. Respondent failed to file his Initial Submissions and, on March 15, 2012, the court issued a docketing follow-up notice that warned Respondent if he failed to file the overdue documents by March 20, 2012, the court would initiate disciplinary proceedings against him pursuant to Local Rule 46(g) and dismiss his client's appeal pursuant to Local Rule 45. BX 29 at 4, 16.

250. On March 19, 2012, Respondent filed his overdue appearance of counsel and corporate affiliations disclosure forms but failed to file his overdue docketing statement. BX 29 at 4, 17. On March 22, 2012, the court issued a Local Rule 46 notice and warned that if Respondent failed to file the overdue docketing statement by April 6, 2012, he would be subject to referral to the Standing Panel on Attorney Discipline. *Id.* at 4, 18. Respondent filed his overdue docketing statement on March 26, 2012. *Id.* at 4, 19-22.

251. Respondent failed to file the opening brief and appendix by the deadline or seek an extension of time in which to do so. On May 15, 2012, the court issued a Local Rule 45 notice warning that if Respondent failed to file the overdue brief and appendix by May 30, 2012, the court would dismiss his client's appeal for failure to prosecute. BX 29 at 4, 23. Respondent did not respond to the Local Rule 45 notice and the court dismissed his client's appeal on May 31, 2012. *Id.* at 4, 24-25.

252. Respondent was retained solely to file the Petition for Review with the Fourth Circuit, "to reserve [Ms. Mushi's] right to appeal." Tr. 418: 7 - 8; 419:3 - 6. As he admitted in his

testimony, he "failed to make a note of the deadlines[,] [a]nd this case got dismissed." Tr. 419:7-12. Once he learned of the dismissal, he told Ms. Mushi what happened, and said that he would file a motion to reopen the appeal. Ms. Mushi said she did not want to pursue the appeal, and "took the files and …left." Tr. 419:13-18.

253. Respondent acknowledged that he "would have to accept some responsibility in this case," Tr. 419:7-8, because he "failed to make a note of the deadlines. And this case got dismissed." Tr. 419:7-12.

Dudley v. Holder, Case No. 11-2412

254. On December 21, 2011, Respondent filed a Petition for Review with the Fourth Circuit on behalf of his client, Garfield Dudley, the petitioner in *Dudley v. Holder,* Case No. 112412. BX 24 at 4 (docket), 6-10. The BIA denied Dudley's motion to reconsider its decision that his criminal conviction for drug trafficking constituted an aggravated felony that rendered him ineligible for cancellation of removal. *Id.* at 9-10.

255. On December 28, 2011, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 24 at 4, 11-17. Respondent's Initial Submissions were due to be filed on or before January 11, 2012. *Id.* at 4, 11-12. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by March 19, 2012. *Id.* at 4, 18.

256. Respondent failed to file his Initial Submissions and, on January 12, 2012, the court issued a docketing forms follow-up notice that warned Respondent if he failed to file the overdue documents by January 18, 2012, the court would initiate disciplinary proceedings against him pursuant to Local Rule 46(g) and dismiss his client's appeal pursuant to Local Rule 45. BX 24 at 4. 18.

257. On January 19, 2012, Respondent filed his untimely appearance of counsel form but failed to file his required docketing statement. BX 24 at 4, 19-20. On January 31, 2012, the court issued a Local Rule 46 notice warning Respondent that he would be subject to referral to the Standing Panel on Attorney Discipline unless he filed his overdue required docketing statement by February 15, 2012. *Id.* at 4, 21.

258. On February 16, 2012, Respondent filed his overdue docketing statement. BX 24 at 4, 22-25.

259. On March 19, 2012, Respondent filed a motion for extension of time to file the opening brief and appendix until April 23, 2012. BX 24 at 4, 26-28. Respondent repeated verbatim from his motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 08-1490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez),* Case No. 08-1934 (*Lazo*), consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*), Case No. 09-1643 (*Rasheed*), Case No. 09-2107 (*Simiusca*), Case No. 10-1086 (Andrade), Case No. 10-1429 (Ali), Case No. 10-1767 (*Singh I*), Case No. 10-2408 (Singh II), and consolidated Case Nos. 11-2067 and 12-1102 (*Singh III* and *IV*), that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 26. The court granted the motion and ordered that Respondent file the opening brief and appendix by April 23, 2012. *Id.* at 4, 29-30.

260. Respondent failed to file the brief and appendix as ordered and on April 24, 2012, the court issued a Local Rule 45 notice that warned Respondent that if he failed to file the overdue opening brief and appendix by May 9, 2012, the court would dismiss his client's appeal for failure to prosecute. BX 24 at 5 (docket), 31.

261. On May 8, 2012, Respondent filed a second motion for extension of time to file the opening brief and appendix until June 11, 2012. BX 24 at 5, 32-34. As justification for the second extension request, Respondent repeated verbatim the reasons set forth in his initial March 19, 2012 motion. *Id.* at 32-33. The court granted the motion and ordered Respondent to file the brief and appendix by June 11, 2012. *Id.* at 5, 35.

262. On June 11, 2012, Respondent filed a third motion for extension of time to file the opening brief and appendix until July 16, 2012. BX 24 at 5, 36-38. As justification for the third extension request, Respondent repeated verbatim the reasons set forth in his March 19, and May 8, 2012 motions. *Id.* at 37. The court granted the motion in part and ordered Respondent to file the brief and appendix by June 25, 2012. *Id.* at 5, 39. The order also stated that: "Any further request for an extension of time in which to file the opening brief and joint appendix will be denied." *Id.* at 39.

263. Respondent failed to file the brief and appendix as ordered and on July 10, 2012, the court issued a second Local Rule 45 notice that warned that if Respondent failed to cure the briefing default by July 25, 2012, the court would dismiss his client's appeal. BX 24 at 5, 40. Respondent did not respond to the Local Rule 45 notice and the court dismissed his client's appeal for failure to prosecute on July 26, 2012. *Id.* at 5, 41-42.

264. Respondent planned to seek a stay of this appeal pending the outcome of a potentially dispositive Supreme Court case. Tr. 428: 4-429:2. While the appeal was pending, Mr. Dudley was taken into custody for another offense, and faced possible deportation as a result. Tr. 429:16 - 22. Respondent planned to file a motion to stay Mr. Dudley's deportation based on a medical condition Mr. Dudley claimed he had. Tr. 430:2-14. However, when Respondent attempted to obtain documentation of the medical condition from Mr. Dudley's doctor, he learned facts that

led him to conclude he could not ethically continue with Mr. Dudley's representation. Tr. 430:11-14; 432: 6-19; Tr.434:17-436:2. We find Respondent's testimony on these points to be credible.

265. Rather than filing a motion with the Fourth Circuit seeking leave to withdraw, Respondent simply told Mr. Dudley's sister that he was unwilling to continue with the case, and that she should get a new lawyer for Mr. Dudley. Tr. 433:13-22; 430:11-14. But, as Respondent testified, "[t]he case in the meantime got dismissed." Tr. 430: 15.

266. Disciplinary Counsel offered no evidence to prove that Respondent came to his conclusion to stop work on the case before any of the motions for extension in this case were filed, and we are unable to determine the date on which he came to that conclusion. Accordingly, there is insufficient evidence to prove, by clear and convincing evidence, that Respondent made a misrepresentation to the Fourth Circuit in any of the extension motions he filed in this case.

Ventura-Fuentes v. Holder, Case No. 12-1087

267. On January 18, 2012, Respondent filed a Petition for Review with the Fourth Circuit of an adverse BIA decision on behalf of his client, Salvador Ventura-Fuentes, the petitioner in *Ventura-Fuentes v. Holder,* Case No. 12-1087. BX 25 at 4 (docket), 5-9. The BIA denied Ventura-Fuentes's motion to reconsider its decision that he failed to establish the required "exceptional and extremely unusual hardship" that his deportation (resulting from his entering the United States without inspection) would cause. *Id.* at 9. The BIA also rejected his argument that it should have remanded the matter for consideration of Ventura-Fuentes's request for asylum. *Id.* at 8-9.

268. On January 23, 2012, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 25 at 4, 10-16. Respondent's Initial Submissions were due to be filed on

or before February 6, 2012. *Id.* at 4, 12-13. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by April 12, 2012. *Id.* at 4, 10.

269. Respondent failed to file his Initial Submissions and on February 16, 2012, the court issued a docketing forms follow-up notice that warned Respondent if he failed to file the overdue documents by February 22, 2012, the court could initiate disciplinary proceedings against him pursuant to Local Rule 46(g) and dismiss his client's appeal pursuant to Local Rule 45. BX 25 at 4, 17.

270. Respondent failed to file the overdue Initial Submissions as ordered and, on February 24, 2012, the court issued a Local Rule 45 notice that warned Respondent if he did not cure his default by March 12, 2012, the court would dismiss his client's appeal. BX 25 at 4, 18. Respondent did not respond to the Local Rule 45 notice and the court dismissed his client's appeal on March 14, 2012, for failure to prosecute. *Id.* at 4, 19-20.

271. Respondent testified that, as was his practice, he immediately filed a Petition for Review to preserve Mr. Ventura's right to appeal. Tr. 439:14-440:3. Thereafter, he told Mr. Ventura that he would not proceed with the appeal unless he was paid to do so, and that the appeal would be dismissed as a result. According to Respondent, Mr. Ventura said he could not afford to pay for Respondent to work on the appellate brief, and he said it was "fine" if the appeal was dismissed, because he had been released from custody. Tr. 440:8-441:7. As a result, Respondent did no further work on the case, and it was dismissed by the Fourth Circuit. We find Respondent's testimony on these issues to be credible.

Sok v. Holder, Case No. 12-1091

272. On January 23, 2012, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Lon Sok, the petitioner in *Sok v. Holder,* Case No.

12-1091. BX 26 at 4 (docket), 5-9. The BIA sustained the government's appeal of the Immigration Court's decision that Sok had failed to establish his eligibility for relief from removal (because of his criminal conviction) pursuant to the Convention Against Torture and ordered him removed. *Id.* at 8-9.

273. The Fourth Circuit issued a docketing notice and briefing order, which it sent to Respondent on January 24, 2012. BX 26 at 4, 10-16. Respondent's Initial Submissions were due to be filed on or before February 7, 2012. *Id.* at 4, 10-11. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by April 13, 2012. *Id.* at 4, 15.

274. Respondent failed to file his Initial Submissions and, on February 16, 2012, the court issued a docketing follow-up notice that warned Respondent if he failed to file the overdue documents by February 22, 2012, the court would initiate disciplinary proceedings against him pursuant to Local Rule 46(g) and dismiss his client's appeal pursuant to Local Rule 45. BX 26 at 4, 17.

275. Respondent failed to file his Initial Submissions as directed and, on February 23, 2012, the court issued a Local Rule 45 notice that warned Respondent if he did not cure his default by March 9, 2012, the court would dismiss his client's appeal. BX 26 at 4, 18.

276. On March 19, 2012, Respondent filed his overdue appearance of counsel and corporate affiliations forms but failed to file his overdue docketing statement. BX 26 at 4, 19. On March 20, 2012, the court dismissed his client's appeal for failure to prosecute pursuant to Local Rule 45. *Id.* at 4, 20-21.

277. Another attorney handled the initial proceedings before the Board, and Respondent was retained after the Board denied the client's request for relief. The client was in custody in

Alabama. Respondent filed a Motion for Reconsideration with the Board, and a Petition for Review with the Fourth Circuit. Tr. 442:2-12.

278. The Board denied the Motion for Reconsideration, but according to Respondent the decision was sent directly to the client, not to Respondent, and he did not learn of the decision until after the time to file an appeal from it had expired. Tr. 442:13-443:4. The client also was released from custody, but did not contact Respondent after his release. *Id*.

279. Respondent nevertheless proceeded with the appeal of the Board's initial decision, and filed his appearance form and list of corporate affiliations, but not his docketing statement. As noted above, the Fourth Circuit dismissed the appeal for failure to prosecute, due to Respondent's failure to timely file his docketing statement. *See* paragraph 272, *supra*.

280. Respondent gave two explanations for his failure to file the docketing statement. Initially, he testified that "court of appeals clerks, managers … [told him that] 'the docketing statement is not a must'…. so the docketing statement is not a [sic] necessary, according to me." Tr. 446:12 - 447:2. We do not find Respondent's testimony to be credible on this point; the court's rules clearly stress the importance of the docketing statement, and Respondent could not identify specifically who allegedly told him it wasn't necessary to file one. When confronted by the fact that the Fourth Circuit dismissed the appeal because of his failure to file the docketing statement, he then testified that the reason he did not file it was because "… I don't see an issue before the 4th Circuit. So I cannot frame an issue based on what that is to pursue this appeal." Tr. 447:3-22. It appears, from Respondent's testimony, that he did believe the issues he raised in his Motion for Reconsideration, filed with the Board, would support a meritorious appeal, but he was precluded from raising those issues on appeal because the 30-day period during which a Petition for Review must be filed had lapsed before Respondent became aware that the Board had denied the motion.

Tr. 447:17-22. No evidence was offered, by either side, as to why the Board sent its decision directly to the client, rather than to Respondent. Nor did Disciplinary Counsel proffer any evidence to prove that Respondent knew that there was no basis for an appeal at the time he filed the Petition for Review that subsequently was dismissed by the Fourth Circuit for failure to prosecute the case.

***Esperanza v. Holder*, Case No. 12-1199**

281. On February 13, 2012, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Yoni Manfredi Nolasco Esperanza, the petitioner in *Esperanza v. Holder*, Case No. 12-1199. BX 28 at 4 (docket), 6-10. The BIA denied Esperanza's motion to reopen his removal proceedings in which his counsel conceded that he was convicted of an aggravated felony and crime of domestic violence that made him removable. *Id.* at 9-10.

282. On February 15, 2012, the court issued a docketing notice and briefing order, which it sent to Respondent. BX 28 at 4, 13-19. Respondent's Initial Submissions were due to be filed on or before March 1, 2012. *Id.* at 4, 13-14. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by May 7, 2012. *Id.* at 4, 18.

283. Respondent failed to file his Initial Submissions and, on March 13, 2012, the court issued a docketing forms follow-up notice that warned Respondent if he failed to file the overdue documents by March 16, 2012, the court would initiate disciplinary proceedings against him pursuant to Local Rule 46(g) and dismiss his client's appeal pursuant to Local Rule 45. BX 28 at 4, 20.

284. On March 19, 2012, Respondent filed his overdue appearance of counsel and corporate affiliations forms but failed to file his overdue docketing statement. BX 28 at 4, 21. On March 20, 2012, the court issued a Local Rule 45 notice that warned if Respondent failed to file the

overdue docketing statement by April 4, 2012, the court would dismiss his client's appeal for failure to prosecute. *Id.* at 4, 22.

285. On March 26, 2012, Respondent filed the overdue docketing statement. BX 28 at 4, 23-26.

286. Respondent failed to file the opening brief and appendix and, on May 10, 2012, the court issued a second Local Rule 45 notice warning that if Respondent failed to cure the default by May 25, 2012, the court would dismiss his client's appeal for failure to prosecute. Respondent failed to file the brief and appendix as directed. BX 28 at 4, 27.

287. On May 29, 2012, Respondent filed an untimely motion for extension of time to file the opening brief and appendix until June 25, 2012. BX 28 at 4, 28-30. Respondent repeated verbatim from his motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 06-1490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), Case No. 08-1934 (*Lazo*), consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*), Case No. 09-1643 (*Rasheed*), Case No. 09-2107 (*Simiusca*), Case No. 10-1086 (*Andrade*), Case No. 10-1429 (*Ali*), Case No. 10-1767 (*Singh I*), Case No. 10-2408 (*Singh II*), consolidated Case Nos. 11-2067 and 12-1102 (*Singh III and IV*), and Case No. 11-2412 (*Dudley*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 28. The court granted the motion and ordered Respondent to file the opening brief and appendix by June 25, 2012. *Id.* at 4, 31. Respondent failed to file the brief and appendix by the due date or seek an extension of time in which to do so.

