THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

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

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

INTRODUCTION

Congressional intern Chandra Levy disappeared in 2001. Because of her alleged affair with a sitting Congressman, public interest in the case was extensive, both at the time she vanished and after her remains were found in Rock Creek Park a year later.

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

Respondents Amanda Haines and Fernando Campoamor-Sanchez were Assistant United States Attorneys responsible for prosecuting Ingmar Guandique, who was tried, convicted, and sentenced to a lengthy imprisonment for the Levy murder. His conviction was later set aside, and the government agreed to dismiss the charges against him.

Disciplinary Counsel contends that Respondents failed to provide Guandique's attorneys with information that tended to discredit a key government witness, and charged them with violating D.C. Rules of Professional Conduct 3.8(e) (intentional failure to disclose information that tends to negate the guilt of the accused) and 8.4(d) (serious interference with the administration of justice). Respondent Haines is also charged with disclosing client confidences in violation of Rule 1.6(a) (knowing disclosure of client confidence or secret).

We find that Disciplinary Counsel proved by clear and convincing evidence that Respondent Haines violated Rules 3.8(e), 8.4(d) and 1.6(a). *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005). We also conclude that Disciplinary Counsel failed clearly and convincingly to prove that Respondent Campoamor-Sanchez committed any Rule violation. Accordingly, and for the reasons discussed herein, we recommend that Respondent Haines be suspended for ninety days, and that the charges against Respondent Campoamor-Sanchez be dismissed.

I. FINDINGS OF FACT

A. Background

1. Chandra Levy, a Congressional intern, disappeared in 2001. Her remains were found in Rock Creek Park approximately a year later. Tr. 77:12-21 (Sonenberg).[1]

2. Ingmar Guandique was an early suspect in the Levy murder, but no charges were brought against him until 2009, eight years after she disappeared. Tr. 79:14-82:4 (Sonenberg); Tr. 571:18-572:6 (Kavanaugh); AHX 1.

3. Respondent Amanda Haines is an attorney admitted to practice in New York State. A seasoned trial lawyer, starting in 1998 she had worked as an Assistant in the office of the United States Attorney for the District of Columbia ("USAO"), practicing in its courts pursuant to D.C.C.A. Rule 49(c)(1).[2] Jt. Stip. 1; Tr. 1471:8-10 (Haines). Beginning in about 2007, Respondent Haines began to work primarily on prosecuting unsolved homicides ("cold cases") that had female victims. Tr. 1473:9-474:2 (Haines). Along with a team of Metropolitan Police Detectives, she began to investigate the Levy murder. Tr. 1476:17-477:13 (Haines).

4. Some witnesses in the Levy investigation spoke only Spanish but Respondent Haines did not. She asked her supervisors to assign a Spanish-speaking

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[1] "Tr." refers to the transcript of the hearing held on May 18-25 and October 7, 2021. "DCX" refers to Disciplinary Counsel's exhibits. "AHX" refers to Respondent Haines's exhibits. "FCSX" refers to Respondent Campoamor's exhibits. "RJX" refers to Respondents' joint exhibits. "Jt. Stip." refers to the stipulations between Disciplinary Counsel and both Respondents. "Haines Stip." refers to the stipulations between Disciplinary Counsel and Respondent Haines.

[2] Ms. Haines is subject to the disciplinary jurisdiction of the Board and Court pursuant to D.C. Bar Rule XI, Section 1(a).

lawyer to help her, and Respondent Campoamor-Sanchez joined the Levy investigative team. Tr. 1481:15-482:7 (Haines); Tr. 1018:4-019:6 (Campoamor-Sanchez). Assigned Bar number 451210, he had been admitted to the D.C. Bar on June 3, 1996, joined the USAO in 2004, and had been assigned to its homicide bureau in September 2007. Jt. Stip. 2; Tr. 1013, 1016 (Campoamor-Sanchez).

B. The Zaldivar Letter Introduces Armando Morales

5. In 2008 (six years after her body was found), the media published stories about the Levy case naming Guandique as the prime suspect. Tr. 81:4-15 (Sonenberg); Tr. 1270:15-20 (Campoamor-Sanchez).

6. On March 24, 2009, Respondent Haines and Respondent Campoamor-Sanchez received a Department of Justice email that forwarded a letter, dated February 23, 2009, from Miguel Zaldivar (the "Zaldivar letter"). DCX 5; Tr. 1024:5-22 (Campoamor-Sanchez). Zaldivar was a federal inmate in Florida, imprisoned for importing drugs. Tr. 1391:16-392:15 (Campoamor-Sanchez). Both Respondents read the Zaldivar letter shortly after it was received. Tr. 1025:5-6 (Campoamor-Sanchez); Tr. 1798:2-18 (Haines).

7. The Zaldivar letter was three pages long. The first page provided background information about another prisoner, Armando Morales, and stated among other things that Morales:

- had seen Levy's case on CNN;
- knew who killed Chandra Levy;
- was a founder of the Fresno Bulldogs, a notorious gang closely associated with the Mexican Mafia;

- was a drop-out from the gang;
- had "debriefed to law enforcement about his gang involvement"; and
- was willing to help law enforcement with the Levy case.

DCX 5 at 48. Respondents' failure timely to provide Guandique's attorneys with the information contained on the first page of the Zaldivar letter underpins the Rule 3.8 and 8.4 charges against them. *See* Specification of Charges.

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

9. When Respondents received the Zaldivar letter, there was an open grand jury investigation into the Levy case. Tr. 1025:21-1026:13 (Campoamor-Sanchez). Respondents verified that Morales and Guandique had been in prison together in 2006, and Respondent Campoamor-Sanchez arranged to bring Morales to the District of Columbia. Tr. 1028:8-1029:5 (Campoamor-Sanchez).

C. Morales Testifies Before the Grand Jury

10. On April 20, 2009, Respondent Campoamor-Sanchez called Morales as a witness before the grand jury and asked him to verify the account attributed to him on the second and third pages of the Zaldivar letter. Jt. Stip. 4; DCX 6 at 91-95; Tr. 1275:12-16, 1333:12-334:10 (Campoamor-Sanchez).

11. Morales's testimony was central to the government's case against Guandique. Tr. 133:1-17 (Sonenberg); Tr. 1268:22-1270:7 (Campoamor-Sanchez). Respondents viewed him as "very important," Tr. 1268:19-1269:1 (Campoamor-Sanchez), and, from the defense perspective, he was the "most important witness in the trial, no doubt." Tr. 539:1-15 (Sonenberg).

12. Morales's credibility was therefore crucial to the success of the prosecution. His credibility in turn depended on the believability of his explanation as to why he had delayed disclosing Guandique's supposed confession for almost three years, revealing it only after he learned that the media had named Guandique as a suspect. Tr. 1270:8-1272:2 (Campoamor-Sanchez).

