THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

FILED

May 11 2021 2:08pm

Board on Professional Responsibility

In the Matter of:	:	
EDUARDO JUSTO DE POMAR,	:	Board Docket No. 20-ND-002
Respondent.	:	Disciplinary Docket Nos. 2016-D290 and 2017-D168
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 492823)	:	

REPORT AND RECOMMENDATION
APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on April 6, 2021 for a limited hearing on an Amended Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Leslie H. Spiegel, Chair; La Verne Fletcher, Public Member; and Webster R.M. Beary, Attorney Member. The Office of Disciplinary Counsel was represented by Assistant Disciplinary Counsel Caroll Donayre Somoza. Respondent, Eduardo Justo de Pomar, was represented by Justin M. Flint and Channing Shor.

The Hearing Committee has carefully considered the Petition, the supporting amended affidavit submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent, Respondent's counsel, and Disciplinary Counsel. The Hearing Committee also has fully

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

considered the Chair's *in camera* review of Disciplinary Counsel's files and records and *ex parte* communications with Disciplinary Counsel. For the reasons set forth below and in the attached Confidential Appendix, we approve the Petition, find the negotiated discipline of a nine-month suspension with 120 days stayed on the condition that Respondent not engage in any misconduct in any jurisdiction within a year from his reinstatement is justified and recommend that it be imposed by the Court.

II. FINDINGS PURSUANT TO D.C. BAR R. XI, § 12.1(c) AND BOARD RULE 17.5

The Hearing Committee, after full and careful consideration, finds that:

1. The Petition and Affidavit are full, complete, and in proper order.

2. Respondent is aware that there is currently pending against him an investigation involving allegations of misconduct. Tr. 16-17[1]; Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that, in connection with two client matters, Respondent violated D.C. Rules of Professional Conduct 1.1(a) (competence), 1.1(b) (skill and care), 1.3(a) (diligence and zeal)[2], 1.3(b)(1) (intentional failure to seek client's lawful objectives), 1.3(b)(2) (intentional prejudice or damage to client), 1.4(b) (failure to explain matter to client), 1.5(a) (unreasonable fee), 1.5(b) (failure to provide written fee agreement),

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[1] "Tr." refers to the transcript of the limited hearing held on April 6, 2021.

[2] Stipulation of Fact 57(c) contains a typographical error: it references D.C. Rule 1.3(b), but describes it as a failure to represent a client with diligence and zeal, which is covered by D.C. Rule 1.3(a). *See* Petition at 12. Disciplinary Counsel confirmed at the limited hearing that the paragraph should refer to Rule 1.3(a). *See* Tr. 22.

1.15(a) and (e) (commingling), 1.15(b) (failure to maintain trust account with an approved depository), 1.16(d) (protect client's interests upon termination of representation), 3.3(a)(1) (knowing false statement of fact to tribunal), and 8.1(a) (knowing false statements to Disciplinary Counsel), and/or their Virginia counterparts.[3] Petition at 7-9, 12-14.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 17; Affidavit ¶¶ 4, 6. Specifically, Respondent acknowledges:

(a) Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on June 6, 2005, and assigned Bar number 492823.

<u>Disciplinary Docket No. (2016-D290) ("The Zapata-Espinal Matter")</u>

(b) On March 29, 2013, Alma Zapata-Espinal was detained by Immigration Customs and Enforcement at the Texas border. Ms. Zapata-Espinal was found inadmissible to the United States and placed in expedited removal proceedings.

(c) On April 1, 2013, Ms. Zapata-Espinal was released under an order of supervision to be interviewed later.

(d) In February 2014, when Ms. Zapata-Espinal reported to the [Department of Homeland Security ("DHS")] office, DHS placed a GPS ankle bracelet monitor on her as a condition of her release.

(e) On February 18, 2014, Ms. Zapata-Espinal visited Respondent's office to discuss her immigration matter and possible avenues of relief to remain in the U.S.