288. On July 6, 2012, the court issued a third Local Rule 45 notice warning that if Respondent failed to file the overdue brief and appendix by July 23, 2012, the court would dismiss his client's appeal for failure to prosecute. BX 28 at 4, 32.

289. On July 20, 2012, Respondent filed a second motion for extension of time to file the opening brief and appendix until September 10, 2012. BX 28 at 5 (docket), 33-35. As justification for the second request, Respondent repeated verbatim the reasons set forth in his May 29, 2012 motion. *Id.* at 33. The court denied the motion on July 20, 2012, but granted Respondent an additional 15 days to remedy the filing default and warned that if he failed to do so by August 6, 2012, the court would dismiss his client's appeal for failure to prosecute. *Id.* at 5, 36-37.

290. Respondent did not respond to the court's July 20, 2012 order and the court dismissed his client's appeal on August 8, 2012. BX 28 at 5, 38.

291. Respondent's representation of Mr. Esperanza began after the client's prior attorney conceded before the Immigration Court that the client should be removed from the United States. Respondent was retained by the client's mother, and filed a motion asking the immigration judge to reopen the case and allow Mr. Esperanza to withdraw his consent to removal. The motion was denied, and Respondent filed an appeal of the order with the Fourth Circuit. Tr. 450:6 - 451:6. Once the client's family learned that it would cost $800 to $1,000 to have Respondent file a brief in the appeal, they told him they no longer wanted to proceed with the case. Tr. 451:9-20. As a result, Respondent took no further action, and the appeal was dismissed for failure to prosecute. Tr. 452:16 - 453:8.

292. We were not presented with evidence sufficient to allow us to determine when Respondent completed his initial evaluation of the case and when he advised the client's family how much it would cost to proceed with the appeal. As a result, we cannot find, by clear and

convincing evidence, that the two motions for extension file by Respondent contained misrepresentations to the Fourth Circuit.

Bowen v. Holder, Case No. 12-1418

293. On April 3, 2012, Respondent filed a Petition for Review of a BIA decision with the Fourth Circuit on behalf of his client, Adina Dehenda Bowen, the petitioner in *Bowen v. Holder,* Case No. 12-1418. BX 30 at 4 (docket), 5-15. The BIA denied Bowen's appeal of the Immigration Court's determination that his conviction of an aggravated felony crime of violence (assault in the 1st degree) rendered him removable. *Id.* at 9-11.

294. The court issued a docketing notice and briefing order, which it sent to Respondent on April 3, 2012. BX 30 at 4, 16-22. Respondent's Initial Submissions were due to be filed on or before April 17, 2012. *Id.* at 4, 16-17. The briefing order directed Respondent to file the petitioner's opening brief and joint appendix by June 22, 2012. *Id.* at 4, 21.

295. Respondent failed to file his Initial Submissions as directed and on April 30, 2012, the court issued a Local Rule 45 notice warning Respondent if he failed to file the overdue Initial Submissions by May 15, 2012, the court would dismiss his client's appeal for failure to prosecute. BX 30 at 4, 23. On May 12, 2012, Respondent filed his overdue Initial Submissions. *Id.* at 4, 24-28.

296. Respondent failed to file the opening brief and appendix by the due date or seek an extension of time in which to do so. On July 6, 2012, the court issued a second Local Rule 45 notice that warned that if Respondent failed to file the overdue brief and appendix by July 23, 2012, the court would dismiss his client's appeal for failure to prosecute. BX 30 at 4, 29.

297. On July 20, 2012, Respondent filed a motion for extension of time to file the opening brief and appendix until August 20, 2012. BX 30 at 4, 30-32. Respondent repeated

verbatim from his motions in Case No. 06-1058 (*Villanueva-Rodriguez*), Case No. 08-1490 (*Laremont*), Case No. 08-1847 (*Morales-Rodriguez*), Case No. 08-1934 (*Lazo*), consolidated Case Nos. 09-1029 and 09-1260 (*Alvarenza-Reyes*), Case No. 09-1643 (*Rasheed*), Case No. 09-2107 (*Simiusca*), Case No. 10-1086 (*Andrade*), Case No. 10-1429 (*Ali*), Case No. 10-1767 (*Singh I*), Case No. 10-2408 (*Singh II*), consolidated Case Nos. 11-2067 and 12-1102 (*Singh III and IV*), Case No. 11-2412 (*Dudley*), and Case No. 12-1199 (*Esperanza*) that he needed additional time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because Respondent was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *Id.* at 30. The court granted the motion in part and ordered that Respondent file the opening brief and appendix by July 27, 2012. *Id.* at 4, 33-34.

298. Respondent failed to file the opening brief and appendix and the court dismissed his client's appeal on August 15, 2012 for failure to prosecute. BX 30 at 4, 35-36.

299. Respondent advised Ms. Bowen to proceed with an appeal, because he thought she had "a good case." Tr. 467:11-17. Her family told him they did not have the money for an appeal. Tr. 467:18-22. Respondent said he would pay the initial filing fee himself, and did so. *Id*.

300. Respondent was unwilling, however, to proceed with the brief on appeal without payment from the family, and did not file a brief because he never received payment to do so. Tr. 471:3-17.

301. Respondent testified that at the time he filed his initial request for an extension on the brief, he was waiting for the client's family to decide whether they would proceed and pay for the brief. Tr. 469:19 - 470:12. Disciplinary Counsel offered no evidence to prove that Respondent

knew he would not proceed with the brief at the time he requested the extension, and we credit Respondent's testimony on this point.

Summary of the Evidence: Respondent's Failure to File Initial Submissions

302. In each of the foregoing cases, Fourth Circuit Local Rules required Respondent to file three documents ("Initial Submissions") within 14 days of the filing of the Petition for Review: (1) an entry of appearance form; (2) a docketing statement; and (3) a disclosure of corporate affiliations. BX 36 at 2, 9-10, 17 (Local Rules 3(b), 26.1, and 46(c)); BX 37; Tr. 48-59 (Tousley). Respondent was familiar with these forms, and knew that the Local Rules required him to file them. BX B at 2, ¶ 5; BX D at 1, ¶ 5 (Respondent's admission); Tr. 571-73. In testimony, Respondent acknowledged that he was obligated to comply with court rules and standards. Tr. 569-70; Tr. 569 ("the law is the same for everybody").

303. In most of the cases, the Court Clerk issued a docketing notice on the same day Respondent filed the Petition for Review, setting forth the specific dates by which Respondent was required to file his Initial Submissions. Appendix A, Column B. The docketing notices warned Respondent that his failure to comply with the filing deadlines might result in dismissal of his client's appeal or the imposition of sanctions pursuant to Local Rules 45 and 46.[7] *See, e.g.,* BX 3 at 6-7 (Notice from Clerk of Court to Respondent setting forth filing requirements in *Lazo* matter).

304. The docketing statement serves multiple purposes that include "provid[ing] the Clerk of the Court of Appeals at the commencement of an appeal with the information needed for effective case management" and "assist[ing] counsel in giving prompt attention to the substance of

[7] Local Rule 46(c) provides that the Court may discipline a member of the Fourth Circuit Bar for "[c]onduct with respect to this Court which violates the rules of professional conduct or responsibility in effect in the state or other jurisdiction in which the attorney maintains his or her principal office, the Federal Rules of Appellate Procedure, the local rules of this Court, or orders or other instructions of this Court."

an appeal." BX 36 at 2; Tr. 52-53 (Tousley) (the Docketing Statement "is a necessary tool for—to give the clerk's office the information they need to start the case.").

305. Respondent failed to file timely entry of appearance and corporate disclosure forms in all 28 of the foregoing cases requiring them.[8] In addition, Respondent failed to file timely docketing statements in 27 of the 28 cases that required them. Appendix A, Columns E and F. As a result, the Fourth Circuit issued a total of 36 follow-up notices (18 follow-up notices and 18 Local Rule 45 and/or Local Rule 46 notices) that identified Respondent's failure to comply with the Court's deadlines and set a date certain for him to cure his filing deficiencies. Appendix A, Columns D, E, K.

306. Thereafter, Respondent filed untimely, and sometimes incomplete, Initial Submissions in 27 of the 28 cases. Appendix A, Column F. In one case, Respondent never filed a Docketing Statement and the Fourth Circuit dismissed the matter based solely on Respondent's failure to do so. BX 9 at 5, 20-21 (*Diagana*).[9]

Summary of the Evidence: Respondent's Motions for Extension of Time

307. Respondent knew at the outset of each Fourth Circuit case that the Court required him to file a brief and appendix approximately two and one-half months from the docketing date.

[8] For purposes of filing Initial Submissions, there were 28 cases at issue here, because the Court consolidated two of the *Alvarenza-Reyes* matters and two of the Singh matters. BX 10 at 4 (consolidating Case No. 09-1260 with 09-1029 (BX 8)); BX 27 at 4 (consolidating Case No. 12-1102 with Case No. 11-2067 (BX 23)). In the first *Alvarenza-Reyes* and *Singh* matters, Respondent late-filed the Initial Submissions in piecemeal fashion in the initial cases and filed an untimely Docketing Statement in the second *Alvarenza-Reyes* matter. BX 8 at 5-6, 20-24, 28; BX 10 at 4, 15-18; BX 23 at 4-5, 19, 43-46.

[9] Respondent filed an untimely Docketing Statement after the Fourth Circuit dismissed the *Diagana* case. BX 9 at 5, 21-25.

Appendix A, Columns C and F. Respondent failed to file a timely brief and appendix, or any brief at all, in 28 of the 29 cases at issue here. Appendix A, Columns J and K.

308. Respondent filed 43 motions for extensions of time in 18 of the 29 Fourth Circuit matters at issue. Appendix A, Column H. Twenty-eight of the 43 motions were themselves untimely, some by several months. *Id.* (untimely motions indicated by boldface type). Fourteen were filed on the date the brief and appendix were due. Appendix A, Columns G and H.

309. Local Rule 31(c), governing extensions, provides:

> Extensions will be granted only when extraordinary circumstances exist. A motion for an extension of time to file a brief must be filed well in advance of the date the brief is due and must set forth the additional time requested and the reasons for the request. The Court discourages these motions and may deny the motion entirely or grant a lesser period of time than the time requested.

BX 36 at 11.

310. Respondent used a "template" for his motions for an extension, representing that he needed extra time "in order to prepare and file a proper and detailed brief as the legal issues to be addressed by the brief are complex and require additional research that cannot be completed before the deadline" and because he was a sole practitioner who "has had to contend with and balance a heavy litigation schedule." *E.g.,* BX 5 at 25 (*Laremont*). Respondent repeated these reasons throughout the 43 motions, either verbatim or in substantial part. *See, e.g.,* BX B at 50, ¶ 238 (citing examples where Respondent used verbatim language in multiple cases). In 5 of the 18 cases in which Respondent filed a motion for extension, Respondent included an additional reason for the request. *Laremont* (Respondent not served with a CD containing the administrative record) (BX 5 at 31 (¶ 4)); *Alvarenza-Reyes I* (Respondent couldn't contact his client, who had been removed from the United States) (BX 8 at 53-54); *Rasheed* (government had supplemental administrative record; Respondent's scheduled international travel) (BX 12 at 24-25, 28-29, 33-

34); *Simiusca* (Respondent's scheduled international travel) (BX 14 at 31, 36); and *Andrade* (client filed writ pro coram nobis) (BX 15 at 32).

311. Although the Court granted most of Respondent's "template" motions, it denied some, and ordered that no further extensions would be granted in others. Appendix A, Columns H and I; BX 7 at 54 (*Lazo*; extension denied); BX 14 at 39 (*Simiusca*; extension denied); BX at 33 (*Ruiz*; extension denied); BX 28 at 36 (*Esperanza*; extension denied); BX 8 at 53-54, BX 10 at 38 (*Alvarenza-Reyes)* (no further extension.);[10] BX 18 at 32-34 (Singh) (Court denied untimely motion as moot).

312. Disciplinary Counsel offered no direct evidence to rebut or controvert Respondent's representations in any particular case that the issues in each case were "complex," and that his docket and schedule made it difficult or impossible to comply with the briefing schedule in each case. However, Respondent's own testimony about the way he generally handles these types of cases is sufficient to establish that in at least some of the cases at issue here, Respondent misrepresented to the Court the reason he was requesting an extension.

313. Respondent testified that in every motion for extension that he filed it was his intent to file the brief on the date he requested. In three cases at issue here *Lazo II*, *Ali*, and *Bowen* – the Hearing Committee finds this testimony is not credible, and inconsistent with other testimony by Respondent.

314. Respondent testified that, after he filed the Petition for Review, it was his practice to evaluate the appeal, advise the client of the likelihood of success and specify additional fees and

[10] In the *Alvarenza-Reyes* matter, the Court ordered Respondent not to file any more motions for extension of time after he filed five motions using his "template." BX 8 at 32. Respondent disregarded this order, and after the Court issued a second Rule 45 notice based on Respondent's failure to file his brief and appendix, he filed his sixth motion for extension on September 18, 2009, nine months after he had filed the Petition for Review. *Id.* at 53-56.

costs that would need to be paid to Respondent before he would begin working on the brief. Tr. 153:12-21; Tr. 161:22 – 162:13; Tr. 175:13 – 20. Respondent would not begin working on the brief unless and until he was paid by the client to do so. Tr. 158:15 – 159:12. If the client did not pay Respondent the fees and costs requested by Respondent, he would do no further work on the case, and allow the appeal to be dismissed by the Fourth Circuit for want of prosecution. Tr. 167:19 – 169:1.

315. In *Quinteros-Dubon, Lazo II*, *Ali* and *Bowen*, Respondent testified that he was not willing to begin work on the appellate brief unless and until he first received payment from the client, and that in each of these cases he was never paid by the client. *Quinteros-Dubon*, Tr. 167:4-169:19; *Lazo*, Tr. 183:6-10, *Ali*, Tr. 353-55, 363-3-8; *Bowen*, Tr. 467-70. This was consistent with Respondent's experience: "most of the time" his clients were unwilling to pay for the preparation of an appellate brief. Tr. 161:22-162:13. Thus, Respondent did not know whether a brief would be filed at all, and reasonably could have expected, based on his experience, that no brief would be filed. Indeed, in the 29 cases at issue here, Respondent only filed one appellate brief.

316. For each of Respondent's extension motions, the Court or the Clerk had to docket the filing, determine what action to take, and issue an order ruling on the motion. Tr. 56-63 (Tousley); Tr. 519-20. Similarly, every time Respondent failed to file the brief and appendix as ordered, the Court or the Clerk had to take additional steps to manage its docket by issuing Rule 45 and other notices, as well as dismissal orders and mandates in cases Respondent admittedly had no intention to pursue, for a variety of reasons. Tr. 63-65 (Tousley); Appendix A, Columns K and L; Appendix B.

317. In each of the cases, the government was required to prepare and file the sometimes voluminous Administrative Record from the proceedings below. Tr. 59 (Tousley) (briefing order

directs when government must file the administrative record); *see, e.g.,* BX 5 at 17 (order setting deadline for filing administrative record); Tr. 237 (Respondent received the "big" administrative record in the *Alvarenza-Reyes* case).

Summary of the Evidence: The Fourth Circuit's
Dismissal with Prejudice of each of Respondent's Cases

318. Respondent failed to file a brief in 28 of the 29 appeals he filed. In the only case in which he filed a brief – the *Laremont* appeal – the Court dismissed the appeal because Respondent failed to file the Appendix to the brief. BX 5 at 7, 95. No brief was filed in the 28 other cases.

319. In ten of the 28 cases, Respondent did not even file a motion for an extension of time in which to file the brief and appendix, and did not respond to the Fourth Circuit's Rule 45 and/or other notices that ordered him to file the brief and appendix by a date certain or risk dismissal of his client's case with prejudice as well as possible disciplinary action against Respondent. Appendix A, Columns H, J, and K.