13. Morales claimed that he had had an epiphany well after Guandique confessed to him: At the time of the confession he "didn't try to do things right." He testified that he had later participated in a prison skills program that "chang[ed his] value system" and, as a result, he was "trying to become a better . . . person." DCX 6 at 88. Morales asserted that, after hearing reports about Guandique on CNN, Zaldivar suggested he come forward, but that Morales was nervous because he had "never done that before" and did not trust the police. DCX 6 at 87-89; *see also* Tr. 1062:10-15, 1272:3-17 (Campoamor-Sanchez).

14. Morales's claim about having undergone a post-confession transformation was a lie. Tr. 127:1-128:14 (Sonenberg); Tr. 1133:2-20 (Campoamor-Sanchez). After the Guandique trial, the government learned that, well before Guandique supposedly confessed to him, Morales had worked closely with

authorities and provided them with information incriminating others in order to benefit himself. The reality of Morales "debrief[ing] to law enforcement" cited on the first page of the Zaldivar letter "was directly contrary to what his testimony was at trial, that he had never done that before [and] that he was not willing to testify against anybody else until he had his change after the [prison] Skills program." Tr. 1227:3-1228:8 (Campoamor-Sanchez).

15. Respondent Campoamor-Sanchez offered the entire Zaldivar letter as a grand jury exhibit, marking it with a red exhibit sticker, but did not ask Morales about the information on its first page. DCX 6 at 91-92; Tr. 1066:7-21, 1069:5-1070:11 (Campoamor-Sanchez). The grand jury transcript thus did not disclose that Morales had debriefed to law enforcement before coming forward in the Levy investigation. Tr. 1275:4-11 (Campoamor-Sanchez); Tr. 284:3-13 (Sonenberg).

16. Respondent Haines viewed "debriefed" as an ambiguous term that "could mean lot of various things." Tr. 1805:7-1806:3 (Haines). Its dictionary definition is "to be interrogated for useful information following a mission, experience, etc." *Debrief*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/debrief. It was understood by witnesses at the disciplinary hearing to mean anything ranging from providing information to the government (sometimes in anticipation of entering into a cooperation agreement or sometimes after having entered into such an agreement), or "just a meeting, just to talk." Tr. 303:22-304:14 (Sonenberg); Tr. 1521:10-11, 1805:11-1806:7 (Haines). There is no evidence, however, what *Zaldivar* meant when *he* used the term in his letter to

describe Morales's earlier interaction with police, and Respondent Haines did not know what Zaldivar meant by it. Tr. 1807:15-17 (Haines).

17. On May 19, 2009, the grand jury indicted Guandique for the murder of Levy. Jt. Stip. 5.

D. Pre-trial Discovery Issues

18. Guandique was represented in the Levy case by Santha Sonenberg and Maria Hawilo of the Public Defender Service for the District of Columbia ("PDS"). Tr. 310:17-311:15 (Hawilo).

19. On October 13, 2009, Respondents provided the defense with a notice of admissions by Guandique that they might offer at trial. The notice did not disclose the names of witnesses and provided only brief summaries of their anticipated testimony. AHX 3; Tr. 84:13-85:12 (Sonenberg).

20. The defense made repeated efforts to learn who the confession witnesses were so that they could investigate their backgrounds. Tr. 85:18-87:11, 89:8-93:1 (Sonenberg); Tr. 312:22-315:13 (Hawilo); *see, e.g.*, FSCX 17. Early disclosure of those names would, self-evidently, have given the defense more time to do so. Tr. 639:15-641:2 (Kavanaugh). Respondents opposed those efforts, asserting danger to witnesses and arguing that they had no obligation to disclose potentially favorable information if it was not material. Tr. 93:2-95:12 (Sonenberg); FCSX 18 at 4-5.

21. Respondents also represented that there was no reason for the trial court to order them to provide the defense with potential exculpatory information because

they had voluntarily begun to make such disclosures and would continue to do so without a court order. *See* FCSX 18 at 1.

22. Respondents further argued that "solely impeaching" evidence need not be disclosed until two weeks before trial but, if impeachment evidence required investigation, they promised to produce it in advance or explain why they were unable to do so. FCSX 18 at 22-23, 25; *see also* Tr. 95:13-97:20 (Sonenberg).

23. The defense argued that it needed extra time to investigate the confession witnesses because they were incarcerated in far-flung jurisdictions around the country. Tr. 98:13-101:22 (Sonenberg); RJX 4 at 5-6.

24. The trial court ordered that no later than two weeks before trial Respondents produce: (1) impeachable convictions, (2) materially inconsistent statements, and (3) mental issues that would go to capacity. Tr. 103:5-21 (Sonenberg); RJX 4 at 23.

E. The *Giglio* Letter

25. The trial was originally scheduled to begin on October 4, 2010, so the disclosures ordered by the trial court were due two weeks earlier, on September 20, 2010. Tr. 1316:3-20 (Campoamor-Sanchez). Those disclosures (the "*Giglio* letter") would be the first time the government provided the names of many witnesses to the defense.[3] Tr. 1291:13-1293:1 (Campoamor-Sanchez). Because the trial was continued, the due date for the *Giglio* letter was October 4, 2010.

[3] Under *Giglio v. United States*, 405 U.S. 150 (1972) and its progeny, a prosecutor must disclose information and evidence that could be used to impeach the credibility of a government witness.

26. Respondent Haines – who was lead counsel – had wavered on whether she or Respondent Campoamor-Sanchez would present Morales's testimony at trial. She initially assigned herself that responsibility. FCSX 23 at 5; Tr. 1486:11-13 (Haines). Although she temporarily re-assigned the task to Respondent Campoamor-Sanchez in mid-September, before the trial she re-assumed personal responsibility for Morales as a witness. Tr. 1145:1-7, 1286:1-1291:19 (Campoamor-Sanchez); FCSX 29 at 5; FCSX 40 at 6; FCSX 42 at 6.

27. On September 21, 2010, Respondent Campoamor-Sanchez emailed Respondent Haines a draft of the *Giglio* letter for five incarcerated witnesses, including Morales. DCX 8. The draft was incomplete. As to Morales, Respondent Campoamor-Sanchez proposed disclosing criminal convictions that might be introduced to impeach his credibility. He did not suggest disclosing Morales's prior debriefing to law enforcement or any of the other information contained on the first page of the Zaldivar letter. DCX 8 at 116-17; Tr. 1296:5-1299:2 (Campoamor-Sanchez).

28. Early on September 22, 2010, Respondent Campoamor-Sanchez emailed Respondent Haines another draft of the *Giglio* letter, adding names of three witnesses, omitting some material he had bracketed in his previous draft, and adding a sentence about the absence of mental health issues for Morales. DCX 9. Again, he did not recommend disclosing Morales's prior debriefing to law enforcement. Tr. 1299:3-1301:2, 1306:1-1310:5 (Campoamor-Sanchez).

29. Both Campoamor-Sanchez drafts were unfinished, as evidenced by notes, errors, sentence fragments, and questions contained on them. DCX 8 at 109, 115; DCX 9 at 120, 122.