(f) Respondent quoted Ms. Zapata-Espinal a fee of $3,000 to handle her asylum case but did not provide Ms. Zapata-Espinal a retainer agreement. Respondent also mentioned to Ms. Zapata-Espinal that each hearing he attended on her behalf would cost her an additional $250.

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[3] During the limited hearing, the parties agreed that, pursuant to D.C. Rule 8.5(b) (choice of law), the D.C. Rules should exclusively apply to all of the misconduct in this matter. Tr. 19.

(g) Respondent wrote down on a piece of paper the documents he wanted the client to bring him. Respondent also handwrote that the $3,000 would cover "asylum and court completed until it is decided[,]" and he added that it didn't cover "appeals, waivers, changes, filing costs[.]" Lastly, he included "you will go get your GED."

(h) Ms. Zapata-Espinal made six payments to Respondent towards her legal fee. She paid Respondent a total of $3,815.00.

Date	***Amount***	***Amount paid to date***
2/24/2014	$1,000.00	$1,000.00
4/1/2014	$725.00	$1,725.00
4/28/2014	$900.00	$2,625.00
5/19/2014	$375.00	$3,000.00
10/5/2015	$465.00	$3,465.00
2/19/2016	$350.00	$3,815.00

(i) Respondent deposited Ms. Zapata-Espinal's payments in his Bank of America checking account ending in #8200. The #8200 account was not a trust account.

(j) Respondent did not have a trust account at the time of the representation.

(k) On March 25, 2014, Respondent filed an asylum petition, a form I-589 application, with [the United States Citizenship and Immigration Services ("USCIS")] in Ms. Zapata-Espinal's case. This application did not trigger the 150-day rule to apply for employment authorization based on the asylum claim because Ms. Zapata-Espinal was in removal proceedings.

(l) On April 30, 2014, Ms. Zapata-Espinal contacted Respondent to update her address.

(m) USCIS scheduled a credible fear interview for May 6, 2014. Respondent notified USCIS that he would not attend the interview with the client.

(n) On April 28, 2014, USCIS notified Respondent that the asylum interview was cancelled, based on a request received from Respondent's office.

(o) The credible fear interview was re-scheduled for August 8, 2014. Ms. Zapata-Espinal did not appear for the interview because the scheduling notice was sent to her old address, and she was unaware of the new date.

(p) The credible fear interview was then scheduled for September 17, 2014. Respondent notified USCIS that he would not attend the interview with the client.

(q) Ms. Zapata-Espinal appeared for the credible fear interview. The asylum officer found she had a credible fear of returning to her country and referred the matter to the Immigration Court where she would be able to file a defensive asylum application and start the 150-day clock to apply for employment authorization.

(r) In June 2015, Respondent incorrectly notified Ms. Zapata-Espinal that a work permit application could be filed on her behalf based on her pending asylum application. In his letter, Respondent asked Ms. Zapata[-]Espinal to mail in passport size photos along with a $465.00 filing fee.

(s) On October 5, 2015, Ms. Zapata-Espinal gave Respondent $465 in cash for the filing fee work permit application. Respondent deposited the $465 in his #8200 checking account.

(t) Respondent filed the application but did not pay a filing fee because a filing fee was not required. Despite this, Respondent kept the $465 and did not refund it.

(u) On October 7, 2015, USCIS received the application for Ms. Zapata-Espinal for the work permit application.

(v) On December 31, 2015, USCIS denied the application for the work permit application and stated that the asylum office administratively closed Ms. Zapata-Espinal's asylum case when she failed to appear for her interview in April 2014.

(w) On February 25, 2016, Respondent filed a second application for a work permit.

(x) On February 26, 2016, Respondent filed a second, I-589 application with the Arlington Immigration Court.