320. Respondent failed to dismiss or withdraw the Petitions for Review he filed in 21 cases where the clients expressly advised him that they did not want to continue with the appeal. Appendix B, Column C.

321. The Fourth Circuit dismissed all of Respondent's cases for failure to prosecute, pursuant to Local Rule 45. Appendix A, Column L.

322. Respondent testified that he followed a blanket policy of never withdrawing from, or moving to voluntarily dismiss, appeals that his clients no longer wanted (or could not afford) to pursue, or that he considered to be non-meritorious. Respondent expressed the view that voluntarily dismissing an appeal "would have been more harmful" to his client than having a case dismissed pursuant to Local Rule 45 for failure to prosecute. Tr. 154, 392-94 (Respondent believed his clients

were better served if the Fourth Circuit dismissed their cases for failure to prosecute than if he moved to voluntarily dismiss the case, even when the clients decided they did not want to continue.); *see also* Tr. 401-03 (by not voluntarily dismissing his client's appeal, Respondent believed that he was acting "in the interest of [his] client"); Tr. 154 (Respondent "always leave[s] the venue open so they can always come back and have the cases reopened.").

323. Respondent testified that if an appeal was dismissed for failure to prosecute, "it can be reopened if there's ample cause, and I don't want to close the opportunities and doors of my client, whatever, by withdrawing the case where he cannot open." Tr. 247; *see also* Tr. 392 (as a strategic matter, Respondent would never move to dismiss appeal but would leave it to the court to dismiss the appeal for failure to prosecute).

324. Respondent never researched the legal basis for his belief that his clients could seek at any time to reopen their cases after the Fourth Circuit dismissed for failure to prosecute. Tr. 394-96. He stated that he relied on "the Constitution," rather than case law or precedent. Tr. 396. Respondent never took any steps to confirm his assumptions that a Rule 45 dismissal would allow his client to resurrect the case in the future. Tr. 569-71.

325. Respondent testified that, in the future, he would never file a motion to withdraw as counsel, even if his client provided him with information that made it unethical for Respondent to continue with the representation. Tr. 286-91. Respondent "would not do that [file a motion to withdraw as counsel], even [in] the future" because he believes that his withdrawal would close the "window of opportunity" for his client to come back in the future. Tr. 170-71. Respondent could not explain how his remaining in the case as counsel instead of moving to withdraw would improve his client's position. Tr. 171.

326. Respondent's position that he would never withdraw from a client's case conflicted with his testimony that when one client (Ali) did not pay him, "[t]hat is when I have to withdraw." Tr. 362-63. Yet even in that case, Respondent did not seek to withdraw as counsel and did not notify the court that he did not intend to go forward with the appeal.

FAILURE TO COOPERATE WITH
DISCIPLINARY COUNSEL'S INVESTIGATION (COUNT II)

327. On August 13, 2012, Disciplinary Counsel served Respondent personally with a written inquiry about his actions in the Fourth Circuit cases. BX 31. Disciplinary Counsel's inquiry letter contained specific questions pertaining to each of the cases at issue and included copies of the PACER docket sheets for each of the cases.[11] *Id.* Disciplinary Counsel also enclosed copies of the applicable Federal and Fourth Circuit Local Rules of Appellate Procedure, as well as copies of the Fourth Circuit's Entry of Appearance, Disclosure of Corporate Affiliations and Docketing Statement forms (Initial Submissions). *Id.* at 194-212.

328. Disciplinary Counsel requested Respondent's written response to the inquiry by September 17, 2012, and advised that because of the number of cases involved, he was being afforded 35, rather than 10, days to respond. BX 31 at 18.

329. Respondent was aware of the September 17, 2012 deadline for submitting his response, as confirmed during an August 20, 2012 meeting at Disciplinary Counsel's office and again in writing on August 21, 2012. *See* Tr. 476-77; BX 32 at 1-2.[12] Respondent did not respond

[11] Disciplinary Counsels letter included one case (*Mansoor*) that was not included in the Specification. BX 31 at 17-18.

[12] Disciplinary Counsel's letter stated:

> As we also discussed during our meeting [yesterday], your response to this matter must be received in our office no later than September 17, 2012. We have provided you this extraordinarily lengthy response period in order to

to Disciplinary Counsel's inquiry by September 17, 2012, nor did he request additional time to do so. Tr. 560.

330. Disciplinary Counsel submitted the Specification of Charges for Contact Member Review on October 12, 2012; the charges were approved on or about November 19, 2012. BX B at 1, 55. Disciplinary Counsel served Respondent personally on November 20, 2012, with the Specification of Charges, Petition Instituting Formal Disciplinary Proceedings, as well as other documents, including copies of Rule XI of the District of Columbia Court of Appeals Governing the Bar and the Rules of the Board on Professional Responsibility. BX C.

331. Respondent's answer to the Specification of Charges was due to be filed by December 10, 2012. Board Rule 7.5. Respondent did not file his answer to the Specification of Charges by that date, nor did he file his overdue response to Disciplinary Counsel's August 13, 2012 inquiry letter.

332. Respondent retained counsel after being served with the Specification of Charges. Disciplinary Counsel wrote to Respondent's counsel on February 20, 2013, and enclosed another copy of Disciplinary Counsel's August 13, 2012 inquiry letter, with attachments, and the August 21, 2012 follow-up letter to Respondent, and again requested Respondent's response. BX 33 at 1-2.

333. In a pretrial order of February 27, 2013, the Hearing Committee Chair gave Respondent until March 5 to respond to Disciplinary Counsel's inquiry letter. Instead, on March 11, 2013, Respondent filed a response to what he characterized as the "questionnaire" served on him seven months earlier. BX 35. Respondent wrote, "I reserve my right to produce evidence at

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> avoid the need for extensions of time and to permit us to further our investigation in this matter.

the time of hearing to all the questions, which are not allegations, through proper witnesses." BX 35 at 2. He contended that his clients, and not he, would have to answer Disciplinary Counsel's inquiry and "[u]ntil such time, I reserve my responses." *Id.* at 3. Respondent attached a signed copy of Disciplinary Counsel's questions, which he did not answer. *Id.* at 3-16. Respondent chose to not respond to the Disciplinary Counsel's questions in any substantive way until he testified during the hearing in this matter. Tr. 565-66.

334. Disciplinary Counsel's inquiry posed specific factual questions, seeking information that Respondent alone possessed. BX 31. Respondent refused to provide this information, hampering Disciplinary Counsel's investigation and presentation of evidence at the hearing. Tr. 563-66.

335. For example, Respondent testified for the first time in his case-in-chief about various reasons why he did not file a brief and appendix or otherwise comply with the Fourth Circuit rules and orders in each of the cases – information that was requested in Disciplinary Counsel's inquiry letter. Tr. 564-66. Respondent also testified about conversations he purportedly had with unnamed staff at the Fourth Circuit, which purported to justify his actions. He also failed to disclose or provide the affidavits he claimed he had from several witnesses who had information relevant to Disciplinary Counsel's inquiry. Disciplinary Counsel issued a subpoena to Respondent to produce all information pertaining to each client matter, but Respondent did not provide those affidavits in response to the subpoena. BX 33 at 4; Tr. 463-64. (Respondent testified that he collected affidavits for six of the matters).

CONCLUSIONS OF LAW

Disciplinary Counsel alleges that Respondent's conduct violated the following provisions of the D.C. Rules of Professional Conduct:

a. Rule 3.3(a), which provides that a lawyer "shall not knowingly . . . make a false statement of fact or law to a tribunal." Disciplinary Counsel contends that Respondent violated this Rule by making misrepresentations in numerous motions for extensions he filed in the appeals at issue.

b. Rule 3.4(c), which provides that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal." Disciplinary Counsel contends that Respondent violated this Rule by "consciously" failing to file docketing statements, briefs and other submissions when they were due.

c. Rule 4.4(a), which provides that a lawyer "shall not use means that have no substantial purpose other than to . . . delay." Disciplinary Counsel contends that Respondent violated this Rule by filing motions for extensions that had no substantial purpose other than to delay the appeal.

d. Rule 8.4(c), which prohibits a lawyer from "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation." Disciplinary Counsel contends Respondent violated this Rule by making false representations regarding his purported need for an extension in numerous motions filed in connection with the appeals at issue.

e. Rule 8.4(d), which provides that "[i]t is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice." Disciplinary Counsel contends that Respondent violated this Rule by: (1) filing numerous motions for extensions of deadlines which misstated the reasons for the requested extensions, causing an

unnecessary expenditure of time and resources by the Fourth Circuit; and (2) by failing to cooperate with Disciplinary Counsel's investigation of this case.

f. Rule 8.1(b), which provides that a lawyer ". . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for information from [a] disciplinary authority." Disciplinary Counsel alleges that Respondent violated this Rule by his "willful failure" to respond timely to Disciplinary Counsel's written requests for information regarding the appeals at issue.

Before we proceed with our analysis of each of these charges, we want to address what the Hearing Committee does not consider to be at issue in this case.

First, even though some evidence was proffered at the hearing that Respondent filed Petitions for Review before he was authorized to do so by a client, Disciplinary Counsel states that "[t]he Specification of Charges addressed solely Respondent's conduct . . . *after* filing the Petitions for Review . . . and not the filing of the Petitions themselves . . ." (ODC Post-Hearing Brief, p.8, ¶ 15) (emphasis in original).

Second, although Disciplinary Counsel argues in its Post-Hearing Brief that Respondent made misrepresentations in the entry of appearance forms he filed with the Fourth Circuit,[13] there is no allegation in the Specification of Charges that Respondent made a misrepresentation in any of his entry of appearance forms, or that he violated an ethical obligation by making misrepresentations in his entry of appearance forms. The only allegation in the Specification of

[13] "By entering his appearance in each of the cases, Respondent affirmatively represented to the Court that he acted with authority to represent his clients in the appeal. In many cases, Respondent knew that he did not have such authorization, and deliberately withheld this information from the Court. Indeed, Respondent filed misleading entries of appearance in numerous cases where he had no authority or direction from his clients to advance an appeal on their behalf." ODC Post-Hearing Brief p.16 ¶ 39.

Charges relating to Respondent's entry of appearance forms is that Respondent "failed to file or otherwise timely file any or all of the required Initial Submissions [defined to include appearance of counsel forms] in 29 of the 30 Fourth Circuit cases, sometimes requiring the Court to issue multiple notices and warnings regarding Respondent's defaults." Specification of Charges, ¶ 11. Thus, we decline to consider whether any alleged misrepresentations in Entry of Appearance forms filed by Respondent constitute ethical violations. *See In re Williams*, 464 A.2d 115, 118-19 (D.C. 1983).[14]

Third, although Disciplinary Counsel argues, in its Post-Hearing Brief, that Respondent "delayed the judicial process through . . . failing to withdraw the appeal and/or his appearance in cases where he knew there was no basis for pursuing the appeal" (ODC Post-Hearing Brief, p.29), there are no allegations in the detailed Specification of Charges asserting that Respondent committed an ethical violation by failing to file a motion to voluntarily dismiss an appeal when he purportedly was obligated to do so. In identifying the Fourth Circuit "Court Rules and Procedures" at issue in this case, Disciplinary Counsel does not cite Rule 42, the provision governing Voluntary Dismissals. (Specification of Charges, ¶¶ 5-15). Nor does Disciplinary Counsel cite Rule 42, or any alleged failings there under, in any of the specific cases at issue. (Specification of Charges, ¶¶ 16-252). Likewise, Disciplinary Counsel does not brief, in either its Post-Hearing Brief or its

[14] *Cf. In re Hager*, 812 A.2d 904 (D.C. 2002). In *Hager*, Respondent argued that he was not on notice that a specific provision in a settlement agreement otherwise at issue would be considered as an ethical violation; the Court rejected the argument because the Settlement Agreement – which was at the very heart of the case – had been "highlighted" by Disciplinary Counsel as the source of the alleged ethical violations. In this case, not only did Disciplinary Counsel fail to allege that Respondent acted unethically by allegedly misrepresenting his authority to represent his clients ; it also affirmatively slated that it was *not* contending that the Petition for Review filed by Respondent – in which Respondent also represented that he was acting on behalf of his clients – constituted an ethical violation. By not alleging that the Entry of Appearance forms themselves gave rise to an ethical violation, Disciplinary Counsel denied Respondent the opportunity to come forward with evidence to dispute this claim.

Post-Hearing Reply Brief, whether or to what extent Rule 42 obligates an attorney to file a motion to voluntarily dismiss an appeal, or whether the evidence establishes a violation of Rule 42 by Respondent, much less an ethical violation. Indeed, Disciplinary Counsel's Post-Hearing Brief seems to acknowledge that the Specification of Charges does not directly allege an ethical violation resulting from any failure to file a motion to voluntarily dismiss an appeal, because it argues that Respondent's "failing to dismiss or withdraw the petitions for review in cases where the clients expressly advised him that they did not want to continue with the appeal" should be considered as "evidence in aggravation of proposed sanctions, rather than as evidence of an ethical violation alleged in the Specification of Charges." Thus, we decline to consider whether any alleged failure by Respondent to voluntarily dismiss an appeal constitutes an ethical violation. *See Williams*, 464 A.2d at 118-19.

Violation of Rule 3.3(a)

Rule 3.3(a) provides that a lawyer "shall not knowingly . . . make a false statement of fact or law to a tribunal." Disciplinary Counsel contends that Respondent violated this Rule by misrepresenting the reasons he was seeking an extension of a filing deadline in 43 motions for extension filed in connection with 17 of the appeals at issue.

Comment [2] to Rule 3.3(a) provides that "[t]here may be circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation." Such is the case here.

Disciplinary Counsel alleges (ODC Post-Hearing Brief, p. 35), and Respondent admits (Respondent's Post-Hearing Brief, p.13, ¶ 25), that Respondent used a "template" motion for seeking extensions of filing deadlines in the Fourth Circuit. Respondent filed 43 of motions for extension in the appeals at issue; and each one asserted the same two reasons justifying the request: first, "the legal issues to be addressed by the brief are complex and require additional research that

cannot be completed before the deadline"; and second, because he was a sole practitioner who "has had to contend with and balance a heavy litigation docket." *See*, *e.g*. BX 5 at 25. In a few instances, Respondent added an additional reason for his requested extension: *Laremont* (Respondent not served with a CD containing the administrative record) (BX 5 at 31 (¶ 4)); *Alvarenza-Reyes I* (Respondent couldn't contact his client, who had been removed from the United States) (BX 8 at 53-54); *Rasheed* (government had supplemental administrative record; Respondent's scheduled international travel) (BX 12 at 24-25, 28-29, 33-34); *Simiusca* (Respondent's scheduled international travel) (BX 14 at 31, 36); and *Andrade* (client filed writ *pro coram nobis*) (BX 15 at 32) Disciplinary Counsel alleges, in each case, that the proffered reasons for an extension are not the "template" reasons set forth therein – the "complexity" of the issues and counsel's "busy schedule."

Respondent acknowledged that he used a "template" motion for extension in each of the cases at issue, which did not set forth the actual factual basis for the request in each case: ". . . in each case, sir, it's different. The facts are different. The situation is different . . . but the motions I file, they're the same motions. That's documented. That's documented. It's [a] template . . . ." Tr.195:6-10. Respondent justified this practice because "these are consent motions." Tr. 194:12-195:2.

It may or may not have been true that the issues in each case at issue were "complex," or that Respondent had a "heavy litigation docket" at the time he filed the motions. As discussed below, in most of the cases at issue, Disciplinary Counsel proffered no evidence to show issues on appeal were not complex, or to show that Respondent's representations about his docket, and his ability to handle it, were false. As a result, in most of the cases, Disciplinary Counsel has not

proved, by clear and convincing evidence, that Respondent's representations about the complexity of the issues in each case, and the state of his docket, were false.

On the other hand, we were presented with clear and convincing evidence that, in three cases, Respondent failed to disclose a principal or substantial reason for his request, wholly apart from the reasons proffered to the court – typically, his client's refusal or inability to pay Respondent to prepare the brief on appeal.