30. As lead counsel, on September 22, 2010 Respondent Haines took over from Respondent Campoamor-Sanchez the responsibility for finalizing the *Giglio* letter. DCX 10. After she received his drafts, she assured Respondent Campoamor-Sanchez she would make the disclosures and would "revise" and "take care of getting out the [G]iglio letter" on her own. *Id.*; *see* Tr. 1158:19-1159:2 (Campoamor-Sanchez).

31. The final version of the *Giglio* letter was nominally dated September 22, 2010, but was not provided to the defense until October 4. Tr. 108:16-109:9 (Sonenberg); Tr. 1501:9-1503:4 (Haines). As to Morales, Respondent Haines disclosed the information contained in Respondent Campoamor-Sanchez's draft and added a statement that Morales had received no benefit in exchange for testifying. She did not disclose his prior debriefing with law enforcement. Tr. 111:6-12 (Sonenberg); DCX 11 at 129.

32. Respondent Campoamor-Sanchez is of the view that the Morales debriefing was not impeachment material and "do[esn't] think" it had to be disclosed; indeed, he surmises that he does not "think [he] would have included it" in the *Giglio* letter. Tr. 1166-67 (Campoamor-Sanchez). Nevertheless, he did not make a "conscious choice" whether or not to do so. Tr. 1167:9-12 (Campoamor-Sanchez)

33. The content of the final *Giglio* letter was determined by Respondent Haines alone. Respondent Campoamor-Sanchez did not make any further revisions to the letter (or have an opportunity to do so) in the twelve days between the date of his second draft and the date the final version was delivered to the defense. Tr. 1163:21-1164:12 (Campoamor-Sanchez). He did not decide, or discuss with Respondent Haines, what information should be disclosed about Morales, either in the *Giglio* letter or during trial. Tr. 1165:14-20, 1166:17-1167:12, 1313:7-17 (Campoamor-Sanchez). He did not decide the timing of the *Giglio* letter, and Respondent Haines did not give him a copy. Tr. 1163:21-1166:2 (Campoamor-Sanchez). He did not review or approve the letter, and did not sign it. DCX 11 at 133; Tr. 1163:21-1166:2 (Campoamor-Sanchez). Indeed, he did not see the final version of the letter until more than a year after trial. Tr. 1165:9-13 (Campoamor-Sanchez). At the time the *Giglio* disclosure was made two weeks before trial, he thus had no direct knowledge that Respondent Haines failed to disclose that Morales had debriefed to police authorities.

34. Defense counsel learned Morales's name for the first time when they received the *Giglio* letter on October 4, 2010. Tr. 102:14-103:4, 108:16-109:9, 188:21-189:7 (Sonenberg); Tr. 320:1-321:7 (Hawilo).

35. Following receipt of the *Giglio* letter, although the PDS attorneys attempted to investigate Morales's background to prepare for his cross-examination (Tr. 188:21-192:16, 198:2-14 (Sonenberg); Tr. 1730:12-17 (Haines)), they were unable to find any evidence that suggested Morales had cooperated in the past with

police authorities; any such information "would have been very powerful . . . [but they] didn't have it." Tr. 203:8-14 (Sonenberg); *see also* Tr. 320:1-321:7 (Hawilo).

36. Had they received the information contained on the first page of the Zaldivar letter, the PDS attorneys would have sought information contained in Fresno law enforcement files (through litigation if necessary), talked to law enforcement officials there, and sought other witnesses "who knew anything about it," all to undermine Morales's testimony. Tr. 323:6-324:3 (Hawilo).

37. Before trial Respondents never disclosed the information contained on the first page of the Zaldivar letter, and the defense did not know that Morales had earlier debriefed to law enforcement. Tr. 321:8-11 (Hawilo); Tr. 1285:16-21 (Campoamor-Sanchez); Tr. 1713:9-1717:19 (Haines).

F. Preparing Morales for Trial

38. On October 5, 2010. Respondent Haines met with Morales in a Virginia jail to prepare his trial testimony. Tr. 1146:11-1149:8 (Campoamor-Sanchez); Tr. 1503:5-1504:16 (Haines). Respondent Campoamor-Sanchez was present for this interview. Tr. 1148:3-8 (Campoamor-Sanchez). Respondent Haines brought an outline of questions to ask Morales (AHX 9; Tr. 1508:14-1509:17 (Haines)), including whether he had testified before. When he said he had never done anything like that, she "confronted" him about the fact of his debriefing with a law enforcement gang unit. AHX 9 at 3; Tr. 1513:4-1515:09, 1691:2-1693:6 (Haines). She thus appreciated the evident inconsistency between Morales's epiphany narrative and his earlier interaction with law enforcement.

39. Respondent Haines met with Morales a second time, again to prepare for his direct trial testimony and cross-examination. Tr. 1566:1-1568:11 (Haines). Her outline suggested that she intended to ask him at trial if he had testified before, and in brackets wrote "prep for did debrief with gang unit but not about others." AHX 10 at 4. She thus understood and anticipated that, if they knew about it, defense counsel would cross-examine Morales about his prior debriefing. She prepared Morales to neutralize that line of cross examination by testifying that, in the debriefing, he did not incriminate others. Tr. 1567:14-1568:19, 1697:5-1698:10 (Haines).

40. Appreciating the potential impact of the debriefing on Morales's credibility, Respondent Haines considered whether "to take the sting out" of the issue by asking about it on direct examination. Tr. 1569:2-16 (Haines). She usually did "try to draw out the sting," with witnesses but for "some reason -- and I don't remember, you know, exactly why," she "didn't feel the need to draw out the sting" with respect to the debriefing by Morales. Tr. 1569:21-1570:4 (Haines). She still had not disclosed the Zaldivar letter, or the fact of the debriefing, to the defense. Tr. 1694:6-696:4 (Haines).

41. The fact that she felt it necessary to confront Morales about his prior debriefing and prepare him for cross-examination about it demonstrates her awareness of, and concern for, its possible effect on his credibility and on the success of the prosecution's case. Respondent Haines was sufficiently concerned about the

potential impact of the debriefing that it "fell into a category of, [she] needed to test it." Tr. 1595:3-18 (Haines).

42. To "test" the information, however, Respondent Haines simply asked Morales about it. He claimed he had received no benefit from the debriefing, had debriefed truthfully in a matter unrelated to the Levy case, had debriefed solely about his own activities, and had not implicated others in the debriefing session. DCX 26 at 504-06. Nothing in the Zaldivar letter, however, said the Morales debriefing was limited to his own activities (Tr. 1672:10-13 (Haines)); nothing in the letter said he refused to implicate others (Tr. 1673:8-12 (Haines)); nothing in the letter said he did not ask for or receive benefits (Tr. 1673:13-15 (Haines)); and nothing in the letter said he debriefed truthfully. DCX 5 at 48-50.

43. Relying solely upon what Morales told her about his debriefing session, Respondent Haines rationalized that the debriefing was consistent with his maintaining the gang's code of silence and "the particulars of the debriefing" were thus not *Brady* material; she decided that she did not need to disclose them. DCX 26 at 506; *see* Tr. 1595:3-18 (Haines).