(y) On June 27, 2016, USCIS denied the work permit application because, according to USCIS records, Ms. Zapata-Espinal's application was premature.[4]

(z) In July 2016, Ms. Zapata[-]Espinal discharged Respondent because she was dissatisfied with his services. Respondent explained to Ms. Zapata-Espinal that the denial of the work authorization could be appealed but it would cost more money. The client responded that she had already paid for everything.

(aa) On August 8, 2016, successor counsel to Ms. Zapata-Espinal sent Respondent correspondence notifying him that the client had retained his firm and requesting a copy of her client file.

(ab) Subsequently, Respondent contacted the client despite having notice that she was represented by counsel.

(ac) Respondent did not complete the entire asylum case for the client, but he failed to refund any of the $3,000 he was paid.

(ad) On August 12, 2016, Ms. Zapata-Espinal filed a disciplinary complaint against Respondent.

(ae) On February 28, 2018, Respondent refunded $500 to the client.

Disciplinary Docket No. 2017-D168 ("The Macario Matter")

(af) In January 2017, Eduardo Macario Ramirez, a Guatemalan national, was detained by Immigration and Customs Enforcement for driving while under the influence (DWI).[[5]]

(ag) Mr. Macario was detained in Farmville, Virginia and a removal hearing was scheduled for February 21, 2017.

[4] The Petition states: "An asylum applicant may be able to obtain work authorization if 150 days have passed after they filed their application, and there has been no decision on their case from USCIS or the IJ [immigration judge]. 8 U.S.C.A. § 1158(d)(2); 8 C.F.R. § 208.7(a)." Petition at 6 n.1.

[5] It is unclear from the Petition whether Mr. Macario was detained for driving under the influence (DUI) or driving while intoxicated (DWI); however, the discrepancy is immaterial to the resolution of this matter.

(ah) Elsi Nolasco, a friend of Mr. Macario, contacted Respondent and paid him a consultation fee to discuss Mr. Macario's case. Mr. Macario wished to be released from detention and adjust his status in the United States.

(ai) On January 9, 2017, Ms. Nolasco met with Respondent.

(aj) On January 13, 2017, Ms. Nolasco paid Respondent, $1,500 in cash, to represent Mr. Macario and request his release on bond from ICE detention.

(ak) Ms. Nolasco asked Respondent to visit Mr. Macario to discuss his case with him personally, but Respondent did not do so.

(al) Respondent did not provide Ms. Nolasco or Mr. Macario a retainer agreement.

(am) Respondent did not deposit the legal fees in a trust account.

(an) On January 17, 2017, Respondent deposited the fees in his Bank of America checking account ending in #8200.

(ao) From January 13, 2017 to February 21, 2017, Respondent did not meet or have any conversations with Mr. Macario Ramirez.

(ap) On February 21, 2017, Respondent appeared at the removal hearing before Immigration Judge Snow. He submitted a notice of entry of appearance, EOIR-28.

(aq) Respondent conceded to the court that Mr. Macario was not eligible for any form of relief and requested voluntary departure for him to return to Guatemala.

(ar) Mr. Macario was not aware that Respondent would ask for his voluntary departure and did not agree with that decision.

(as) At the end of the hearing, the Judge granted Mr. Macario voluntary departure.

(at) Mr. Macario through the interpreter, addressed the Judge and said, "I need some kind of refuge."

(au) The Court instructed Mr. Macario to talk to his lawyer, "Well, your lawyer didn't ask for that, so you'll have to talk to your lawyer if you want to change things."

(av) At that point, Respondent falsely told the Judge that he was not aware Mr. Macario wanted some other type of relief. "I wasn't aware of this fact, your honor. I wasn't aware[.]"

(aw) Following the hearing, Mr. Macario telephoned Respondent to ask why he requested voluntary departure. Respondent told the client that his case was completed. Mr. Macario told Respondent that it was unfair that Respondent did not do anything on his behalf, and he was paid in full.

(ax) On March 1, 2017, Mr. Macario filed a *pro se* request to reopen his case based on his fear of returning to Guatemala because he had been the victim of labor trafficking.