In the 17 appeals in which such motions were filed, we find that Disciplinary Counsel proved, by clear and convincing evidence, that Respondent failed to disclose the principal (or only) reason for the requested extensions in only three[15] of those cases, as set forth below.

Lazo II: While we do not have evidence sufficient to persuade us that the initial motions for extension filed in this contained misrepresentations, we do find, by clear and convincing evidence, that the motions filed on May 1, 2009 and June 2, 2009 did not accurately set forth the reasons why Respondent could not file the brief when due. Respondent advised the Court on March 9, 2009, that he could not "continue any further" due to his client's inability to pay court costs, and asked for a waiver of those costs, which the Court immediately denied. Thereafter, Respondent filed two more "template" motions for extension before the appeal was dismissed by the Court, yet we find that the reason Respondent could not, or would not, meet the specified briefing deadlines was his refusal to prepare a brief until he received payment from his client, consistent with his admitted practice for handling such appeals.

[15] At the hearing, Respondent admitted that he was unwilling to prepare a brief in *Quinteros-Dubon* unless and until he received payment from his client to do so. Tr. 167:4 – 169:19. The appeal was dismissed because the client never made such a payment, and as a result, Respondent never prepared and filed the brief. *Id*. However, because Disciplinary Counsel did not offer as evidence the motions for extension filed in *Quinteros-Dubon*, we cannot determine whether those motions failed to disclose the principal reason for the requested extension.

Ali: Disciplinary Counsel contends that the "real reason" Respondent filed two motions for an extension in this case was that Respondent was unwilling to begin work on the case unless and until he was paid, and he had not been paid by the client at the time the motions were filed. We find that Disciplinary Counsel has proven, by clear and convincing evidence, that the principal reason Respondent filed the motions for extension was because his client did not pay him, a reason that was not disclosed in the motions.

Respondent testified that he told the client that he had to pay for the appeal. Tr. 353: 16-17. Thereafter, he received a check from a friend of the client, but a "Stop Payment" had been entered, which prevented him from cashing the check. Tr. 353:16-21. Respondent received the check before he paid the filing fee, in April 2010. Tr. 353:16-21; 361:19-21. He later learned of the Stop Payment, which was reflected in his next monthly bank statement. Tr. 359:16-20.[16] Respondent testified that he told the client that he had to pay for the brief, and that he would not proceed with the appeal unless and until he received such payment. Tr. 354:1-4; 354:19-355:9.[17] Respondent did not disclose, in his motions for an extension, that his inability to meet the court's briefing deadlines in this case was caused by his client's failure or refusal to pay for the appeal. Respondent said he did not disclose this reason because if he did, he would "have to withdraw. That is when I have to withdraw." Tr. 363: 3-8.

[16] Respondent testified that "usually" we did not go "immediately" to the bank to deposit his checks, Tr. 359: 21 – 360:10, suggesting that this check may have been deposited later. However, he did not testify specifically that this was the case with the check at issue here. Even if the check had been deposited a month or two later, Respondent received the pertinent bank statement well before he filed the motions for extension in this case, in August and September. Tr. 361: 19 – 362:6.

[17] Respondent testified that his motions "also are based on my workload"; but we do not find his testimony to be credible on this point; he offered no testimony about his workload for the time period at issue.

We find, by clear and convincing evidence, that Respondent intentionally misrepresented the reason he needed an extension, because he did not want to be in the position of having to withdraw from the case.

Bowen: Disciplinary Counsel contends that the "real reason" Respondent filed his one motion for extension in this case is because he was unwilling to proceed unless and until his client paid him to work on the brief. Tr. 471. Based upon Respondent's testimony at the hearing, we find that Disciplinary Counsel has proven, by clear and convincing evidence, that such was the case. Respondent admitted that, even before he filed the Petition for Review, his client's family told him they could not pay for the appeal. Tr. 467:11-22. Respondent told them he would pay the filing fee, and then wait to see whether they would change their mind. *Id*. The client never came forward with payment, and Respondent allowed the case to be dismissed. Tr. 469:11 – 470:7. Respondent proffered no evidence to support his stated reason for seeking an extension – the purported "complexity" of the issues in this case, or the supposed burdens imposed by his schedule. Thus, we find that Respondent intentionally did not inform the Fourth Circuit of the only reason, or certainly the principal reason, for the extension he requested.

In the other 14 cases, we find that Disciplinary Counsel did not prove a violation of Rule 3.3(a) by clear and convincing evidence, as set forth below:

Villanueva-Rodriguez: Respondent testified that he did not file a brief in this appeal because his client ultimately decided that he would remain in Peru, rather than seek relief that would allow him to return to the United States. Tr. 186: 10-11. Respondent filed two motions for extension to file the brief, claiming that the extensions were necessitated by the "complexity of the issue" and his "busy schedule." BX 4 at 32-33, 37. However, Disciplinary Counsel did not present clear and convincing evidence that Respondent misrepresented the reasons for the request. It is

not clear that either motion was filed after Respondent was told that the client wanted to drop the appeal. Tr. 187: 18 – 189:2; 192: 17 – 194:6. Nor did Disciplinary Counsel proffer any evidence to show that Respondent had deferred work on the brief for reasons other than as represented in the motions.

Laremont: Disciplinary Counsel contends that Respondent lied to the court when he sought an extension based on the complexity of the issues in the case and the size of his caseload, arguing that the "real reason" was that the client did not pay Respondent to file the brief. The sole evidence relied upon by Disciplinary Counsel is Respondent's testimony that "I worked very hard, and ultimately [the client] could not pay for the briefing, because that costs a lot of money. Briefing – I'm prepared to put in my hours, but the briefing I cannot afford." Tr. 206: 1-5. This does not establish, by clear and convincing evidence, that Respondent made a misrepresentation to the court. This is not a case in which Respondent refused to start work on the brief because he was not paid; to the contrary Respondent filed a brief even though he never was paid to do so. (BX 5 at 6, 46-85). Disciplinary Counsel offered no evidence to question, much less disprove, that the complexity of the case, and Respondent's crowded docket, necessitated the requested extensions.

Morales-Rodriguez: Disciplinary Counsel contends that Respondent misrepresented to the Court his reasons for seeking an extension in the one motion he filed in this appeal, because the "real reasons" were that he had "lost contact, client never came back, called or responded," App. B, citing Tr. 217, and the appeal had no merit. *Id*. (citing Tr. 219). Disciplinary Counsel's first "real reason" for seeking the extension is not supported by the record, which shows only that Respondent testified that "the client never pursued the case." Tr. 217:18 – 21. In fact, the record establishes that Respondent was actually in contact with the client and informed him that, after reviewing the administrative record, it was his opinion that the appeal had no merit, and that the

client agreed with this assessment. Tr. 219:8 – 220:4. Disciplinary Counsel, however, offered no evidence to show that this review of the administrative record and conversation with the client occurred before Respondent filed his one motion for an extension. Thus, the Hearing Committee finds that Disciplinary Counsel has failed to prove, by clear and convincing evidence, that Respondent misrepresented the reasons for seeking an extension in this appeal.

Alvarenza-Reyes: Disciplinary Counsel contends that Respondent misrepresented the reasons he needed an extension in this case. This argument is based solely on Respondent's testimony that the client no longer wished to pursue the appeal once he had been deported. As in several other cases at issue, Disciplinary Counsel proffers no evidence on the sequence of events, i.e. no evidence to show that Respondent filed his motions after he knew that the client had decided to drop the case. Nor does Disciplinary Counsel proffer any other evidence that the stated reasons for the extension – the complexity of the case, and Respondent's schedule – were untrue when made. Indeed, Respondent's uncontroverted testimony was that he spent time reviewing a "big administrative record," Tr. 237: 12-16, and found an important document, previously undisclosed by the government, that caused Respondent to revise his strategy for handling the case. Tr. 237:17 – 238:7. Thus, we do not find, by clear and convincing evidence, that Respondent made misrepresentations to the court in connection with this appeal.

Rasheed: In this case, Respondent filed a Petition for Review challenging the Board's denial of the client's application for asylum. Tr. 271:5-12. After the Petition for Review was filed, the client was taken into custody in Fairfax County. Tr. 271:18 – 272:12. Respondent testified that he met with the client and the client's criminal defense counsel, and researched legal issues relating to the case. Tr. 272:7 – 273:6. At some point, the client was released from jail, but he never followed up with Respondent about pursuing the appeal. Tr. 273:3 – 11. Once again,

Disciplinary Counsel proffered no evidence regarding the sequence of events, e.g. the date of the client's release from prison and the date of Respondent's conversations with the client's sister about proceeding with the appeal. Thus, we do not know whether the motions for extension were filed before or after these events. Respondent testified that the issues raised by this appeal were complex, (an assertion that was unchallenged by Disciplinary Counsel), and Disciplinary Counsel did not take issue with Respondent's testimony that he was a solo practitioner with a very busy schedule. While Respondent acknowledged that his difficulty in contacting his client, after the client was released from jail, also precluded him from filing a timely brief, it is not clear, from the evidence presented at the hearing, whether any of the motions for extension were filed once this fact became known to Respondent. Thus, while this appeal is a closer case than several of the others, we do not find, by clear and convincing evidence, that Respondent made misrepresentations to the court in his motions for extensions, when he represented that he needed an extension due to the complexity of the case, and his schedule.

Simiusca: Disciplinary Counsel contends that the "real reason" Respondent was unwilling or unable to timely file his brief was because his client did not pay the required fee (Tr. 285) and because of ethical issues (Tr. 286-89). The evidence upon which Disciplinary Counsel relies does not establish that Respondent made misrepresentations in the two motions for extension he filed with the Fourth Circuit. Although Respondent testified that he was not paid to work on the case (Tr. 285: 11-12), there was no testimony that he sought either extension because of this fact. And while Respondent testified that an ethical issue ultimately caused him to not proceed with the case, his uncontroverted testimony was that he did not learn of the ethical issue until after he filed his second motion for an extension. Tr. 288: 4 – 289:3.

Andrade: Disciplinary Counsel contends that the "real reasons" Respondent sought two extensions in this case were that the client was "removed or deported," Tr. 339-40) that Respondent concluded that the case was without merit (Tr. 344-45) and that the client directed Respondent to stop the appeal (Tr. 339-40).

There is no support for Disciplinary Counsel's argument that the client's deportation or removal somehow delayed the appeal. Respondent testified that he was able to communicate with his client, and did in fact communicate with his client, after the client had been removed to El Salvador. Tr. 339:12 – 340:4; 344: 2-10. Disciplinary Counsel offered no evidence to show that the client's removal was the "real reason" respondent sought extensions in the case.

Respondent further testified that, while the Fourth Circuit appeal was pending he learned that his client had been charged with again illegally entering the United States, and he concluded that this fact would make it impossible to prevail on appeal. Tr. 344:7-19. He advised the client's girlfriend of this, and she retrieved his file to obtain another opinion from a different attorney. Tr. 344:17 – 19; 344: 22; 346:14; 348:2 – 8. However, Disciplinary Counsel proffered no evidence to show that Respondent's motions for extension were filed after Respondent learned any of this information. Thus, we find that Disciplinary Counsel failed to prove, by clear and convincing evidence, that Respondent made misrepresentations to the Court in his motions for extension in this case.

Ruiz: Disciplinary Counsel contends that Respondent filed the two motions for extension in this case after he concluded there was no merit to the case, Tr. 374, 377-78, and the client agreed that the appeal should not be pursued. Tr. 380-81. While it is undisputed that Respondent did reach that conclusion – after reviewing the entire record in the case, Tr. 374:2-10, Disciplinary Counsel proffered no evidence to prove that Respondent reached this conclusion before he filed

the motions for extension, or that the reasons stated in the motion were false. Thus, we find that Disciplinary Counsel has failed to prove, by clear and convincing evidence, that Respondent made misrepresentations to the Fourth Circuit in this case.

Singh I, II and III: Disciplinary Counsel contends that Respondent filed a motion for extension in each of these three cases after his client told him to stop the appeal. Tr. 413-14. While it is undisputed that the client ultimately did tell Respondent that he wanted to drop his appeals and return to his country, Tr. 412:8 – 413:10, Disciplinary Counsel offered no evidence to show that Respondent was told this before filing the motions for an extension in each case. Thus, we find that Disciplinary Counsel did not prove, by clear and convincing evidence, that Respondent made a misrepresentation to the Fourth Circuit in his motions for extension.[18]

Dudley: Disciplinary Counsel contends that ethical issues, Tr. 432-33, and the client's decision to drop the appeal, Tr. 430-31, were the "real reasons" why Respondent was unable to timely file his brief. While it is undisputed that Respondent ultimately obtained privileged information that undercut the basis of his appeal (seeking relief from removal based upon the client's medical condition), Tr. 431:12 – 432:19, and that the client agreed that Respondent should not pursue the appeal further, Tr. 432:16 – 433:7, Disciplinary Counsel proffered no evidence that Respondent was aware of this information, or came to the conclusion that he would not proceed with the appeal, before he filed the motions for extension in this case. Thus, we find that

[18] The government's lawyer in one of the Singh matters advised Respondent that she intended to file a motion to dismiss and, after two or three conversations, Respondent concluded that the appeal should be dismissed. Tr. 390-91, 404-06. After those conversations, Respondent filed an untimely motion for an extension of time in which to file the overdue brief and appendix, after the court had issued a Rule 45 Notice. Tr. 406; BX 18 at 28-32. In his motion, Respondent asked for an additional month to file the brief and appendix based on his status as a sole practitioner with a busy workload. BX 18 at 29. The court dismissed the case the following day and denied Respondent's untimely extension motion as moot. BX 18 at 32-34. Although this motion was discussed at the hearing, Respondent was not asked why he filed the motion.

Disciplinary Counsel has not proven, by clear and convincing evidence, that Respondent made misrepresentations to the Fourth Circuit in those motions.

Esperanza: Disciplinary Counsel contends that the "real reasons" Respondent needed extensions in this case is that he had difficulty communicating directly with his client, Tr. 452-53) and that his client directed him to stop the appeal. Tr. 451. Disciplinary Counsel does not contend that the "real reason" was that the client did not want to pay, or could not pay, for the appeal, App. B, yet the uncontroverted testimony at the hearing established that the reason the client's family ultimately told Respondent to stop the appeal was because they could not afford to proceed. Tr. 451:15 – 452:6. More to the point, Disciplinary Counsel proffered no evidence sufficient to prove that Respondent sought the extensions because he had not been paid. Consequently, we find that Disciplinary Counsel has not proved, by clear and convincing evidence, that Respondent made a misrepresentation to the Fourth Circuit in this case.

We may be skeptical that a boilerplate, template motion used in every instance an extension was requested fully and accurately set forth the reason the extension was needed, but skepticism is insufficient to prove, and does not excuse Disciplinary Counsel from presenting the clear and convincing evidence necessary to establish, an ethical violation. And while a pattern or "mosaic" of behavior can be sufficient, under some circumstances, to prove misconduct, *In re Ukwu*, 926 A.2d 1106 (D.C. 2007), there must be a sufficient pattern of *misconduct* to support the inference. The three cases in which Disciplinary Counsel proffered sufficient evidence of a violation of Rule 3.3(a) here is not, in the Hearing Committee's view, sufficient to establish the "pattern of misconduct" contemplated by *Ukwu*.

In the three instances in which Disciplinary Counsel proved that Respondent misrepresented the reasons why he had requested an extension, Respondent proffered several

explanations purporting to justify his behavior, none of which have merit. First, when asked by the Committee to explain why he told the Fourth Circuit that the "complexity of the case" or his "workload" necessitated an extension, when it in fact was required because he did not know whether he would be paid to proceed, Respondent testified that it was because "these are consent motions," Tr. 194:12-195:4. Respondent was apparently of the view that, since both sides agreed to an extension, it was unnecessary to be truthful to the Court in explaining the need for the extension. Obviously there is no merit to this contention; an attorney always is obligated to be truthful in his or her representations to the court, whether they are set forth in a contested motion, a consent motion, or any other filing.