44. At trial, Respondent Haines asked no questions about the debriefing, and the defense did not cross-examine Morales about it. DCX 15 at 244-352.

45. Respondent Haines contends that "it never dawned on [her] that [Morales would] be lying about the . . . debriefing." Tr. 1564:9-10 (Haines). After the trial she came to view him as a pathological liar. Tr. 1750:5-9 (Haines).

G. The Morales Jencks Disclosure

46. "Jencks" material includes, *inter alia*, "a written statement made by [the] witness and signed or otherwise adopted or approved by him" and "a substantially verbatim recital of an oral statement made by [the] witness and recorded contemporaneously . . . ." 18 U.S.C. § 3500(e)(3). It must be produced no later than after the witness testifies on direct examination. 18 U.S.C. § 3500(b). A Jencks package for Morales was hand-delivered to the defense in the lobby of the USAO two nights before he testified. Tr. 581:13-17, 584:21-585:12 (Kavanaugh). There is no dispute that the package contained the Morales grand jury transcript and the last two pages of the Zaldivar letter. Much of the testimony at the disciplinary hearing concerned whether or not the Jencks production also contained the letter's first page.

47. Both defense attorneys testified clearly, unhesitatingly and from first-hand knowledge that the first page of the Zaldivar letter was not given to them. Tr. 121:8-12, 122:7-123:16,146, 299:19-301:8 (Sonenberg); Tr. 325:15-21 (Hawilo). Their testimony was unshaken on cross-examination. Although they did not contemporaneously confirm the contents of the Jencks production in writing (a task impractical under the time pressure of trial (Tr. 545:1-20 (Anderson)), a thorough post-trial search of PDS files (*see infra* FF 72-73) confirmed that the first page was not there. Tr. 144:19-145:9 (Sonenberg).

48. There is no basis for Respondents' suggestion that the first page was produced, but then lost or misplaced by PDS: Jencks productions were personally

handled by the two PDS trial attorneys who were careful (if not "anal") about handling the materials they received. Tr. 76:4-22, 177:11-20 (Sonenberg); Tr. 335:7-22, 340:2-18, 437:12-438:13 (Hawilo); Tr. 484:12-487:1 (Anderson).

49. The defense attorneys' recollection was credible – and readily understandable as such – because the information contained on the first page (had they received it) would directly have supported a central argument they were making about the key witness at trial. Tr. 485:2-13 (Anderson). The first page of the Zaldivar letter showed that Morales debriefed to law enforcement *before* his supposed redemption, while he claimed still to have a "thug mentality" (DCX 15 at 345); it thus "directly refuted the statements [Morales] had made under oath . . . . [It also] powerfully supported [the defense] position that he acts on self-interest and that he fabricated what he claims Mr. Guandique said . . . ." Tr. 279:9-20 (Sonenberg); *see also* Tr. 125:4-20. The evidence would have been so significant to the defense that, had it been produced as Jencks material, PDS would have claimed it should have been disclosed pre-trial and "would have moved for a dismissal, in the lesser alternative moved for a mistrial, asked for a continuance as a third lesser alternative." Tr. 284:18-285:5 (Sonenberg); *see also* Tr. 351:4-14 (Hawilo).

50. The defense lawyers did not object to the missing first page of the letter because they "trusted that [they] were being given the Jencks [they] were entitled to." Tr. 405:12-406:3 (Hawilo); *see also* Tr. 226:14-20, 272:9-273:7 (Sonenberg); Tr. 437:2-4 (Hawilo). Respondents had occasionally produced Jencks materials with entire pages redacted, so a missing page was not unusual (Tr. 346:16-347:1, 445:22-

46:4 (Hawilo)), and the format of the two pages that *were* produced – which contained the entire Morales first-person narrative – was consistent with a completed Jencks disclosure. Tr. 221:16-223:2, 231:14-19 (Sonenberg).

51. On the other hand, only one witness for Respondents had any knowledge of the Jencks production. Chris Kavanaugh, an AUSA helping the prosecution team in a support role, testified that he hand-delivered the package to a defense attorney and believed it contained the first page of the Zaldivar letter. Tr. 581:13-17, 588:14-590:12 (Kavanaugh). His testimony, although sincere, was mistaken.

52. Kavanagh's testimony was substantially based on his review of ambiguous documentation, and was tentative at best since he could not say with certainty whether the first page was included in the packet he delivered. Tr. 588:14-590:12, 651:21-652:5 (Kavanaugh). Critically, in 2017 – four years before the disciplinary hearing – Kavanagh had testified that he could not remember whether or not the first page had been produced (Tr. 661:5-9 (Kavanaugh)), and he candidly acknowledged at the disciplinary hearing that his "mental image [was] foggier . . . than it was in 2017 and that mental image that I testified to . . . in 2017 was foggier than it was back in 2012." Tr. 704:5-705:4 (Kavanaugh).

53. Kavanagh's hazy recall is wholly understandable, since his involvement in the Jencks production was that of a mere messenger in a mundane and easily forgettable delivery transaction. He played no substantive role in the Jencks production since he did not decide what was to be included in the Jencks

packet, and did not even remember whether or not he had assembled it. Tr. 576:15-22 (Kavanaugh).

54. Finally, Kavanagh based his testimony in meaningful part on what he believed to be a pattern in the government's Jencks procedures, *i.e.*, on the supposed routine practice of turning over all grand jury exhibits with the grand jury transcripts to which they related. Tr. 593:16-594:12 (Kavanaugh); *see also* Tr. 1171:14-1172:22, 1186:14-1187:7 (Campoamor-Sanchez); Tr. 1583:18-1584:14, 1592:2-13 (Haines). Yet the government's processes were imperfect at best, since from time to time they "had to supplement things because [the government] had missed, I think in copying mostly, giving [the defense] pages." Tr. 1584:6-14 (Haines). Indeed, the purported practice of disclosing all grand jury exhibits of a witness was breached in the Morales Jencks production itself, which did not contain a second exhibit that had been marked during his testimony. Tr. 121:13-123:5 (Sonenberg); Tr. 649 (Kavanaugh). Finally, the government did not make a record of the Jencks production, which itself violated its procedures; nothing in the government's files showed that the first page was produced. Tr. 700:2-19 (Kavanaugh); Tr. 827:9-12, 882:12-883:1 (Evangelista); Tr. 925:4-19, 999:4-7 (McCord).

55. Both Respondents testified they thought the first page of the Zaldivar letter was contained in the Jencks packet (Tr. 1171:20-1172:3, 1186:14-19 (Campoamor-Sanchez); Tr. 1583:18-1584:14, 1591:18-1592:13 (Haines)), but neither had any direct knowledge of that fact. Respondent Campoamor-Sanchez did not participate in the Jencks disclosures for Morales. Tr. 1170:14-1171:13

(Campoamor-Sanchez). Respondent Haines could not recall who prepared the Jencks packet, and had no knowledge of when the first page of the Zaldivar letter may have been turned over. Tr. 1577:16-21, 1762:18-22 (Haines). No witness called by Respondents knew anything about the preparation of the Morales Jencks packet.