(ay) On March 16, 2017, Steven Smith, successor counsel[] for Mr. Macario[,] forwarded a request to Respondent for the client's file. Respondent replied and enclosed the client file.

(az) On May 19, 2017, Mr. Smith on behalf of Mr. Macario filed a complaint with the Office of Disciplinary Counsel.

(ba) In his response to the complaint, Respondent admitted that he did not provide Ms. Nolasco or Mr. Macario with a retainer agreement and that he deposited the legal fees in his #8200 account on Monday, January 16, 2017.

(bb) Respondent falsely stated to Disciplinary Counsel that he waived his fee to appear in court and argue the case.

(bc) Respondent falsely stated to Disciplinary Counsel that he had completed the representation by appearing on behalf of the client and submitting the evidence to the court on the same day he received payment.

See Petition at 2-7, 9-12.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 16; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition. Affidavit ¶ 7. The only such promise is that Disciplinary Counsel has agreed not to pursue any charges arising out of the conduct described in the Petition. Petition at 14. Respondent confirmed during the limited

hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 29.

7. Respondent has conferred with his counsel. Tr. 12; Affidavit ¶ 1.

8. Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 17-28; Affidavit ¶ 6.

9. Respondent is not being subjected to coercion or duress. Tr. 29; Affidavit ¶ 6.

10. Respondent is competent and was not under the influence of any substance or medication that would affect his ability to make informed decisions at the limited hearing. Tr. 12-14.

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

a) he has the right to assistance of counsel if Respondent is unable to afford counsel;

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

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

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

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

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

g) any sworn statement by Respondent in his affidavit or any statements made by Respondent during the proceeding may be used to impeach his testimony if there is a subsequent hearing on the merits.

Tr. 32-34; Affidavit ¶¶ 1, 9-12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a nine-month suspension with 120 days stayed on the condition that Respondent not engage in any misconduct in this or any other jurisdiction within a year of his reinstatement. Petition at 14; Tr. 28. Respondent further understands that he must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for his suspension to be deemed effective for purposes of reinstatement. Tr. 35.

13. In aggravation of sanction, the parties agree that Respondent has a disciplinary history, having previously been informally admonished for a violation of Rule 7.1. Petition at 17; Tr. 30-31.

14. In mitigation of sanction, the parties agree that Respondent (1) acknowledges his misconduct; (2) has cooperated with Disciplinary Counsel; (3) has expressed remorse; and (4) refunded all fees to the clients. Petition at 16; Tr. 29-30.

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

III. DISCUSSION

The Hearing Committee shall approve an agreed negotiated discipline if it finds:

a) that the attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein;

b) that the facts set forth in the Petition or as shown during the limited hearing support the attorney's admission of misconduct and the agreed upon sanction; and

c) that the agreed sanction is justified.

D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(i)-(iii).

A. Respondent Has Knowingly and Voluntarily Acknowledged the Facts and Misconduct and Agreed to the Stipulated Sanction.

The Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein. Respondent, after being placed under oath, admitted the stipulated facts and charges set forth in the Petition, and denied that he is under duress or has been coerced into entering into this disposition. *See* Paragraphs 8-9, *supra*. Respondent understands the implications and consequences of entering into this negotiated discipline. *See* Paragraph 11, *supra.*

Respondent has acknowledged that any and all promises that have been made to him by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the Petition and that there are no other promises or inducements that have been made to him. *See* Paragraph 6, *supra*.

B. The Stipulated Facts Support the Admissions of Misconduct and the Agreed-Upon Sanction.

The Hearing Committee has carefully reviewed the facts set forth in the Petition and established during the limited hearing and we conclude that they support

the admissions of misconduct and the agreed-upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because he believes that he could not successfully defend against the misconduct described in the Petition. *See* Paragraph 5, *supra*.