Respondent also sought to justify his conduct by claiming that he was not required to identify all of the reasons he needed an extension, and that the reasons he identified were "true." "That does not mean that I misrepresented. No. This is also a reason, and that is also a reason. The only fact is, that reason was not incorporated into my motion." Tr. 275:16 – 276:2. Respondent's position is untenable. Since he has undertaken to inform the court of his reasons for the requested extension, he must truthfully and accurately set forth those reasons.

Dishonesty does not always require proof of an affirmative misrepresentation but rather can result from the totality of the circumstances, including omissions of material facts. ODC Br. at 34-35; *In re Shorter*, 570 A.2d 760, 768 (D.C. 1990); *In re Reback*, 487 A.2d 235, 239-40 (D.C. 1985) (per curiam) (citation omitted), *adopted in pertinent part*, 513 A.2d 226 (1986) (en banc) ("Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation"). The Fourth Circuit was entitled to rely on Respondent's representations as complete and true because a lawyer's word is his bond, and the court requires attorneys to be "scrupulously honest." *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) ("Lawyers

have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law.") (citations omitted); *In re Reback*, 513 A.2d at 231 ("A lawyer's word to a colleague at the bar must be the lawyer's bond. A lawyer's representation to the court must be as reliable as a statement under oath. The reliability of a lawyer's pleadings is guaranteed by the lawyer's membership in the bar."). In the motions he filed in the *Lazo II*, *Ali* and *Bowen* cases, Respondent omitted the principal reason an extension was necessary. This constitutes a violation of Rule 3.3(a).

Violation of Rule 3.4(c)

Rule 3.4(c) provides that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal." Knowledge is defined as "actual knowledge of the facts in question" and "may be inferred from circumstances." Rule 1.0(f). The Court has interpreted "an obligation under the rules of a tribunal" to include complying with court orders. *See In re Askew*, 96 A.3d 52 (D.C. 2014) (per curiam), *approving recommendation in relevant part*, Board Docket No. 12-BD-037 at 21-22 (BPR May 22, 2013); *In re Steele*, 868 A.2d 146, 151-54 (D.C. 2005) (failing to attend a court-ordered pre-trial conference); *In re Klein*, 747 A.2d 1179, 1182 (D.C. 2000) ("filing of successive motions and disregard of a court order"); *In re Ramacciotti*, 683 A.2d 139, 141 (D.C.1996) (appended Board Report) ("willfully refusing to obey court orders in connection with the dissolution of his marriage" and complying with child support orders).

Disciplinary Counsel contends that Respondent violated this Rule by repeatedly failing to file docketing statements, briefs and other submissions when they were due. We find that Disciplinary Counsel has established, by clear and convincing evidence, that Respondent violated Rule 3.4(c).

In almost every appeal he filed, Respondent ignored the filing deadline for his Initial Submissions imposed by the rules and orders of the Court. Respondent was aware of his filing obligations and deadlines. Tr. 569-70; 571-73. He was warned by the Fourth Circuit, on multiple occasions, that his failure to comply with filing deadlines could result in disciplinary proceedings being instituted against him.[19] He simply ignored those deadlines, requiring the court or the Clerk to issue follow-up notices. We find this conduct is a violation of Rule 3.4(c).

Likewise, Respondent's admitted practice of waiting for the court to issue Rule 45 notices before he would "cure" his "delays" in meeting his filing obligations (Tr. 192:5-15; 521:11-19) demonstrated that he knew of the court's rules and orders but elected to disregard them for his own purposes or convenience. Even without Respondent's admissions, under the circumstances evidenced by Respondent's chronic lapses, Respondent's knowledge of his obligations under Rule 3.4(c) can be inferred. For example, in each motion Respondent filed, he acknowledged in writing that he was obligated to file a brief and appendix or other pleading by a date certain pursuant to the court's prior orders. *See* Appendix A, Column H. Respondent, however, disregarded these deadlines at will, as a matter of course, and ultimately the court dismissed his clients' cases as a result. Appendix A. *See In re Bland*, Bar Docket No. 245-95 at 18 (BPR Jan. 13, 1998), *recommendation adopted*, 714 A.2d 787 n.2 (D.C. 1998) (per curiam) (attorney's knowing and willful noncompliance with trial court's orders established clear and convincing evidence of a Rule 3.4(c) violation).

[19] *See* Findings of Fact ¶¶ 9, 55, 64, 92, 110, 125, 144, 146, 156, 168, 192, 204, 207, 211, 231, 238, 245, 252, 265, 270, and 279.

Violation of Rule 4.4(a)

Rule 4.4(a) provides that a lawyer "shall not use means that have no substantial purpose other than to . . . delay." Disciplinary Counsel contends that Respondent violated this Rule by filing motions for extensions that had no substantial purpose other than to delay the appeal.

"Substantial" is defined as "a material matter of clear and weighty importance." Rule 1.0(m). Intent or "purpose" may be established through circumstantial evidence, and in assessing a respondent's intent in a case involving multiple clients, the court "consider[s] the entire context" or "mosaic" of a respondent's conduct, and does not view each client matter in isolation. *In re Ukwu*, 926 A.2d at 1116; *see also In re Pelkey*, Bar Docket No. 67-03 at 40-41 (BPR July 31, 2006) (finding Rule 4.4(a) violation where attorney moved to rescind a signed arbitration agreement, attempted to disqualify the arbitrator, and appealed court orders of attorney's fees on "a highly dubious theory" that demonstrated a motive to harass and delay), *recommendation approved*, 962 A.2d 268 (D.C. 2008); *In re Schwartz*, Bar Docket No. 216-01 at 8 (BPR April 11, 2002) (finding Rule 4.4(a) violation where the respondent conceded that his bankruptcy filings where intended only to delay the lawful foreclosure action on his home), *recommendation adopted*, 802 A.2d 339 (D.C. 2002) (per curiam).

Disciplinary Counsel argues that Respondent violated Rule 4.4(a) by "repeatedly using means that had no substantial purpose other than delay." However, in its Brief, Disciplinary Counsel concedes that "it is impossible to identify which of Respondent's overdue submissions were filed solely for the purposes of delaying proceedings." Disciplinary Counsel nevertheless argues that based on circumstantial evidence and Respondent's testimony "at least some of them were." ODC Brief at 33. Disciplinary Counsel alleges that Respondent rarely did the things for which he requested an extension of time, such as locating his clients, and that his template motions

were simply an "excuse" for his failure to appropriately pursue his cases. *Id.* Thus, Disciplinary Counsel seems to acknowledge most of the motions for extension filed by Respondent were for valid purposes, and not solely for the purpose of delay, provided that Respondent acted to address the problem that necessitated the motion. Disciplinary Counsel argues that many of the extension motions were made because Respondent "needed to locate missing clients or get direction regarding the continuing of the appeal" yet he "took few, if any, steps to locate" them. ODC Post Hearing Brief, p. 33. Yet Disciplinary Counsel has not proffered clear and convincing evidence to prove that Respondent failed to take sufficient action to contact his clients, many of whom had left the United States or were held in custody.

Disciplinary Counsel relies on *Ukwu* to support its argument that when viewed collectively, at least some of Respondent's overdue submissions were filed primarily to delay the proceedings. However, in *Ukwu*, the Court examined a mosaic of *misconduct* in finding that the respondent's neglect was intentional. *Ukwu*, 926 A.2d at 1116. Here, Disciplinary Counsel has not proven a "mosaic of misconduct" by clear and convincing evidence. Instead, Disciplinary Counsel is asking the Hearing Committee to find that conduct that *could* have been motivated by desire to delay, was in fact motivated by a desire to delay. In *In re Boykins*, the Board cautioned that not every group of findings of irregular conduct constitutes a "mosaic" establishing misconduct:

> Not every group of subsidiary findings of misconduct or irregular procedures can be regarded as a "mosaic" providing another violation. The subsidiary findings must have evidentiary weight and probative value sufficient to "produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Dortch*, 860 A.2d 346 (D.C. 2004) (quoting *In re T.J.*, 666 A.2d 1, 16 n.17 (D.C. 1995) (internal quotation marks and citations omitted)). Furthermore, care must be taken that a violation not be inferred simply from the fact that the Respondent has engaged in other misconduct. The evidence must always induce a firm belief or conviction that Respondent has violated a disciplinary rule as charged.

In re Boykins, Bar Docket No. 325-02 at 54 (BPR July 31, 2008), *recommendation adopted in relevant part*, 999 A.2d 166 (D.C. 2010).

The Hearing Committee finds, by clear and convincing evidence, that the motions for extension filed by Respondent in three appeals –*Lazo II*, *Ali* and *Bowen* – were filed for no substantial purpose other than to delay the proceedings. Respondent testified that he was unwilling to begin working on the appellate briefs in these cases unless and until he received payment from his client, and the motions were filed with no purpose other than to delay the appeal to see whether such payments would be forthcoming. *See* Findings of Fact ¶¶ 84 (*Lazo II*), 176-78 (*Ali*), 294-96 (*Bowen*), *supra*. Respondent could have avoided an ethical violation by simply disclosing the real reason for the requested extensions, rather than representing to the court that the "complexity of the issues" necessitated the request for more time.

The Hearing Committee finds that these three instances do not, however, constitute "subsidiary findings" sufficient to produce "a firm belief or conviction as to the facts sought to be established" by Disciplinary Counsel with respect to the other appeals at issue here. *In re Boykin*, Bar Docket No. 325-02 at 54. There is sufficient uncertainty about the facts and circumstances underlying the motions for extension in those cases that we decline to find a "pattern of misconduct" based on our findings with respect to the motions filed in *Lazo II*, *Ali* and *Bowen*.

Violation of Rule 8.4(c)

Rule 8.4(c) prohibits a lawyer from "[e]ngaging in conduct involving dishonesty, fraud, deceit or misrepresentation." Disciplinary Counsel contends that Respondent violated this Rule

by making false representations regarding his need for an extension in numerous motions for continuances of scheduled dates.

The Court has stated that "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *Ukwu*, 926 A.2d at 1113. The term "dishonesty" under Rule 8.4(c) includes not only fraudulent, deceitful or misrepresentative conduct, but is a more general term that also encompasses "conduct evincing 'a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness.'" *In re Hager*, 812 A.2d at 916 (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (citations omitted)). Dishonesty includes not only affirmative misrepresentations, but also a failure to disclose when there is a duty to do so. Giving "technically true" answers to questions posed and abstaining from literal false statements or affirmative acts of concealment can still constitute dishonesty when other relevant facts are withheld. *In re Shorter*, 570 A.2d at 768; *In re Reback*, 487 A.2d 235, 239-40 (D.C. 1985) (per curiam) (citation omitted), *adopted in pertinent part*, 513 A.2d 226 (1986) (en banc) ("Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation.").

For the reasons set forth in our analysis of Respondent's conduct under Rule 3.3(a), we find that Respondent omitted and concealed material facts that should have been disclosed in the motions for extensions he filed in the *Lazo II*, *Ali*, and *Bowen* cases, and that the failure to do so constitutes "dishonesty" under Rule 8.4(c).

The Fourth Circuit was entitled to rely on Respondent's representations as being complete and true because a lawyer's word is his bond and the court requires attorneys to be "scrupulously honest." *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) ("Lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law.") (citations omitted)); *In re Reback*, 513 A.2d at 231 ("A lawyer's word to a

colleague at the bar must be the lawyer's bond. A lawyer's representation to the court must be as reliable as a statement under oath. The reliability of a lawyer's pleadings is guaranteed by the lawyer's membership in the bar."). Thus we find, only with respect to these three cases, that Respondent violated Rule 8.4(c). We find that Disciplinary Counsel did not prove, by clear and convincing evidence, violations of Rule 8.4(c) in any of the other appeals, again for the reasons set forth in our analysis of these cases under Rule 3.3(a). *Supra* at 85-97.

Violation of Rule 8.4(d) (Motions for Extension)

Rule 8.4(d) provides that "[i]t is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice."

A Rule 8.4(d) violation may be found where, "considering all the circumstances in a given situation, the attorney should know that he or she would reasonably be expected to act in such a way as to avert any serious interference with the administration of justice." *See In re Hopkins*, 677 A.2d 55, 61 (D.C. 1996). Comment [2] to Rule 8.4 states that "[t]he cases under paragraph (d) include acts by a lawyer such as: . . . the failure to obey court orders. . . ." *Id.*; *In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009) (respondent violated Rule 8.4(d) because his failure to represent his client resulted in an unnecessary expenditure of time and resources by the immigration court, among other reasons); *see also Askew*, Board Report at 22-23 (respondent violated Rule 8.4(d) by failing to file appellate brief despite court orders to do so), *recommendation approved in relevant part*, 96 A.3d 52, 59 (D.C. 2014). Disciplinary Counsel contends that Respondent violated this Rule by filing numerous motions for extensions of deadlines which misstated the reasons for the requested extensions, which purportedly caused the unnecessary expenditure of time and resources by the Fourth Circuit.

In *Hopkins*, the District of Columbia Court of Appeals set forth three elements required to show conduct that is prejudicial to the administration of justice. First, the attorney must engage in "improper" conduct, whether or not it violates a specific Rule. "That is, the attorney must either take improper action or fail to take action when, under the circumstances, he or she should act." 677 A.2d at 61-62. Second, "the conduct itself must bear directly upon the judicial process . . . with respect to an identifiable case or tribunal." *Id*. at 61. Third, "the attorney's conduct must taint the judicial process in more than a *de minimis* way; that is, at least potentially impact upon the process to a serious and adverse degree." *Id*.

We find that Respondent's misrepresentations to the Fourth Circuit regarding the reasons for the motions for extension he filed in the *Lazo II*, *Ali* and *Bowen* appeals constitute "improper actions" sufficient to satisfy the first element of a Rule 8.4(d) violation set forth in *Hopkins*. As set forth above, in these cases Respondent's testimony established that the extensions he sought were principally for reasons other than the "complexity of the issues" or his "busy schedule" he proffered in his motions.

It is also clear that Respondent's actions bore "directly upon the judicial process with respect to an identifiable case or tribunal." Each motion for an extension was filed in a specific case pending before the Fourth Circuit.

The closer question is whether Respondent's conduct "taint[ed] the judicial process in more than a *de minimis* way; that is, at least potentially impact upon the process to a serious and adverse degree." *In re Hopkins*, 677 A.2d at 61.

Disciplinary Counsel argues that Respondent violated Rule 8.4(d) by "causing unnecessary expenditures of time and resources in the Fourth Circuit cases," citing *In re Cole,* 967 A.2d 1264, 1266 (D.C. 2009). Yet the conduct at issue in Cole – counsel's failure to timely file an asylum

application, lying to the client about this failure, his subsequent failure to tell his client that a deportation order had been entered, and his failure to appeal the deportation order – is far more egregious than the conduct at issue here. Similarly, the "serious and adverse" impact on the judicial process – counsel's client was denied the opportunity to obtain permanent residence in the United States based upon his asylum petition – is far more serious than the consequences at issue here. *In re Cole*, 967 A.2d. at 1266.[20]

The District of Columbia Court of Appeals has long recognized that "[e]very paper filed with the Clerk . . . , no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the [c]ourt's responsibility is to see that these resources are allocated in a way that promotes the interests of justice," citing "*Corley v. United States,* 741 A.2d 1029, 1030 (D.C. 1999) (per curiam) (citations omitted). That, of course, is not in dispute. What is in dispute here is whether Respondent's conduct impacted the Fourth Circuit's resources "to a serious and adverse degree." *In re Cole*, 967 A.2d at 1266.