56. The first page of the Zaldivar letter was not produced to the defense as part of the Morales Jencks packet. Even if it had been produced at that time, defense attorneys would have had insufficient time adequately to investigate its contents. Tr. 86:8-87:20 (Sonenberg); Tr. 1339:3-11 (Campoamor-Sanchez).

57. Respondent Haines was responsible for the contents of the Jencks production because she had assumed responsibility for Morales as a witness at trial. She is thus responsible for the failure to produce the first page of the letter at that time. Particularly in light of the imperfect document production practices employed by the government, however, Disciplinary Counsel failed clearly and convincingly to prove that her failure to produce it as part of the Jencks packet was intentional. Tr. 1594:11-12 (Haines) ("it's possible that there was a mistake made in copying it or transmittal").

H. The Trial Testimony of Morales

58. At trial, Respondents knew that Morales had to explain to the jury's satisfaction why he had delayed reporting Guandique's alleged confession. Tr. 1271:19-1272:2 (Campoamor-Sanchez).

59. To that end, Respondent Haines had him testify about his violent activities, including preparation for an encounter with a rival gang when he was Guandique's cellmate. DCX 15 at 245-48. Explaining his delay in coming forward, Morales claimed to the jury that he "wasn't thinking like that" in 2006, and that he "didn't have it in [him] to tell at that time." *Id.* at 269-270. He testified that after he transferred to a medium security prison, he entered a skills program that "drastically" changed his mind-set by teaching him how to "make better . . . choices." *Id.* at 270-72; *see also* Tr. 1272:3-12 (Campoamor-Sanchez). In effect, Morales claimed the skills program liberated him, made him a better citizen, and freed him belatedly to report Guandique's confession. He said a Christmas visit with his family in 2008 also gave him the confidence to cooperate but that he needed help from his mentor (Zaldivar) to do so because he did not know how to come forward to law enforcement. DCX 15 at 272-23, 277.

60. As perceived by the defense, Morales testified that:

> notwithstanding his 30-year criminal history . . . he all of a sudden had done a 180 and . . . these . . . forces coalesced and . . . basically he had gone from sinner to saint . . . . That was his motivation for coming forward about Mr. Guandique, not because he was trying to help himself.

Tr. 127:12-128:2 (Sonenberg).

61. Morales was "devastating as a witness" because he came across basically as someone who "had a prior criminal record" but had "never been any sort of law enforcement informant . . . . So, there was no real way to attack his credibility." Tr. 322:8-15 (Hawilo).

62. On cross-examination the defense challenged Morales about his failure to report the confession until after CNN disclosed Guandique as the prime suspect (Tr. 125:15-20 (Sonenberg)) and contested his tale of an epiphany (Tr. 127:6-128:14 (Sonenberg); Tr. 316:17-317:12 (Hawilo)), but Morales insisted that he had never testified before or come forward with respect to anyone other than Guandique. DCX 15 at 318; Tr. 125:4-129:20 (Sonenberg).

63. The defense did not confront Morales over his prior debriefing, or about the details of that debriefing, because they did not know about it. DCX 15 at 280-338; Tr. 132:20-133:17, 258:15-259:20, 278:22-279:20 ("If I had had it, I definitely would have used it.") (Sonenberg). The defense lawyers reasonably believe that, had they been able to use the debriefing on cross-examination, it could have shown "both . . . that this is his MO, to act in his own self-interest, and . . . that he had lied when he said he'd never done this sort of thing before." Tr. 130:10-133:17, 278:22-279:20 (Sonenberg).

64. On redirect examination, Respondent Haines returned to the subject and asked Morales to explain again why he had not sooner informed on Guandique. Morales reiterated that he "still had a thug mentality, you know, I still subscribed to them false philosophies of you don't tell." DCX 15 at 345.

65. Morales was such a good witness that in a courtroom "packed full of people . . . you could hear a pin drop." Tr. 1393:22-1394:2 (Campoamor-Sanchez). As a consequence, Respondent Campoamor-Sanchez concluded "there was no need to further corroborate" him. Tr. 1394:3 (Campoamor-Sanchez).

66. In closing argument, Respondent Haines again contended that Morales's redemption had changed his life. DCX 17 at 461. Claiming that he was a person whom the "the system has actually affected," she asked the jury to believe that "prison has worked for just one person"; that he "had a change of heart and is just trying to do the right thing"; that he was "just trying to do something good"; and that he had no "ulterior motive." *Id.* at 396-97.

67. The defense countered that the case "essentially rises or falls on whether you can believe Armando Morales beyond a reasonable doubt." *Id.* at 403; *see also* Tr. 264:2-12 (Sonenberg); Tr. 315:14-316:16 (Hawilo). They pointed out that Morales had never said "word one about these supposed statements that Mr. Guandique makes [until] after it's being reported on the news that Mr. Guandique is about to be charged with Ms. Levy's murder." DCX 17 at 425. They attempted to discredit Morales's "turn-around"; becoming "a good [S]amaritan"; going "from sinner to saint, 180 degrees, on the turn of a dime." *Id.* at 433-35.

68. In rebuttal argument, Respondent Campoamor-Sanchez reiterated that Morales had "had a redemption" and that "he's actually going to start making different decisions about his life and about what he needs to do and about being a real man." *Id.* at 461.

69. On November 22, 2010, Guandique was found guilty of first-degree murder. Jt. Stip. 8. On February 11, 2011, he was sentenced to sixty years in prison. Jt. Stip. 9.

I. Post Trial Events

70. In January 2012, Fresno police contacted the Justice Department seeking to interview Morales. DCX 26 at 510. This serendipitous event triggered a Justice Department investigation. Tr. 1636:7-1641:17 (Haines).

71. The government's post-trial investigative team confirmed that in June 1998, while imprisoned in Atlanta, Morales volunteered to provide the Fresno authorities with information about two murders and had had eight to ten interviews with the Sheriff's Department. DCX 28 at 1-2; Tr. 893:19-894:15, 926:7-927:16; 967 (Evangelista). Morales had also provided a written statement about his gang activities, and his lawyer sought to negotiate a cooperation agreement for him to provide testimony about murders and a police shooting. In 1996, Morales sent a letter to a prosecutor saying that he had worked with law enforcement in the past, and local law enforcement approached a federal prosecutor about the possibility of a reduction in sentence for Morales. DCX 25 at 497-98; Tr. 966:14-968:16 (McCord). All of this information was contrary to his testimony before the grand jury and at trial. Tr. 1234:11-1235:16 (Campoamor-Sanchez).

72. The Morales developments were conveyed to the Guandique trial judge, who ordered the information disclosed to the defense. DCX 27 at 517-520; DCX 28 at 521. Respondent Campoamor-Sanchez did so in a letter dated November 21, 2012, which noted that information about Morales's debriefing to law enforcement was contained in the Zaldivar letter that, he claimed, had been "previously provided to" the defense. DCX 28 at 522 n.2.