With regard to the second factor, the Petition states that Respondent violated D.C. Rules of Professional Conduct 1.1(a) and (b) (competence, skill, and care) in the Zapata-Espinal and Macario matters. The evidence supports Respondent's admission that he violated Rules 1.1(a) and (b) in the Zapata-Espinal matter because the stipulated facts describe Respondent providing incorrect information to Ms. Zapata-Espinal about the availability of a work permit application (paragraph 4(r)); asking the client to pay a filing fee when no fee was required (paragraphs 4(r) and (s)); and filing a second application for a work permit before filing a second asylum petition after USCIS had administratively closed the first asylum petition (paragraphs 4(v)-(y)). Similarly, the evidence supports Respondent's admission that he violated these Rules in the Macario matter because the stipulated facts describe Respondent failing to meet with or have a conversation with his client before the removal hearing (paragraphs 4(ak) and (ao)), misstating his client's position at the removal hearing (paragraphs 4(aq) and (ar)), and failing to take steps to protect his client's interest during or after the hearing (paragraphs 4(av) and (aw)). In both matters Respondent failed to provide the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation" and failed to serve his

clients with the "skill and care commensurate with that generally afforded to clients by other lawyers in similar matters," as required by Rules 1.1(a) and (b).

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.3(a) (diligence and zeal) in the Zapata-Espinal and Macario matters. The evidence supports Respondent's admission that he violated Rule 1.3(a) in the Zapata-Espinal matter because the stipulated facts describe Respondent (1) failing to take steps to protect the client's interests between September 17, 2014 and June 2015 and then providing incorrect information to the client in June 2015 (paragraphs 4(p)-(r)) and (2) filing a second application for a work permit the day before filing a second asylum petition and almost two months after USCIS stated that it had administratively closed the first asylum petition (paragraphs 4(v)-(y)). Similarly, the evidence supports Respondent's admission that he violated Rule 1.3(a) in the Macario matter because the stipulated facts describe Respondent failing to meet with or have a conversation with his client before the removal hearing (paragraphs 4(ak) and (ao)), misstating his client's position at the removal hearing by stating that Mr. Macario was not eligible for any form of relief and requesting voluntary departure to return to Guatemala (paragraphs 4(aq) and (ar)), and failing to take steps to protect his client's interest during or after the hearing (paragraphs 4(av) and (aw)). In both matters, Respondent failed to represent his clients "zealously and diligently within the bounds of the law" as required by Rule 1.3(a).

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.3(b)(1) (intentional failure to seek client's lawful objectives) in the

Zapata-Espinal and Macario matters. The evidence supports Respondent's admission that he violated Rule 1.3(b)(1) in the Zapata-Espinal matter because the stipulated facts describe Respondent (1) failing to take steps to protect the client's interests between September 2014 and June 2015 (paragraphs 4(p)-(r)), and (2) filing a second application for a work permit the day before filing a second asylum petition and doing so almost two months –after USCIS stated that it had administratively closed the first asylum petition (paragraphs 4(v)-(y)). Similarly, the evidence supports Respondent's admission that he violated Rule 1.3(b)(1) in the Macario matter because the stipulated facts describe Respondent misstating his client's position at the removal hearing (paragraphs 4(aq) and (ar)) by stating that Mr. Macario was not eligible for any form of relief and requesting voluntary departure to return to Guatemala, falsely claiming at the hearing that he was unaware that his client wanted to seek other relief after his client requested refuge (paragraphs 4(ah) and (av)), and refusing to take steps to protect his client's interest during or after the hearing (paragraphs 4(av) and (aw)). In both matters, Respondent intentionally failed "to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules" as required by Rule 1.3(b)(1).