The circumstances in *Corley* (not a disciplinary case) are significantly different than those at issue here. In *Corley*, a *pro se* convicted felon "delayed" the court with a "truly staggering" number of post-conviction submissions, "all" of which "required the expenditure of a substantial amount of the time of the judges and staff of this court." *Corley*, 741 A.2d at 1029-30. Here, in connection with 30 appeals, we are dealing with 43 motions (1.4 per case, on average) for extensions filed by Respondent, as well as 79 notices (2.6 per case, on average) issued by the court addressing filing deficiencies, and orders of dismissal in 28 of the cases at issue. Yet these figures

[20] The same can be said for *Hopkins*, in which the respondent failed to take action after learning that her client was wrongfully withdrawing estate assets from a bank account, which "not only prejudiced, but destroyed, the Probate Division's ability to administer the estate assets." *In re Hopkins*, 677 A.2d at 62.

significantly overstate the problem, because we have determined that Disciplinary Counsel was able to prove, by clear and convincing evidence, ethical violations in only three of those appeals, involving a total of only six motions for extension and three orders of dismissal.

The Rule 45 Notices sent out for Respondent's failure to timely file his Initial Submissions is simply a form notice issued by the Deputy Clerk. *See*, *e.g.*, BX-5; Fourth Circuit Local Rule 27(b). They are issued virtually automatically upon a failure to file a required document. While Respondent failed to timely file his Initial Submissions in all of the cases at issue here – failures that we do not condone – we do not think the failure impacted the Fourth Circuit's resources "to a serious and adverse degree." *In re Cole*, 967 A.2d at 1266. The motions for extension filed in *Lazo II*, *Ali* and *Bowen* presumably required some additional consideration by the court, or the Clerk, but not enough to support a finding, by clear and convincing evidence, that the resources of the court were impacted "to a serious and adverse degree."

While any filing by a party, or notice issued by a court, consumes some of the limited resources of a court and its staff, Disciplinary Counsel acknowledges that "[o]f course, the Fourth Circuit would not have been overburdened by a single, few or even several defaults by Respondent." ODC Post-Hearing Reply Brief, 9.[21] Based on the evidence presented at the hearing, Disciplinary Counsel proved clear and convincing evidence of improper conduct in only a "few" of the cases, and we conclude that whatever burden was imposed on the court or the Clerk did not impact the court's resources "to a serious and adverse degree." Thus, we find that Respondent's filings did not violate Rule 8.4(d) by filing motions for extension of time that misstated the reason for the motion.

[21] *See also* Disciplinary Counsel's Post-Hearing Brief at 31 ("[W]hether by the second case or the fifth, but well short of the 30 cases at issue here . . . Respondent's conduct demonstrated that he violated Rule 8.4(d) as charged.").

Violation of Rules 8.1(b) and 8.4(d) (Disciplinary Proceeding)

Rule 8.1(b) provides that "a lawyer . . . in connection a disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for information from [a] disciplinary authority." Rule 8.4(d) provides that "[i]t is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice." Disciplinary Counsel alleges that Respondent violated this Rule by his "willful failure" to respond timely to Disciplinary Counsel's written requests for information regarding the appeals at issue.

Respondent concedes that his failure to timely respond to Disciplinary Counsel's inquiries violated Rule 8.1(b). ("Respondent cannot and will [not] deny that his responses to Disciplinary Counsel's inquiries were tardy and did affect Disciplinary Counsel's ability to prepare in a more timely manner.") Respondent's Post Hearing Brief, p. 14, ¶ 27. Based upon the evidence before us, and Respondent's concession, we filed that Respondent violated Rule 8.1(b).

As Comment [3] to Rule 8.4 notes, "[t]he majority of cases brought under the rule involve a lawyer's failure to cooperate with Disciplinary Counsel. A lawyer's failure to respond to Disciplinary Counsel's inquiries or subpoenas may constitute misconduct . . . ." The Court repeatedly has held that a lawyer's failure to respond to legitimate inquiries of Disciplinary Counsel in the course of a disciplinary matter seriously interferes with the administration of justice. *See*, *e.g., In re Godette*, 919 A.2d 1157 (D.C. 2007); *In re Steinberg*, 864 A.2d 120 (D.C. 2004) (per curiam); *In re Beller*, 802 A.2d 340 (D.C. 2002) (per curiam); *In re Beaman*, 775 A.2d 1063 (D.C. 2001) (per curiam); *In re Mabry*, 851 A.2d 1276 (D.C. 2004); *In re Follette*, 862 A.2d 394 (D.C. 2004).

Turning to the Rule 8.4(d) charge based on failure to respond, applying the *Hopkins* criteria to the facts presented here, Respondent's willful failure to respond timely to Disciplinary

Counsel's legitimate written requests for information regarding the 30 Fourth Circuit cases was improper. *See Hopkins*, 677 A.2d at 61 (observing that conduct "may be improper simply because, considering all the circumstances in a given situation, the attorney should know that he or she would reasonably be expected to act in such a way as to avert any serious interference with the administration of justice"). Further, Respondent's improper conduct bore directly on both an identifiable case and tribunal in this disciplinary proceeding.

Most importantly, Respondent's refusal to answer Disciplinary Counsel's pre-hearing inquiries interfered with the formal disciplinary proceedings. Respondent effectively "sandbagged" Disciplinary Counsel by refusing to answer any of Disciplinary Counsel's reasonable requests for information. Findings of Fact ¶¶ 328, 330-34; BX 35. Instead, once the Specification of Charges was filed, Respondent "reserved his right" to present evidence at the hearing itself. Findings of Fact ¶332. By intentionally withholding this information, including affidavits that were subject to Disciplinary Counsel's subpoena, Respondent denied Disciplinary Counsel the opportunity to refute or corroborate Respondent's representations.

Even as a technical matter, Respondent's refusal to respond to Disciplinary Counsel's inquiry "hindered the expeditious resolution of the allegations" him, tainting the judicial process in more than a *de minimis* way. *See In re Cater*, 887 A.2d 1, 17 (D.C. 2005). It imposed unnecessary delay and expense on the disciplinary system and required Disciplinary Counsel to make repeated requests and provide multiple copies of the inquiry letter and enclosures.

Respondent sought leave to late-file his response and then did not do so by the date agreed upon by counsel and ordered by the Chair. Respondent cannot choose if and when he will respond to Disciplinary Counsel's lawful demands for information. The fact that he ultimately filed a nominal response to Disciplinary Counsel's inquiry, months after he was served with formal

disciplinary charges, did not excuse his violations of Rule 8.4(d) and Rule 8.1(b). *See In re Shariati,* 31 A.3d 81, 86-87 (D.C. 2011) (Rule 8.4(d) violation where attorney late-filed responses to Disciplinary Counsel's inquiries); *In re Steinberg*, 864 A.2d 120, 128 (D.C. 2004) (attorney's belated response to lawful demands for information from disciplinary authorities after repeated inexcusable failures to do so prior to formal disciplinary proceedings constituted clear violation of Rule 8.1(b)). The Rules did not permit Respondent to set his own standards; by failing to respond to Disciplinary Counsel's inquiry, Respondent violated Rules 8.1(b) and 8.4(d).

RECOMMENDED SANCTION

A. Factors to Be Considered

The appropriate sanction is one that is necessary to protect the public and the courts, maintain the integrity of the profession, and deter other attorneys from engaging in similar misconduct. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007)). The sanction imposed must be consistent with sanctions for comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). 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 conduct, (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. *See, e.g., In re Martin*, 67 A.3d at 1053; *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc).

The Court of Appeals has further instructed that the discipline imposed, although not intended to punish a lawyer, should serve to maintain the integrity of the legal profession, protect the public and the courts, and deter future or similar misconduct by the respondent-lawyer and

other lawyers. *Hutchinson*, 534 A.2d at 924; *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc). Additionally, 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).

1. Seriousness of the Misconduct

Respondent failed to file a brief in 28 of the 29 immigration appeals he filed with the Fourth Circuit. Findings of Fact ¶ 313. Respondent violated Rule 3.4(c) in most of these appeals in two ways: first by ignoring the filing deadlines for his Initial Submissions, despite warnings from the court on multiple occasions, and second by his admitted practice of ignoring filing obligations and waiting for the court to issue Rule 45 notices before curing his delays. In three of the matters (*Lazo II, Ali*, and *Bowen*), Respondent also violated Rule 3.3(a) by failing to disclose to the court the principal reason for requesting extensions in those cases, Rule 4.4(a) because the motions for extension in those three cases were filed for no substantial purpose other than to delay the proceedings, and Rule 8.4(c) by intentionally omitting or concealing material facts that should have been disclosed in the motions for extension. Respondent also violated Rules 8.1(b) and 8.4(d) by failing to timely file responses to Disciplinary Counsel's written inquiries, which seriously interfered with the formal disciplinary proceedings.

2. Misrepresentation or Dishonesty

Respondent engaged in misrepresentation in the *Lazo II, Ali*, and *Bowen* matters by omitting or concealing material facts that he should have disclosed to the court his motions for extension of time.

3. Respondent's Attitude Towards Underlying Misconduct

Respondent did not seem to think it was wrong to include misrepresentations in his motions for extension, because "some" of the stated reasons were true, or he considered them to be "consent

motions." He also believes he is obligated to have his clients' appeals dismissed for want of prosecution, rather than by a Motion for Voluntary Dismissal, because it would make it easier for his clients to seek to have their cases reopened, should they want to do so.

4. Prior Disciplinary Violations

Respondent has no prior disciplinary history.

5. Mitigating Circumstances

Respondent argues that the fact that the Fourth Circuit did not take direct disciplinary action against him as a result of the dismissals in these cases should be considered in mitigation of sanctions. R. Br. 12-13. We understand that the Fourth Circuit has deferred consideration of any potential disciplinary action pending the resolution of this proceeding; thus we give no weight to this factor.

6. Number of Rules Violations

The Hearing Committee has found that Respondent violated Rules 3.3(a), 3.4(c), 4.4(a), 8.1(d), 8.4(c) and 8.4(d).

7. Prejudice to Clients

Respondent argues that there were no complaints from his clients, no client testified against him, and there are no allegations of actual damage or prejudice cause to any of his clients. R. Br. 13. Disciplinary Counsel notes that Respondent's clients were not available to testify "because nearly all of them were removed from the United States, either before or during the pendency of their Fourth Circuit cases or after the Court dismissed their appeals for failure to prosecute." ODC

Br. 43-44. In any event, there was no direct evidence before the Committee that Respondent's clients were prejudiced by his conduct.

8. Additional Evidence in Aggravation of Proposed Sanction

The Hearing Committee considered the following additional factors in aggravation of sanction. First, in contravention to his ethical obligations, Respondent substituted his judgment for his clients as to whether and how to proceed in their cases by, *inter alia*,

a. Failing to dismiss or withdraw the petitions for review in cases where the clients expressly advised him that they did not want to continue with the appeal. Appendix B. Column C; Tr. 356, 371 (*Ali* (BX 16)).

b. Filing his entry of appearance in cases where he had no authority or direction from his clients to advance an appeal on their behalf. Appendix B, Column F.

c. Not providing detained clients with retainer agreements because Respondent "morally believed that getting a signature when a person is locked up is not morally right" because "[w]hen a person is locked up, they are prepared to sign anything." Tr. 458. Respondent believed that when his detained clients had been "locked up for a long time, they don't know what they're talking. They don't know." Tr. 402.

d. Never taking any affirmative steps to stop the Fourth Circuit case by filing a motion to dismiss or withdraw after his clients direct him to stop pursuing the appeal. Tr. 456.

Second, in these disciplinary proceedings, Respondent continued his same pattern and practice of misconduct set forth above by:

a. Failing to file a timely answer to the Specification of Charges as required by Board Rule 7.5.

b. Failing to respond to Disciplinary Counsel's written inquiries seeking information about the cases at issue in this proceeding.

c. Failing to timely file witness and exhibit lists, and subsequently filing a witness list without correct information or proffers of each witness's testimony.

d. Failing to attend a meeting with Disciplinary Counsel as ordered by the Chair and scheduled with Respondent's concurrence during the May 7, 2013 prehearing conference.

B. Recommended Sanction

Disciplinary Counsel argues that Respondent's misconduct warrants a lengthy suspension of at least two years with a fitness requirement. ODC Reply 11-13. In support of a two-year suspension, Disciplinary Counsel notes that in *In re Kanu*, 5 A.3d 1 (D.C. 2012), the Court disbarred a lawyer for misconduct in two immigration matters involving serious neglect and procrastination, failing to keep promises, evasive and misleading communications, dishonesty, and false testimony, and that in *In re Vohra*, 63 A.3d 766 (D.C. 2013), it imposed a three-year suspension with a fitness requirement, where an attorney seriously neglected an immigration matter and engaged in a course of dishonesty to cover up his malfeasance. Disciplinary Counsel also cites *In re Ryan*, 670 A.2d 375 (D.C. 1996), in which the Court imposed a four-month suspension with fitness where the respondent neglected five matters, and attempted unsuccessfully to defend against the misconduct by alleging that her clients' failures to meet their obligations under the retainer agreements relieved her of her obligations to clients. Disciplinary Counsel argues that in each of these cases, the Court recognized the vulnerability of the immigration clients based on their unfamiliarity with the language and legal system. ODC Br. 43. In suggesting a two-year suspension, Disciplinary Counsel acknowledges that the direct harm caused to the clients in

Kanu and *Vohra* warranted a harsher sanction than that imposed on Respondent, but argues that the totality of Respondent's misconduct and his pattern of practice in 29 cases is worse than the misconduct in *Ryan*. ODC Reply 12-13.

Respondent argues that his misconduct is limited to his tardy response to the disciplinary inquiry and warrants only a public censure, citing the sanctions imposed in *In re Greenspan*, 910 A.2d 324 (D.C. 2006) (public censure for failure to respond in timely manner to request for information), *In re Kaufman*, 878 A.2d 1187 (D.C. 2005) (public censure for failure to respond and failure to participate in the disciplinary proceedings), and *In re Spitzer*, 851 A.2d 1276 (D.C. 2004) (public censure for persistent failure to cooperate with Disciplinary Counsel). R. Br. 14-16.

Both *Kanu* and *Vohra* involved more serious misconduct than that found in this matter, as Disciplinary Counsel acknowledges. ODC Reply Br. at 12-13. In *Kanu*, the Court found that the respondent had engaged in flagrant dishonesty when she engaged in an immigration fraud scheme involving false religious visas, and violated Rules 1.16(d) (failure to refund unearned fees), 7.1 (false or misleading statements about her services) and 8.4(c) (conduct involving fraud, dishonesty, deceit or misrepresentation). The respondent

> took money from [two immigration] clients and promised to refund the money if she was not able to obtain the benefits they sought. When she realized that she could not do what she had promised to do, she evaded her clients' requests for information, leaving them to find out on a government website that their visa petitions had been denied, 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 to which she had committed.

Kanu, 5 A.3d at 15. The Court determined that the respondent also violated Rule 8.4(d) (serious interference with the administration of justice) by "flagrantly and repeatedly fail[ing] to respond to numerous written and telephonic inquiries from Bar Counsel seeking to investigate . . . complaints" from three immigration clients. *Id.* at 11. In addition to the respondent's "lack of

responsiveness and dishonesty to her clients, Bar Counsel and the Hearing Committee," the Court considered aggravating factors including, "the potential and realized harm the immigration fraud posed to Kanu's clients[,]" the "client's status as non-citizens, which made her conduct difficult to detect[,]" and "Kanu's foot-dragging" in refunding fees to the client. *Id.* at 17.

In *In re Vohra*, the respondent committed thirteen Rule violations, including dishonesty and sustained neglect, "in a single immigration matter involving the obtaining of visas for a married couple." 68 A.3d at 768. Respondent filed visa applications using the incorrect form, failed to advise the clients that the visa applications had been rejected, and ten months later re-filed the applications using the proper form but using forged signatures. He then failed to request appropriate documentation to support the second filing, which was rejected. The respondent violated "Rules 1.1(a) and (b); 1.3(a), (b)(1), (b)(2), and (c); 1.4(a) and (b); 3.3(a)(1); 8.1(a); and 8.4(b), (c), and (d)." *Id.* His misconduct was aggravated by the actual prejudice caused to his client who went without valid visas for over a year, his prior discipline for neglecting an immigration matter, and his misrepresentations to Disciplinary Counsel and false testimony during the hearing. *Id.* at 784-86. The Court agreed that the respondent's dishonesty "was not grounded in malice" or flagrant, and thus imposed a three-year suspension with a fitness requirement rather than disbarment. *Id.* at 773.