73. The assertion that the Morales debriefing had been disclosed to the defense triggered an unsuccessful search of PDS files for the Zaldivar letter's first page. PDS informed the USAO that they did not have it and requested a copy, which was sent to them. DCX 29 at 524; Tr. 143:3-145:9 (Sonenberg); Tr. 453:8-455:8 (Anderson).

74. After receiving page one of the Zaldivar letter, PDS moved for a new trial based in part on the information contained in it (Tr. 458:1-463:12 (Anderson)), arguing that it should have been disclosed pre-trial but had not been disclosed at all. Tr. 464:19-465:8 (Anderson).

75. The court conducted multiple hearings on the new trial motion. Tr. 465:9-20 (Anderson). In May 2015, the government withdrew its opposition to the motion. Tr. 895:1-898:14 (Evangelista). The trial judge thus never ruled on whether the failure to disclose the information about Morales's debriefing violated *Brady*. Tr. 473:20-474:5 (Anderson).

76. The government moved to dismiss the charges against Guandique almost a year later, on December 10, 2015. Tr. 475:5-8, 522:2-5 (Anderson). After additional information came to light about Morales, the government was no longer willing to sponsor him as a witness, and prosecutors concluded it was not possible to prosecute Guandique without his testimony. Tr. 1363:20-1365:20 (Campoamor-Sanchez).

77. At that time, Guandique was incarcerated as a result of his murder conviction. Tr. 1367:2-19 (Campoamor-Sanchez).

J. Prosecutorial Norms

78. The avowed disclosure policies of the USAO, with respect to which it trained its AUSAs, was to provide more exculpatory and impeachment information to the defense than the law required. Tr. 944:3-10, 949:20-950:10, 997:2-19 (McCord). That policy was broad because government lawyers "might not be able to guess what the defense is going to be, . . . [and] you don't want to tack close to the wind and end up being wrong[, s]o is it better to be safe and over-disclose than under-disclose, keeping in mind countervailing circumstances like witness security and national security interference in ongoing investigations, et cetera." Tr. 997:9-998:2 (McCord); *see also* FCSX 18 at 86 (Memorandum for Department Prosecutors, dated January 4, 2010) (stating that "[T]he Department's policy regarding the disclosure of exculpatory and impeachment information . . . provides for broader disclosure than required by *Brady* and *Giglio*. Prosecutors are also encouraged to provide discovery broader and more comprehensive than the discovery obligations.").

79. Respondent Campoamor-Sanchez understood his duty under *Giglio* to make available information to the defense that "tends to impeach or call into question the credibility of a witness" (Tr. 1044:20-1045 (Campoamor-Sanchez)), and under department policy to disclose all exculpatory evidence regardless of materiality. Tr. 1323:6-13 (Campoamor-Sanchez).

80. Respondent Haines was of a different view. She believed that it was permissible to make a "determination as to whether it's favorable to the defense and

also material" before turning evidence over, and viewed "impeachment" and "exculpatory" information as subject to different disclosure requirements. *See* Tr. 1662:2-1664:19, 1756:13-1757:7 (Haines).

81. On July 29, 2010, the Court of Appeals decided *Zanders v. United States*, 999 A.2d 149, 164 (D.C. 2010), in which Respondent Haines appeared both as trial counsel and as appellate counsel of record. *See* Tr. 2053:20-2054:4 (stipulation). The *Zanders* Court held, in relevant part:

> It is not for the prosecutor to decide not to disclose information that is on its face exculpatory based on an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder. . . . The critical task of evaluating the usefulness and exculpatory value of the information is a matter primarily for defense counsel, who has a different perspective and interest than the police or prosecutor.

Zanders, 999 A.2d at 164.

82. A reasonable prosecutor in Respondent Haines's position, adhering to the standards of the Justice Department and USAO and to the admonitions in *Zanders*, would have disclosed the first page of the Zaldivar letter to defense no later than two weeks before the start of trial.

K. Disclosure of Confidences (Haines)

83. In an exchange of internal emails before the Guandique trial, Respondent Haines and Respondent Campoamor-Sanchez disagreed about strategy and division of labor. Tr. 1219:8-1220:10 (Campoamor-Sanchez); Haines's Answer at 23.

84. On November 8, 2010 and November 14, 2010, Respondent Haines forwarded the emails to her boyfriend, who was not employed by the USAO or the Department of Justice. Those emails contained confidential and secret information related to the strategy for prosecuting the Guandique case. DCX 32; Haines Stip. 1.

85. No one from the USAO gave Respondent Haines permission to disclose the confidences and secrets contained in those emails. Tr. 1659:13-17 (Haines).

II. CONCLUSIONS OF LAW

Both Respondents are charged with violating Rules 3.8(e) and 8.4(d) because they did not disclose to PDS the information contained on the first page of the Zaldivar letter. Respondent Haines admits violating Rule 1.6(a) because she disclosed confidential government information to a third party.

A. Respondent Haines Violated Rule 3.8(e)

Rule 3.8(e) provides that:

> The prosecutor in a criminal case shall not . . . intentionally fail to disclose to the defense, upon request and at a time when use by the defense is reasonably feasible, any evidence or information that the prosecutor knows or reasonably should know tends to negate the guilt of the accused . . . .[4]

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[4] The Court adopted the Rule in 1990. As it explained in *In re Kline*, 113 A.3d 202, 207-08 (D.C. 2015):

> The ethical rule regarding prosecutorial disclosure in the District of Columbia, as in most states, incorporated the "tends to negate guilt" standard promulgated by the ABA in its Model Code of Professional Responsibility to define the class of evidence required to be disclosed under Rule 3.8. . . . The 1986 ABA Standards for Criminal Justice . . . provides some guidance on the role *Brady* played in the development of the standards for determining what material must be disclosed to the defendant. Specifically, the commentary notes that, "[t]he standard adopts the definition of exculpatory material contained in the Supreme Court's decision in *Brady v. Maryland*, that is, material that tends to negate guilt or reduce punishment.

To prove a violation of Rule 3.8(e) Disciplinary Counsel must thus establish, with respect to each Respondent, these elements:

(1) Following a request by the defense; and

(2) At a time when use by the defense was reasonably feasible;

(3) The Respondent intentionally did not disclose;

(4) Evidence or information that the Respondent knew, or reasonably should have known, tended to negate the guilt of Ingmar Guandique.

See also In re Dobbie, Board Docket No. 19-BD-018, at 15 (BPR January 13, 2021), *pending review*, D.C. App. No. 21-BG-24. Disciplinary Counsel has met that burden, but only as to Respondent Haines.

Two matters – *In re Kline* and *In re Dobbie* – provide analytical guidance in this case.