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.3(b)(2) (intentional prejudice or damage to client) in the Macario matter. The evidence supports Respondent's admission that he violated Rule 1.3(b)(2) in the Macario matter. The stipulated facts describe Respondent telling the court that Mr. Macario was not eligible for any form of relief and requesting voluntary departure

to return to Guatemala, without discussing the issue with his client and contrary to his client's wish and the information Respondent received from Ms. Nolasco (paragraphs 4(ah), (aq)-(ar), and (au)-(av)). Nor did he correct his statement after his client requested relief; rather, he falsely stated that he "wasn't aware" that Mr. Macario sought relief other than voluntary departure (paragraphs 4(ah) and (av)). The court accordingly granted voluntary departure and informed Mr. Macario that he could not pursue his claim for refuge at the hearing (paragraphs 4(as)-(av)). Respondent thereby intentionally "prejudice[d] or damage[d] a client during the course of the professional relationship" (Rule 1.3(b)(2)).

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.4(b) (failure to explain matter to client) in the Zapata-Espinal and Macario matters. The evidence supports Respondent's admission that he violated Rule 1.4(b) in the Zapata-Espinal matter because the stipulated facts describe Respondent providing incorrect information to Ms. Zapata-Espinal about the availability of a work permit application (paragraph 4(r)) and failing to explain to the client the significance of USCIS's December 31, 2015, denial of the work permit application or the significance of Respondent's filing the February 25, 2016, second work permit application and February 26, 2016, second I-589 application after that denial (paragraphs 4(v)-(x)). Similarly, the evidence supports Respondent's admission that he violated Rule 1.4(b) in the Macario matter because the stipulated facts describe Respondent failing to meet with or have a conversation with his client before the removal hearing (paragraphs 4(ak) and (ao)), failing to consult with his

client before requesting voluntary departure to return to Guatemala (paragraphs 4(aq) and (ar)), and failing to inform his client of any options other than voluntary departure remaining after the hearing (paragraph 4(aw)). In both matters, Respondent failed to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation" as required by Rule 1.4(b).

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.5(a) (unreasonable fee) in the Zapata-Espinal matter. The evidence supports Respondent's admission that he violated Rule 1.5(a) in the Zapata-Espinal matter because the stipulated facts describe Respondent collecting $3,815 from the client to file two asylum petitions and two work permit applications without attending any hearings or adequately monitoring the status of the client's matter (paragraphs 4(h), (k), (t), (v), (w), and (x)). The stipulated facts also describe Respondent collecting $465 from the client for a filing fee for the first work permit application when no filing fee was required (paragraphs 4(r) and (t)).

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.5(b) (failure to provide written fee agreement) in the Zapata-Espinal and Macario matters. The evidence supports Respondent's admission that he violated Rule 1.5(b) in the Zapata-Espinal matter because the stipulated facts describe Respondent failing to provide a retainer agreement to the client (paragraph 4(f)). Similarly, the evidence supports Respondent's admission that he violated Rule 1.5(b) in the Macario matter because the stipulated facts describe Respondent failing

to provide a retainer agreement to his client or to Ms. Nolasco, the third party who paid the fees in the matter (paragraphs 4(al) and (ba)).

The Petition further states that Respondent violated D.C. Rules of Professional Conduct 1.15(a) and (e) (commingling) in the Zapata-Espinal and Macario matters. The evidence supports Respondent's admission that he violated Rules 1.15(a) and (e) in the Zapata-Espinal matter because the stipulated facts describe Respondent placing the client's unearned advance payments of fees in his Bank of America checking account, which was not a trust account (paragraphs 4(h), (i), and (s)). Similarly, the evidence supports Respondent's admission that he violated Rules 1.15(a) and (e) in the Macario matter because the stipulated facts describe Respondent placing the unearned advance payment of fees from Ms. Nolasco in the same Bank of America checking account (paragraphs 4(am), (an), and (ba)).[6]

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.15(b) (failure to maintain trust account with an approved depository) in the Zapata-Espinal and Macario matters. The evidence supports Respondent's admission that he violated Rule 1.15(b) in the Zapata-Espinal matter because the stipulated facts describe Respondent failing to maintain a trust account at the time of the Zapata-Espinal representation in 2014-2016 (paragraph 4(j)). There is no