The Hearing Committee believes that Respondent's misconduct is more comparable to that in *In re Soininen*, 853 A.2d 712 (D.C. 2004) and *In re Uchendu*, 812 A.2d 933 (D.C. 2002). In *Soininen*, the respondent "file[d] false notices of appearances before the Executive Office for Immigration Review (EOIR), the Board of Immigration Appeals (BIA), and the Immigration Court," in five separate matters, "all during the period when she was subject to [an] order of interim suspension[,]" and "also represented to clients in immigration matters, and to persons whom she

represented before the United States Department of Labor, that she was a member of the District of Columbia Bar in good standing, when in fact she was not." 853 A.2d at 714. *She* violated Rules 3.3(a)(1), 5.5(a), 8.4(c), and 8.4(d). The Court concluded that a six-month suspension was the appropriate sanction. *Id.* at 732.

In *Uchendu*, the "respondent violated Rules 3.3(a), 8.4(c), and 8.4(d) . . . by signing his clients' names on documents filed with the Probate Division of the District of Columbia Superior Court and by notarizing some of his own signatures on these documents." 812 A.2d at 934. The respondent "admitted to signing his clients' names on [the sixteen] documents and to notarizing some of these signatures[,]" but claimed that he had the clients' permission and "did not know that his conduct was improper." *Id.* at 935. The Court noted that although the respondent's misconduct was approved by his clients and was not done for personal profit, it had previously "imposed suspension on attorneys whose misrepresentation was either for a client's benefit or with a client's approval." *See Zeiger,* 692 A.2d at 1353 (imposing sixty-day suspension for records alteration intended to benefit client); *In re Sandground,* 542 A.2d 1242, 1248 (imposing three-month suspension for assisting client to conceal assets in a divorce)." *Id.* at 942. Thus, "[i]n light of respondent's repeated submission of such documents," the Court concluded that the recommended thirty-day suspension with six-hour CLE requirement was the appropriate sanction. *Id.*; *see also In re Gonzalez-Perez,* 917 A.2d 689, 691 (D.C. 2007) (90-day suspension for falsely representing that he was a member in good standing of the D.C. Bar in proceedings before the U.S. Citizenship and Immigration Service in four matters and failing to respond to Disciplinary Counsel's request for a response to the initial disciplinary complaint); *In re Owens,* 806 A.2d 1230 (D.C. 2002) (30 day suspension for false statements to an administrative law judge to cover up the fact that she had attempted to eavesdrop on testimony in violation of a sequestration order); *In re Parshall,* 878

A.2d 1253, 1254-55 (D.C. 2005) (18-month suspension for intentionally filing a false status report that attached fabricated documents that supported the false report).

Here, Respondent's misconduct also involves his failure to respond or cooperate with Disciplinary Counsel in violation of Rules 8.1(b) and 8.4(d). "Failure to cooperate with a disciplinary investigation typically results in suspension for thirty days when the attorney ultimately participates in proceedings and answers the underlying complaint." *In re Steinberg*, 864 A.2d 120, 130 (D.C. 2004) (per curiam) (appending Hearing Committee Report) (citing *In re Beaman,* Bar Docket Nos. 19-99 et al. (BPR Feb. 9, 2001), *recommendation adopted,* 775 A.2d 1063 (30-day suspension with no fitness requirement where response to ethical complaint was filed on the day of the disciplinary hearing); *Steinberg,* 761 A.2d at 279 (30-day suspension where response to complaint was filed the day before hearing)).

After considering the foregoing, and recognizing that the facts of this case do not neatly parallel the facts of any of the other cases discussed above, we recommend that Respondent be suspended for a period of six months. That recommendation rests on his false statements to the Court in three extension motions, his practice of completely ignoring the Fourth Circuit's Rules and procedures with respect to filing deadlines, and his failure to timely respond to Disciplinary Counsel.

C. Fitness

Disciplinary Counsel argues that Respondent's course of conduct in the Fourth Circuit cases, his failure to timely respond to investigative inquiries, "as well as his testimony during the disciplinary proceeding that included commitments to continue his misconduct in pursuing immigration appeals, constitutes 'clear and convincing evidence that casts a serious doubt upon [Respondent's] continuing fitness to practice law' – the standard for imposing a fitness

requirement." ODC Br. 41; ODC Reply Br. 11-13.

The Court established the standard for imposing a fitness requirement in *In re Cater*, 887 A.2d 1, 22-23 (D.C. 2005). "[T]o justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id.* at 6. Proof of a "serious doubt" involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24). The Hearing Committee concludes that Disciplinary Counsel did not meet this standard.

In articulating this standard, the *Cater* Court observed that the reason for conditioning reinstatement on proof of fitness was "conceptually different" from the basis for imposing a suspension. As the Court explained:

> The fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct. In contrast, the open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run. . . . [P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement . . . .

Cater, 887 A.2d at 22.

In addition, the *Cater* Court found that the five factors for reinstatement set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985), should be used in applying the *Cater* fitness standard. They include:

(a) the nature and circumstances of the misconduct for which the attorney was disciplined;

(b) whether the attorney recognizes the seriousness of the misconduct;

(c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;

(d) the attorney's present character; and

(e) the attorney's present qualifications and competence to practice law.

Cater, 887 A.2d at 21, 25.

In arguing for fitness, Disciplinary Counsel relies heavily on Respondent's alleged extensive dishonesty, alleged false testimony to the Hearing Committee, his unwillingness to recognize his errors in his approach to these cases and failure to timely respond to Disciplinary Counsel's inquiries. However, as discussed above, we have identified only three dishonest statements, and while those statements are not to be condoned, they do not establish clear and convincing evidence of a serious question as to Respondent's fitness to practice law. We did not find that Respondent testified falsely at the hearing. Nothing in the record causes us to question Respondent's character.

Respondent's strategy for handling these appeals, seeking *seriatim* extensions and essentially abandoning them when he determined that they were not meritorious, leaving the court to dismiss them, is not an appropriate appellate strategy. We agree with Disciplinary Counsel that Respondent has been unwilling to recognize the error in this strategy. However, this evidence is insufficient to establish "real skepticism" that Respondent will be unable to practice law. *See id.* at 24 ("the term 'doubt' connote[s] real skepticism, not 'just a lack of certainty.'" Instead, we believe that this is a failing that can be addressed through a requirement that Respondent take six hours of CLE focusing on appellate practice and procedure, and three hours of ethics-related CLE as a condition of his reinstatement to the Bar. Respondent's ill-conceived appellate strategy does not cause us to question Respondent's qualifications and competence to practice law.

Finally, we do not believe that Respondent's failure to timely respond to Disciplinary Counsel establishes clear and convincing evidence of the need for a fitness requirement.

CONCLUSION

For the reasons set forth above, the Hearing Committee finds that there is clear and convincing evidence that Respondent violated Rules 3.3(a), 3.4(c), 4.4(a), 8.4(c), 8.1(b), and 8.4(d), and recommends to the Board that Respondent be suspended for six months, with his reinstatement conditioned on his successful completion of six hours of CLE focused on appellate practice and procedure, and three hours of ethics-related CLE, all approved by Disciplinary Counsel.

AD HOC HEARING COMMITTEE,

/WAC/
Wallace A. Christensen, Chair

/LP/
Lucy Pittman, Attorney Member

/DB/
David Bernstein, Public Member

Dated: August 10, 2016

A

APPENDIX A-COMPILATION AND CITATION OF EVIDENCE

A	B	C	D	E	F	G	H	I	J	K	L
Bar Exhibit/ Fourth Circuit Case Name and Number	**Docketing Notice Issued**	**Initial Submissions Due Date (original and subsequent)**	**Follow-up Notices Issued**	**New Initial Sumbissions Due Date**	**Initial Submissions Filed**	**Brief & Appendix Due Dates (original and subsequent)**	**Motion for Extension of Time Filed**	**Due Dates Requested in Motions for Extension of Time**	**Rule 45, Rule 46, or Other Notices Issued for Failure to File Brief & Appendix (B&A), Initial submissions (IS), Docketing Statement (D), or Reply to Motion (R)**	**Rule 45, Rule 46, or Other Notices Response Due Dates**	**Rule 45 Dismissal or Motion to Dismiss (MTD) Granted**
BX 1 Quinteros-DuBon v. Gonzales, 06-2062	10/03/06 BX 1 at 5, 8-12	10/17/06 BX 1 at 5, 8			10/17/06 BX 1 at 5	12/22/06 BX 1 at 5, 11	12/22/06 BX 1 at 5, 13	01/22/06 BX 1 at 5, 11			
						01/02/07 BX 1 at 5, 13	**01/23/07** BX 1 at 5	02/23/07 BX 1 at 5	03/13/07 (B&A) BX 1 at 3, 16	03/28/07 BX 1 at 3, 16	
						02/23/07 BX 1 at 5, 14	**03/28/07** BX 1 at 5	05/14/07 BX 1 at 5	05/21/07 (B&A) BX 1 at 3, 20	06/05/07 BX 1 at 3, 20	06/14/07 BX 1 at 6, 23, 24
						04/30/07 BX 1 at 5, 18					
B2 Rodriguez v. Gonzales, 06-2170	11/06/06 BX 2 at 4, 6-11	11/20/06 BX 2 at 4, 6			**12/14/06** BX 2 at 4	01/25/07 BX 2 at 4, 10			11/29/06 (IS) BX 2 at 4, 13	12/14/06 BX 2 at 4, 13	
									02/06/07 (B&A) BX 2 at 4, 16	02/21/07 BX 2 at 4, 16	02/22/07 BX 2 at 4, 18, 20
BX 3 Lazo v. Gonzales, 06-2286	12/08/06 BX 3 at 4, 6-10	12/22/06 BX 3 at 6	01/10/07 BX 3 at 4, 12	01/17/07 BX 3 at 12	**01/18/07** BX 3 at 4	02/26/07 BX 3 at 4, 9			03/01/07 (B&A) (R) BX 3 at 4, 16	03/16/07 BX 3 at 4, 16	03/16/07 BX 3 at 4, 20, 22
BX 4 Villaneuva-Rodriguez v. Mukasey, 06-1058	01/25/08 BX 4 at 4, 11-22				**03/12/08** BX 4 at 4	04/14/08 BX 4 at 4, 21	04/11/08 BX 4 at 4, 32-33	05/26/08 BX 4 at 4, 32	02/27/08 (IS) BX 4 at 4, 30	03/13/08 BX 4 at 4, 30	
	02/09/08 BX 4 at 4, 12					05/27/08 BX 4 at 4, 35	**06/25/08** BX 4 at 5, 37	06/30/08 BX 4 at 5, 37-38	06/10/08 (B&A) BX 4 at 4, 36	06/25/08 BX 4 at 4, 36	
						10/14/08 BX 4 at 5, 42			11/20/08 (B&A) BX 4 at 5, 44	12/05/08 BX 4 at 5, 44	01/05/09 BX 4 at 5, 45

APPENDIX A-COMPILATION AND CITATION OF EVIDENCE

A	B	C	D	E	F	G	H	I	J	K	L
Bar Exhibit/ Fourth Circuit Case Name and Number	**Docketing Notice Issued**	**Initial Submissions Due Date (original and subsequent)**	**Follow-up Notices Issued**	**New Initial Sumbissions Due Date**	**Initial Submissions Filed**	**Brief & Appendix Due Dates (original and subsequent)**	**Motion for Extension of Time Filed**	**Due Dates Requested in Motions for Extension of Time**	**Rule 45, Rule 46, or Other Notices Issued for Failure to File Brief & Appendix (B&A), Initial submissions (IS), Docketing Statement (D), or Reply to Motion (R)**	**Rule 45, Rule 46, or Other Notices Response Due Dates**	**Rule 45 Dismissal or Motion to Dismiss (MTD) Granted**
BX 5 Laremont v. Holder, 08-1490	05/07/08 BX 5 at 5, 13-18	05/21/08 BX 5 at 5, 13			**05/22/08** BX 5 at 5, 19-22, 47	07/28/08 BX 5 at 5, 17	07/25/08 BX 5 at 5, 25-26	08/18/08 BX 5 at 5, 25-26			
						08/18/08 BX 5 at 5, 28	08/18/08 BX 5 at 5				
						08/25/08 BX 5 at 5, 29	08/25/08 BX 5 at 30-32	09/08/08 BX 5 at 30-32			
						09/08/08 BX 5 at 6, 34	**11/13/08** BX 5 at 6, 38-39	12/01/08 BX 5 at 6, 38-39	10/28/08 (B&A) BX 5 at 6, 36	11/12/08 BX 5 at 36	
						12/01/08 BX 5 at 6, 41	**12/05/08** BX 5 at 6, 42-43	12/08/08 BX 5 at 6, 42-43			
						12/08/08 BX 5 at 6, 45			01/06/09 (A) BX 5 at 7, 88	01/21/09 BX 5 at 7, 88	
						12/22/08 BX 5 at 6, 86			01/27/09 (A) BX 5 at 7, 90	02/11/09 BX 5 at 7, 90	02/12/09 BX 5 at 7, 95
BX 6 Morales-Rodriguez v. Holder, 08-1847	08/08/08 BX 6 at 4, 10-15	08/22/08 BX 6 at 4, 10	09/12/08 BX 6 at 4, 16	09/22/08 BX 6 at 4, 16	**10/30/08** BX 6 at 4, 18-22	10/27/08 BX 6 at 4, 14	**12/05/08** BX 6 at 4, 24-25	01/05/09 BX 6 at 4, 24-25	10/17/08 (IS) BX 6 at 4, 17	11/03/08 BX 6 at 4, 17	
									11/19/08 (B&A) BX 6 at 4, 23	12/04/08 BX 6 at 4, 23	
						01/05/09 BX 6 at 4, 27			01/21/09 (B&A) BX 6 at 4, 28	02/05/09 BX 6 at 4, 28	02/17/09 BX 6 at 4, 30, 31

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BX 7 Lazo v. Holder, 08-1934	09/08/08 BX 7 at 5, 11-16	09/22/08 BX 7 at 5, 11			**10/16/08** BX 7 at 5, 18	11/28/08 BX 7 at 5, 15	**12/01/08** BX 7 at 5, 24-25	01/30/09 BX 7 at 5, 24-25	09/30/08 (IS) BX 7 at 5, 17	10/15/08 BX 7 at 5, 17	
					10/30/08 BX 7 at 5, 20-23	12/29/08 BX 7 at 5, 27	**02/06/09** BX 7 at 5, 30-31	03/30/09 BX 7 at 5, 30-31	10/23/08 (D) BX 7 at 5	11/07/08 BX 7 at 5	
						03/09/09 BX 7 at 6, 33	03/09/09 BX 7 at 6, 34-36	04/10/09 BX 7 at 6, 34-36	01/08/09 (B&A) BX 7 at 5, 28	01/23/09 BX 7 at 5, 28	
						03/30/09 BX 7 at 6, 41	**05/01/09** BX 7 at 6, 44-46	06/01/09 BX 7 at 6, 44-46	04/10/09 (B&A) BX 7 at 6, 43	04/27/09 BX 7 at 6, 43	
						06/01/09 BX 7 at 6, 48	**06/02/09** BX 7 at 6, 50-52	07/06/09 BX 7 at 6, 50-52	06/02/09 (B&A) BX 7 at 6, 49	06/17/09 BX 7 at 6, 49	06/29/09 BX 7 at 6, 55, 56
BX 8 & 10 Alvarenga-Reyes v. Holder, 09-1029, 09-1260	01/09/09 BX 8 at 5, 12-17	01/23/09 BX 8 at 5, 12	01/29/09 BX 8 at 5, 18	02/10/13 BX 8 at 5, 18	**02/10/09** BX 8 at 5, 20-24	03/30/09 BX 8 at 5, 12	**03/31/09** BX 8 at 6, 29-30	05/04/09 BX 8 at 6, 29-30	09/03/09 (B&A) BX 8 at 6, 52	09/18/09 BX 8 at 6, 52	
					03/30/09 BX 8 at 6, 28	05/04/09 BX 8 at 6, 35	05/04/09 BX at 6, 36-37	06/01/09 BX at 6, 36-37	10/15/09 (B&A) BX 8 at 7, 58	10/30/09 BX 8 at 7, 58	11/06/09 BX 8 at 7, 59, 60
	03/10/09 BX 10 at 5, 9-12	03/24/09 BX 10 at 4, 9				06/01/09 BX 8 at 6, 39	**06/02/09** BX 8 at 6, 40-41	07/06/09 BX 8 at 6, 40-41			
						07/06/09 BX 8 at 6, 43	07/06/09 BX 8 at 6, 44-45	08/07/09 BX 8 at 6, 44-45			
						08/07/09 BX 8 at 6, 47	08/07/09 BX 8 at 6, 48-49	09/04/09 BX 8 at 6, 48-49			
						08/24/09 BX 8 at 6	**09/18/09** BX 8 at 7, 53-54	10/05/09 BX 8 at 7, 53-54			
						10/05/09 BX 8 at 7, 57					