In *Kline*, defense counsel requested *Brady* material, and specifically sought "information, which . . . impeaches a witness' testimony." *Kline*, 113 A.2d at 205. Kline was aware of the victim's prior inconsistent statement, but decided that it did not have to be produced to the defense because he had determined it was not exculpatory. *Id.* at 214. The Board found that Kline reasonably should have known that the victim's statement tended to negate the defendant's guilt "because of its obvious exculpatory and impeachment potential" and because "'the circumstances under which the [statement] was made were 'of a kind that would suggest to any

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Although the test necessarily presents some questions of relevance, prosecutors are urged to disclose all material that is even possibly exculpatory as a prophylactic against reversible error and possible professional misconduct." ABA Standards for Criminal Justice: *The Prosecution Function* § 3–3.11 (2d ed.1986).

prosecutor that the defense would want to know about it.'"" *In re Kline*, Board Docket No. 11-BD-007 at 13-14 (BPR July 13, 2013) (quoting Hearing Committee Report (quoting *Leka v. Pontuondo*, 257 F.3d 89, 99 (2d Cir. 2001))). In holding that Kline violated Rule 3.8(e) by failing to disclose the statement, the Court later found that Kline acted with the requisite intent, for purposes of Rule 3.8(e), when he consciously decided that the evidence did not have to be produced – even though he was misguided in his assessment of its significance. *Kline*, 113 A.2d at 214.

Similarly, in *Dobbie*, the Board concluded that the respondents violated Rule 3.8(e) when they failed to disclose information that tended to impeach the credibility of a government witness, namely that the witness (a corrections officer) had filed a false disciplinary report and had later been demoted for doing so. Board Docket No. 19-BD-018, at 16-23. The Board found that a reasonable prosecutor would have known that the false disciplinary charge and subsequent demotion were *Giglio* information, and that the respondents intentionally decided not to disclose it. *Id.* at 20. Despite the fact that "[r]espondents did not connect the dots . . . to fully appreciate its importance," the Board concluded "[r]espondents reasonably should have known that an official determination that a corrections officer lied to get an inmate in trouble would be powerful impeachment evidence in a case where that corrections officer is going to testify against an inmate defendant at trial." *Id.* at 16, 20. The Board also confirmed that the intent requirement of Rule 3.8(e) "merely precludes liability where the disclosure is intended to be made, but that disclosure is unsuccessful by accident." *Id.* at 23-24.

1. Defense counsel timely made the requisite information request

Disciplinary Counsel has proved the first element of a Rule 3.8(e) violation because defense counsel timely requested all information that would tend to negate Guandique's guilt, and did so well in advance of trial.

Roughly one year prior to the scheduled trial date, the government provided defense counsel with summaries of the confession witnesses' anticipated testimony. FF 19. Starting before that disclosure and continuing thereafter, the defense sought favorable information – including impeaching information – that would assist in the defense of their client. FF 20; Tr. 89:8-12 (Sonenberg); *see, e.g.*, FSCX 17. Defense attorneys specifically requested that the government disclose "all favorable material information, except that which is solely impeaching, promptly after discovery" and "solely impeaching information no later than August 1, 2010." FSCX 17 at 25. Morales's prior debriefing fell well within the scope of the defense requests.

2. Use by the defense was reasonably feasible until two weeks before trial

a. Rule 3.8 requires pre-trial disclosure in ordinary circumstances

Rule 3.8 requires disclosure of requested information at a time when its use by the defense is "reasonably feasible." Unlike *Brady*, the Rule does not mandate disclosure of evidence as soon as practicable after its discovery. *Cf. Vaughn v. United States*, 93 A.3d 1237, 1257-58 (D.C. 2014). Rather, a Rule violation is triggered only if disclosure is delayed beyond that point at which defense counsel can reasonably use the evidence to defend their client. Here we must determine that disclosure deadline, which necessarily lay at some point on the time continuum from

March 2009 (when Respondents first learned of the information) to November 4, 2010 (when Morales testified at trial). *See* FF 6; DCX 15 at 222-24. Neither *Kline* nor *Dobbie* addresses this issue.

Respondents urge that disclosure as part of the Jencks package would have been timely under the Rule, because defense counsel would have had adequate opportunity to use it on cross examination, which is all the Rule requires. They assert that the Rule does not envisage providing defense counsel with an opportunity to investigate the disclosed information at issue. *See, e.g.*, Tr. 1925:5-11. We disagree.

First, Respondents' current argument is inconsistent with the disclosure commitment they made to defense counsel and to the trial court:

> The government is well aware of its obligation to disclose information in time to make effective use of it at trial, and *if a particular type of impeachment evidence requires investigation, the government will turn that information over in advance or explain why it can not [sic] or under what conditions it proposes to disclose the information* [emphasis added]. There is no need for disclosure of solely impeaching information two months in advance of trial.

FCSX 18 at 25 (emphasis added). Because information about the Morales debriefing did require investigation to be meaningfully useful, it is wholly appropriate to hold Respondents to their promise.

Moreover, Respondents' argument is at odds with both the text and intent of the Rule. Rule 3.8(e) is not confined to reasonable use "at trial." The Rule thus seeks to facilitate the ability of defense counsel reasonably to "use" evidence for whatever purpose they deem appropriate, a notion far more comprehensive than

merely enhancing cross-examination. "Reasonably feasible use" necessarily contemplates providing the defense with sufficient time to undertake a realistic investigation of disclosed information. The defense should "have a fair opportunity to pursue leads before they turn cold or potential witnesses become disinclined to cooperate with the defense." *Zanders*, 999 A.2d at 164 (citing *Lindsey v. United States*, 911 A.2d 824, 839 (D.C. 2006) (disclosure must be made "at such a time as to allow the defense to use the favorable material effectively in the preparation and presentation of its case" (*quoting Curry v. United States*, 658 A.2d 193, 197 (D.C. 1995)))). To foreclose the defense from an investigative opportunity, as urged by Respondents, would undercut the Rule's objective of ensuring that defendants are "accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." Rule 3.8, cmt. [1]. Rule 3.8(e), as recognized in *Kline*, "errs in favor of disclosure [and] will better ensure that criminal defendants in the District of Columbia receive a fair trial." *Kline*, 113 A.3d at 212.

Here, the record shows the scope of the investigation PDS would reasonably have undertaken if Respondents disclosed the Morales debriefing. FF 35-36. Disclosure as part of the Jencks production, on the eve of Morales's testimony, would have been too late for PDS to accomplish what they quite appropriately wanted to do had they received that information. FF 49, 56. This is hardly surprising, because trying a case is an intense undertaking, involving countless time-consuming tasks with little opportunity for the assumption of additional tasks. Tr. 1338:8-1341:10 (Campoamor-Sanchez).

The Court of Appeals has emphasized that any "doubts should be resolved in favor of full disclosure made well before the scheduled trial date, unless there is good reason to do otherwise (such as substantiated grounds to fear witness intimidation or risk to the safety of witnesses), upon request by the defense." *Zanders*, 999 A.2d at 164. Rule 3.8(e) echoes that principle.

For these reasons, prosecutors in District of Columbia courts should understand that under Rule 3.8(e), disclosure of evidence tending to negate guilt should ordinarily be made well before trial.