[6] The Petition does not explicitly state that Respondent's checking account contained personal funds when he deposited unearned fees. *See, e.g.*, *In re Daniel*, 11 A.3d 291, 298 (D.C. 2011). However, Respondent, who was represented by counsel with extensive experience in disciplinary matters, admitted on the record that he engaged in commingling. Therefore, we have no reason to believe that he admitted to a violation that was unsupported by evidence.

specific stipulation that Respondent did not maintain a trust account during the time of the Macario representation in early 2017. Respondent did not have such an account when the Zapata-Espinal matter ended in July 2016 (paragraphs 4(j) and (z)), and the stipulated facts state that he did not place any of the advance payment of fees he received in the Macario matter in a trust account (paragraphs 4(am), (an), and (ba)). The stipulated facts are thus consistent with Respondent's admission that he violated Rule 1.15(b) in both matters (Tr. 26).

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 1.16(d) (protecting client's interests upon termination of representation) in the Zapata-Espinal matter. The evidence supports Respondent's admission that he violated Rule 1.16(d) in the Zapata-Espinal matter because the stipulated facts describe Respondent failing until 2018 to refund any part of the fee he was paid in advance despite not completing the asylum case (paragraphs 4(ac) and (ae)). Respondent thereby failed to "refund[] any advance payment of fee or expense that has not been earned or incurred" as required by Rule 1.16(d).

The Petition further states that Respondent violated D.C. Rule of Professional Conduct 3.3(a)(1) (knowing false statement of fact to tribunal) in the Macario matter. The evidence supports Respondent's admission that he violated Rule 3.3(a)(1) in the Macario matter because the stipulated facts describe Respondent falsely telling the court at the removal hearing that he "wasn't aware" that his client wanted some other type of relief (paragraph 4(av)) although Ms. Nolasco had informed Respondent that

Mr. Macario wanted to be released from detention and to "adjust his status in the United States" (paragraph 4(ah)).

Finally, the Petition states that Respondent violated D.C. Rule of Professional Conduct 8.1(a) (knowing false statements to Disciplinary Counsel) in the Macario matter. The evidence supports Respondent's admission that he violated Rule 8.1(a) in the Macario matter because the stipulated facts describe Respondent falsely stating to Disciplinary Counsel (1) that he waived his fee to appear in court and argue the matter and (2) that he completed the representation by appearing on Mr. Macario's behalf and submitting evidence to the court the same day he received payment (paragraphs 4(bb) and (bc)).

C. The Agreed-Upon Sanction Is Justified.

The third and most complicated factor the Hearing Committee must consider is whether the sanction agreed upon is justified. *See* D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(iii); *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam) (providing that a negotiated sanction may not be "unduly lenient"). Based on the record as a whole, including the stipulated circumstances in mitigation, the Hearing Committee Chair's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* discussion with Disciplinary Counsel, and our review of relevant precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient. The agreed-upon sanction appropriately takes into account the nature of the Respondent's misconduct, Respondents disciplinary history and conduct during the investigation, and factors to be considered in mitigation.

Respondent's misconduct took place in two separate representations, and the misconduct was significant. Respondent was previously informally admonished for a violation of Rule 7.1. That previous discipline is an aggravating factor, although it does not indicate a history of the type of misconduct at issue here. In mitigation, the parties have agreed that Respondent acknowledged his misconduct, expressed remorse, and refunded all fees to the clients. The parties have also agreed that Respondent cooperated with Disciplinary Counsel, despite his false statements to Disciplinary Counsel in the investigation of the Macario matter. Although Respondent testified at the limited hearing that he did not provide retainer agreements to his clients because his clients perceived them negatively, Tr. 37, Respondent is required to comply with his obligations under the Rules in the future. *Cf.* Petition at 14 ("Respondent shall not engage in any misconduct in this or any other jurisdiction within a year from his reinstatement. If Disciplinary Counsel has probable cause to believe that Respondent has engaged in any misconduct, Disciplinary Counsel may seek that Respondent be required to serve the remaining 120 days of the suspension previously stayed herein.").