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BX 9 Diagana v. Holder, 09-1067	01/15/09 BX 9 at 5, 10-15	01/29/09 BX 9 at 5, 10	02/05/09 BX 9 at 5, 17	02/18/09 BX 9 at 5, 17	**02/18/09** BX 9 at 5, 18	04/06/09 BX 9 at 5, 14			02/19/09 (D) BX 9 at 5, 19	03/06/09 BX 9 at 5, 19	03/13/09 BX 9 at 5, 20, 21
					03/13/09 BX 9 at 22-25						
BX 11 Mata v. Holder, 09-1487	04/28/09 BX 11 at 5, 15-20	05/12/09 BX 11 at 5, 15			05/11/09 BX 11 at 5, 21	07/17/09 BX 11 at 5			08/17/09 (B&A) BX 11 at 5, 26	09/01/09 BX 11 at 5, 26	09/08/09 BX 11 at 5, 27, 28
					06/19/09 BX 11 at 5, 22-24						
BX 12 Rasheed v. Holder, 09-1643	06/08/09 BX 12 at 4, 7-12	06/23/09 BX 12 at 4, 7	06/29/09 BX 12 at 4, 13	07/10/09 BX 12 at 4, 13	**07/07/09** BX 12 at 4, 14	08/27/09 BX 12 at 4, 11	**08/28/09** BX 12 at 4, 19-20	10/01/09 BX 12 at 19-20	10/13/09 (B&A) BX 12 at 4, 23	10/28/09 BX 12 at 4, 23	
					07/10/09 BX 12 at 4, 15-17	10/01/09 BX 12 at 4, 22	**10/22/09** BX 12 at 5, 24-25	11/30/09 BX 12 at 24-25	01/06/10 (B&A) BX 12 at 5, 32	01/21/10 BX 12 at 5, 32	
						11/30/09 BX 12 at 5, 27	11/30/09 BX 12 at 5, 28-29	12/31/09 BX 12 at 28-29	03/17/10 (B&A) BX 12 at 5, 37	04/01/10 BX 12 at 5, 37	04/06/10 BX 12 at 5
						12/31/09 BX 12 at 5	**01/15/10** BX 12 at 5, 33-34	04/01/10 BX 12 at 33-34			
						03/12/10 BX 12 at 5, 36					
BX 13 Dennis v. Holder, 09-1896	08/11/09 BX 13 at 4, 10-15	08/26/09 BX 13 at 4, 10			**09/25/09** BX 13 at 4, 17-20	10/30/09 BX 13 at 4, 14			09/16/09 (B&A) BX 13 at 4, 16	10/01/09 BX 13 at 4, 16	12/08/09 BX 13 at 4, 22

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BX 14 Simiusca v. Holder, 09-2107	09/29/09 BX 14 at 4, 10-15	10/13/09 BX 14 at 4, 13	10/22/09 BX 14 at 4, 17	11/02/09 BX 14 at 4, 17	**10/22/09** BX 14 at 4, 18-19	11/09/09 BX 14 at 4, 14	**01/19/10** BX 14 at 4, 31-32	04/16/10 BX 14 at 31-32	11/03/09 (D) BX 14 at 4, 24	11/18/09 BX 14 at 4, 24	
					11/30/09 BX 14 at 4, 26-28	03/12/10 BX 14 at 4, 34	04/22/10 BX 14 at 4, 36-37	04/16/10 BX 14 at 36-37	12/03/09 (B&A) BX 14 at 4, 30	12/18/09 BX 14 at 4, 30	
									04/08/10 (B&A) BX 14 at 4, 35	04/23/10 BX 14 at 4, 35	
						05/07/10 BX 14 at 4, 40					05/12/13 BX 14 at 4, 40, 41
BX 15 Andrade v. Holder, 10-1086	01/21/10 BX 15 at 5, 12-17	02/05/10 BX 15 at 5,	02/23/10 BX 15 at 5, 18	03/05/10 BX 15 at 5, 18	**03/15/10** BX 15 at 5, 20	04/12/10 BX 15 at 5, 16	**04/22/10** BX 15 at 5, 26-27	05/24/10 BX 15 at 26-27	03/09/10 (IS) BX 15 at 5, 19	03/24/10 BX 15 at 5, 19	
					03/24/10 BX 15 at 5, 22-24	05/12/10 BX 15 at 5, 29	**06/04/10** BX 15 at 6, 32-33	07/05/10 BX 15 at 32-33	05/19/10 (B&A) BX 15 at 5, 30	06/03/10 BX 15 at 5, 30	
						07/06/10 BX 15 at 6, 35			07/21/10 (B&A) BX 15 at 6, 36	08/05/10 BX 15 at 6, 36	08/06/10 BX 15 at 6, 37
BX 16 Ali v. Holder, 10-1429	04/16/10 BX 16 at 4, 11-16	04/30/10 BX 16 at 4, 11	05/12/10 BX 16 at 4, 17	05/24/10 BX 16 at 4, 17	**05/24/10** BX 16 at 4, 18	07/06/10 BX 16 at 4, 15	**08/09/10** BX 16 at 4, 25-26	09/06/10 BX 16 at 25-26	06/01/10 (D) BX 16 at 4, 19	06/16/10 BX 16 at 4, 19	
					06/21/10 BX 16 at 4, 20-22	09/07/10 BX 16 at 4, 28	09/06/10 BX 16 at 4, 29-30	10/11/10 BX 16 at 29-30	07/21/10 (B&A) BX 16 at 4, 24	08/05/10 BX 16 at 4, 24	
						10/07/10 BX 16 at 5, 30			10/15/10 (B&A) BX 16 at 4, 33	11/01/10 BX 16 at 4, 33	11/09/10 BX 16 at 5, 34, 35

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BX 17 Ruiz v. Holder, 10-1477	04/28/10 BX 17 at 5, 11 16	05/12/10 BX 17 at 5, 11			**08/20/10** BX 17 at 5, 19-22	07/19/10 BX 17 at 5, 15	09/06/10 BX 17 at 5, 25-26	11/08/10 BX 17 at 25-26	08/12/10 (IS) BX 17 at 5, 17	08/27/10 BX 17 at 5, 17	
						10/07/10 BX 17 at 5, 28	10/27/10 BX 17 at 5, 30-31	11/29/10 BX 17 at 30-31	08/12/10 (B&A) BX 17 at 5, 18	08/27/10 BX 17 at 5, 18	
									08/23/10 (B&A) BX 17 at 5, 24	09/07/10 BX 17 at 5, 24	
									10/12/10 (B&A) BX 17 at 5, 29	10/27/10 BX 17 at 5, 29	10/28/10 BX 17 at 5, 34, 35
BX 18 Singh v. Holder, 10-1767	07/08/10 BX 18 at 5, 13-18	07/22/10 BX 18 at 5, 13	07/29/10 BX 18 at 5, 19	08/09/10 BX 18 at 5, 19	**08/24/10** BX 18 at 5, 21	09/27/10 BX 18 at 5, 17	**10/17/10** BX 18 at 6, 29-30	11/15/10 BX 18 at 29-30	08/12/10 (IS) BX 18 at 5, 20	08/27/10 BX 18 at 5, 20	
					08/26/10 BX 18 at 5, 22-24				09/30/10 (B&A) BX 18 at 6, 28	10/15/10 BX 18 at 6, 28	10/18/10 BX 18 at 6, 33, 34
BX 19 Lizarraga v. Holder, 10-1868	07/30/10 BX 19 at 5, 12-19	08/13/10 BX 19 at 5, 12			**09/24/10** BX 19 at 5, 21	10/18/10 BX 19 at 5, 18			09/08/10 (IS) BX 19 at 5, 20	09/23/10 BX 19 at 5, 20	9/27/2010 BX 19 at 5, 22, 23
BX 20 Singh v. Holder, 10-2408	12/20/10 BX 20 at 4, 9-16	01/04/11 BX 20 at 4, 9	01/10/11 BX 20 at 4, 18	01/20/11 BX 20 at 4, 18	**01/07/11** BX 20 at 4, 17	03/10/11 BX 20 at 4, 16	01/24/11 BX 20 at 4, 66-67	02/14/11 BX 20 at 66-67			
					01/20/11 BX 20 at 4, 62-64	01/24/11 BX 20 at 4, 61			02/15/13 (R) BX 20 at 4, 70	02/25/11 BX 20 at 4, 70	
						02/14/11 BX 20 at 4, 69					03/02/11 BX 20 at 4, 73, 74 (MTD)

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BX 21 Bian v. Holder, 11-1727	07/15/11 BX 21 at 4, 10-16	07/29/11 BX 21 at 4, 10	08/12/11 BX 21 at 4, 17	08/22/11 BX 21 at 4, 17	**08/26/11** BX 21 at 4, 18-21	10/03/11 BX 21 at 4, 15			11/08/11 (B&A) BX 21 at 4, 23	11/22/11 BX 21 at 4, 23	12/01/11 BX 21 at 4, 24, 25
BX 22 Mushi v. Holder, 11-1813	08/03/11 BX 22 at 4, 9-16	08/17/11 BX 22 at 4, 9	08/25/11 BX 22 at 4, 17	09/06/11 BX 22 at 4, 17	**09/09/11** BX 22 at 4, 18-21	10/24/11 BX 22 at 4, 15			11/04/11 (B&A) BX 22 at 4, 23	11/21/11 BX 22 at 4, 23	11/30/11 BX 22 at 4, 24, 25
BX 23 & 27 Singh v. Holder, 12-1102, 11-2067	10/04/11 BX 23 at 4, 11-17	10/18/11 BX 23 at 4, 11	12/15/11 BX 23 at 4, 18	12/20/11 BX 23 at 4, 18	**12/20/11** BX 23 at 4, 19	12/23/11 BX 23 at 4, 16	03/20/12 BX 23 at 5, 39-40	05/07/12 BX 23 at 39-40	01/20/12 (B&A) BX 23 at 4, 32	02/06/12 BX 23 at 4, 32	
					04/06/12 BX 23 at 5, 43-46	01/11/12 BX 23 at 4, 30			03/05/12 (B&A) BX 23 at 5, 37	03/20/12 BX 23 at 5, 37	
	01/25/12 BX 27 at 4, 9-13	02/08/12 BX 27 at 4, 9				02/24/12 BX 23 at 4-5, 35			04/17/12 (B&A) BX 23 at 5, 47	05/02/12 BX 23 at 5, 47	05/03/12 BX 23 at 5, 48, 50
						04/03/12 BX 23 at 5, 42					
BX 24 Dudley v. Holder, 11-2412	12/28/11 BX 24 at 4, 11-17	01/11/12 BX 24 at 4, 11	01/12/12 BX 24 at 4, 18	01/18/13 BX 24 at 4, 18	**01/19/12** BX 24 at 4, 19-20	03/19/12 BX 24 at 4, 16	03/19/12 BX 24 at 4, 26-27	04/23/12 BX 24 at 26-27	01/31/12 (D) BX 24 at 4, 21	02/15/12 BX 24 at 4, 21	
					02/16/12 BX 24 at 4, 22-25	04/23/12 BX 24 at 4, 29	05/08/12 BX 24 at 5, 32-33	06/11/12 BX 24 at 32-33	04/24/12 (B&A) BX 24 at 5, 31	05/09/12 BX 24 at 5, 31	
						06/11/12 BX 24 at 5, 35	06/11/12 BX 24 at 5, 36-37	07/16/13 BX 24 at 36-37	07/10/12 (B&A) BX 24 at 5, 40	07/25/12 BX 24 at 5, 40	07/26/12 BX 24 at 5, 41, 42
						06/25/12 BX 24 at 5, 39					

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BX 25 Ventura-Fuentes v. Holder, 12-1087	01/23/12 BX 25 at 4, 10-16	02/06/12 BX 25 at 4, 12	02/16/12 BX 25 at 4, 17	02/22/12 BX 25 at 4, 17		04/12/12 BX 25 at 4, 10			02/24/12 (IS) BX 25 at 4, 18	03/12/12 BX 25 at 4, 18	03/14/12 BX 25 at 4, 19, 20
BX 26 Sok v. Holder, 12-1091	01/24/12 BX 26 at 4, 10-16	02/07/12 BX 26 at 4, 10	02/16/12 BX 26 at 4, 17	02/22/12 BX 26 at 4, 17	**03/19/12** BX 26 at 4, 19	04/13/12 BX 26 at 4, 15			02/23/12 (IS) BX 26 at 4, 18	03/09/12 BX 26 at 4, 18	03/20/12 BX 26 at 4, 20, 21
BX 28 Esperanza v. Holder, 12-1199	02/15/12 BX 28 at 4, 13-19	03/01/12 BX 28 at 4, 13	03/13/12 BX 28 at 4, 20	03/16/12 BX 28 at 4, 20	**03/19/12** BX 28 at 4, 21	05/07/12 BX 28 at 4, 18	05/29/12 BX 28 at 4, 28-29	06/25/12 BX 28 at 28-29	03/20/12 (D) BX 28 at 4, 22	04/04/12 BX 28 at 4, 22	
					03/26/12 BX 28 at 4, 23-26	06/25/12 BX 28 at 4,	07/20/12 BX 28 at 5, 33-34	09/10/12 BX 28 at 33-34	05/10/12 (B&A) BX 28 at 4, 27	05/25/12 BX 28 at 4, 27	
						8/6/2012			07/06/12 (B&A) BX 28 at 4, 32	07/23/12 BX 28 at 4, 32	08/08/12 BX 28 at 5, 38
BX 29 Mushi v. Holder, 12-1230	02/23/12 BX 29 at 4, 9-15	03/09/12 BX 29 at 4, 9	03/15/12 BX 29 at 4, 16	03/20/12 BX 29 at 4,	**03/19/12** BX 29 at 4, 17	05/14/12 BX 29 at 4, 14			03/22/12 (D) BX 29 at 4, 18	04/06/12 BX 29 at 4, 18	
					03/26/12 BX 29 at 4, 19-22				05/15/13 (B&A) BX 29 at 4, 23	05/30/12 BX 29 at 4, 23	05/31/12 BX 29 at 4, 24, 25
BX 30 Bowen v. Holder, 12-1418	04/03/12 BX 30 at 4, 16-22	04/17/12 BX 30 at 4, 16			**05/12/12** BX 30 at 4, 24-28	06/22/12 BX 30 at 4, 21	07/20/12 BX 30 at 4, 30-31	08/20/12 BX 30 at 30-31	04/30/12 (IS) BX 30 at 4, 23	05/15/12 BX 30 at 4, 23	
						07/27/12 BX 30 at 4, 33			07/06/12 (B&A) BX 30 at 4, 29	07/23/12 BX 30 at 4, 29	08/15/12 BX 30 at 4, 35, 36