The agreed-upon sanction is justified and not unduly lenient under the circumstances. The nine-month suspension with 120 days stayed is within the range of sanctions that have been imposed for comparable misconduct in other immigration matters, although it is shorter than sanctions that have been imposed in some cases. *See In re Cole*, 967 A.2d 1264 (D.C. 2009) (thirty-day suspension when an attorney intentionally neglected a matter, lied to his client that he had filed an

application, and lied about the application's status); *In re Perez*, 828 A.2d 206 (D.C. 2003) (per curiam) (sixty-day suspension with fitness and restitution for "protracted neglect and intentional conduct that resulted in prejudice and damage to a vulnerable client"); *In re Schoeneman*, 891 A.2d 279 (D.C. 2006) (per curiam) (four-month suspension when an attorney "neglected the cases of three clients before the United States District Court, misled them and lied to them as to the status of their cases, concealed from them his suspension from practice[,] and [] engaged in the unauthorized practice of law"; the court noted that a longer suspension could have been justified had the attorney not already served a temporary suspension that caused "injustice"); *In re Ryan*, 670 A.2d 375 (D.C. 1996) (four-month suspension with fitness and restitution for misconduct in five matters for vulnerable clients that included a "pattern of neglect, intentional refusals to return client files and property, and intentional failures to seek clients' objectives" as well as the "manifest failure on the part of respondent to appreciate her ethical responsibilities" and making misrepresentations to Disciplinary Counsel); *In re Carter*, 11 A.3d 1219 (D.C. 2011) (per curiam) (eighteen-month suspension with fitness and restitution for lack of competence, neglect, failure to return unearned fees, and other misconduct in two matters and false statements and failure to respond to inquiries during Disciplinary Counsel investigations); *In re Ukwu*, 926 A.2d 1106 (D.C. 2007) (two-year suspension with fitness and restitution for misconduct in five matters that involved lack of competence, neglect, failing to act promptly, failing to communicate, violating the duty of candor, acting dishonestly, and seriously interfering with the

administration of justice); *In re Rodriguez-Quesada*, 122 A.3d 913 (D.C. 2015) (per curiam) (two-year suspension with fitness and restitution for "numerous serious violations of the Rules of Professional Conduct in four different matters" that included violations of Rules 1.1(a) and (b), 1.3(a), (b)(2), and (c), 1.4(a) and (b), 1.16(d), 3.3(a)(1), and 8.4(c) and (d)); *In re Vohra*, 68 A.3d 766 (D.C. 2013) (three-year suspension with fitness for multiple rule violations in a single matter including "sustained neglect" and dishonesty; the respondent failed to inform his clients that he had filed an incorrect form, resubmitted the correct form without notifying them, signed their names without authorization, failed to collect additional required documentation, and repeatedly misrepresented the status of the matter to the clients); *In re Kanu*, 5 A.3d 1 (D.C. 2010) (disbarment with restitution as a condition of reinstatement for attorney who advised two clients to provide false information in immigration documents and "took money from her clients and promised to refund the money if she was not able to obtain the benefits they sought." But "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[.]" "[S]he 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."). Additional considerations noted in the Confidential Appendix justify the comparatively shorter period of suspension.

IV. CONCLUSION AND RECOMMENDATION

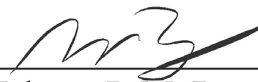
It is the conclusion of the Hearing Committee that the discipline negotiated in this matter is appropriate.

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court suspend Respondent for nine months, with 120 days stayed on the condition that he not engage in any misconduct in this or any other jurisdiction within a year of his reinstatement.

AD HOC HEARING COMMITTEE

Leslie H. Spiegel
Chair

La Verne Fletcher
Public Member



Webster R.M. Beary
Attorney Member