Conversely, prosecutors who delay making disclosures until the eve of trial or thereafter risk violating Rule 3.8(e), for which they will be held accountable in the disciplinary process.

b. Rule 3.8 abides scheduling orders

Rule 3.8(e) required disclosure before trial in this case, but it is less certain when a Rule 3.8(e) violation crystallized. In other words, at what point in time was use of the evidence by the defense no longer reasonably feasible? If disclosure was not made at or before that time, a Rule violation occurred. If disclosure was made at a time when use by the defense was still reasonably feasible, there is no Rule violation.

There is no bright-line answer to the question; the answer is necessarily a case-specific determination.

Here, the trial court weighed Respondents' disclosure obligations, accounted for the need to preserve witness security, and balanced those factors against the

legitimate needs of the defense. FF 20-23. In doing so the trial court assessed many of the considerations underpinning Rule 3.8(e) and ordered the government to make its *Giglio*-related disclosures no later than two weeks before trial. FF 24. That resolution implicitly determined the date past which the defense would no longer be able reasonably to use information that was disclosed. Rule 3.8(e) abides that ruling. It is appropriate to defer to a trial court's scheduling orders in order to establish the point at which Rule 3.8(e) is violated. Disciplinary authorities should be "reluctant to reach a conclusion that [prosecutors] should be faulted for following" the rulings of a court. *See Dobbie*, Board Docket No. 19-BD-018, at 29. Accordingly, in this case, two weeks before trial was the date past which, absent appropriate disclosure, a violation of Rule 3.8 could occur.

c. Respondent Campoamor-Sanchez did not violate Rule 3.8

Our determination of the date upon which a Rule 3.8 violation was viable requires dismissal of the charges against Respondent Campoamor-Sanchez.

More than two weeks before trial, there had been a division of labor on the prosecution team – a procedure entirely common and appropriate in trial practice. By that time Respondent Haines had relieved Respondent Campoamor-Sanchez of all responsibility for Morales as a witness, and for the *Giglio* disclosures relating to him. FF 30. When she assumed that role, she also undertook for herself the duties imposed by Rule 3.8(e).

Respondent Haines alone determined the content of the *Giglio* letter, and she alone decided not to disclose the debriefing. Though he created the initial draft,

Respondent Campoamor-Sanchez did not decide what information the *Giglio* letter should contain, did not review it, did not approve it, did not sign it, did not receive a copy, and had no direct knowledge that Respondent Haines failed to disclose the Morales debriefing in it. FF 33.

It is of course likely that Respondent Campoamor-Sanchez would have made the same disclosure decision that Respondent Haines did. FF 32. However, to conclude that he actually would have done so would require a speculative leap which we cannot take. Respondent Campoamor-Sanchez did not actually make the *Giglio* disclosure. He cannot be held to have violated a disciplinary rule based on what he might have done, or even for what he probably would have done. He is not vicariously responsible for Respondent Haines's decisions in that regard: "Only an individual prosecutor is subject to discipline under Rule 3.8, and only for [his] actions." *Dobbie*, Board Docket No. 19-BD-018, at 14; *cf*. Rule 5.1(c) (setting forth general principles of imputed responsibility for the misconduct of another attorney).

The charges against Respondent Campoamor-Sanchez, all of which depend on the deficient *Giglio* disclosure, should therefore be dismissed.

3. Respondent Haines intentionally did not disclose Morales's prior debriefing

Respondents knew that Morales had previously debriefed to law enforcement no later than March 2009. FF 6. Respondent Haines contends that she did not act "intentionally" within the meaning of the Rule because she did not appreciate the significance of that evidence when she made the *Giglio* disclosures.

Her argument is flawed. As the *Kline* Court explained:

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

Kline, 113 A.3d at 213 (citations omitted).

Rule 3.8(e) does not require that a prosecutor fully grasp the significance of evidence before he or she can be said to have intentionally withheld it. Kline "consciously decided that the exculpatory evidence did not have to be produced – even though he was misguided in his calculus that it was not exculpatory – and, as such, intentionally withheld it." *Id.* at 214; *accord Dobbie*, Board Docket No. 19-BD-018, at 32.

Since Respondent Haines knew that Morales had previously debriefed to law enforcement, assessed it, and consciously elected not to disclose it in the *Giglio* letter, she acted intentionally within the meaning of the Rule. FF 30-31, 38.

4. Respondent Haines knew, as she reasonably should have known, that Morales's prior debriefing tended to negate Guandique's guilt

Respondents urge that impeachment evidence must be distinguished from exculpatory evidence for purposes of Rule 3.8(e), and that a failure to disclose the former does not violate the Rule. Nothing in the text of the Rule supports that argument. Impeachment evidence that, as here, had the potential significantly to undermine the credibility of the government's most critical witness necessarily had a "tendency" to negate Guandique's guilt, which is all the Rule requires.

Impeaching evidence inevitably tends to negate the guilt of an accused. "[I]mpeaching evidence is exculpatory." *Bennett v. United States*, 797 A.2d 1251,

1256 (D.C. 2002) (alteration in original) (quoting *Lewis v. United States*, 408 A.2d 303, 307 (D.C. 1979)); *see also United States v. Bagley*, 473 U.S. 667, 676 (1985) ("This Court has rejected any . . . distinction between impeachment evidence and exculpatory evidence."). It is precisely because impeachment evidence tends to negate the guilt of the accused that "impeaching information does not have a lesser standing in the context of the government's *Brady* disclosure obligations. Rather, '[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence.'" *Vaughn*, 93 A.3d at 1254 (alteration in original) (quoting *Bagley*, 473 U.S. at 676). Because impeaching evidence tends to negate the guilt of the accused, its suppression can lead to the reversal of a conviction. *See id.* at 1263 (conviction reversed due to government's failure to disclose witness's prior false statements); *Bennett*, 797 A.2d at 1257 (same).

Rule 3.8(e) thus requires disclosure of information that impeaches the credibility of a government witness. *See Kline*, 113 A.3d at 213-14 (Rule 3.8(e) violation for failure to disclose prior inconsistent statement of government witness); *In re Howes*, 52 A.3d 1, 4 (D.C. 2012) (Rule 3.8(e) violation for failure to disclose voucher payments "relevant to the jurors' credibility determinations of key government witnesses' testimony"); *Dobbie*, Board Docket No. 19-BD-018, at 16-17 (Rule 3.8(e) violation for failure to disclose findings of report that impeached credibility of government witness).

Morales was the sole witness linking Guandique to the murder of Chandra Levy. FF 11.[5] His credibility was critical to the prosecution's case. FF 11-12, 61, 65, 76. Evidence that he had previously debriefed to law enforcement stood in sharp contrast to Morales's "sinner to saint" narrative. FF 60, 63. The fact that Morales obligingly met with police authorities was *conduct* utterly at odds with his professed "thug mentality" (irrespective of what he discussed with them), and directly contradicted his explanation as to why he delayed reporting Guandique's supposed confession. *See* FF 71.

The fact of the Morales debriefing was "the sort of information in which any competent defense lawyer would have been intensely interested," *see Vaughn*, 93 A.3d at 1255, and "of a kind that would suggest to any prosecutor that the defense would want to know about it." *See Leka*, 257 F.3d at 99, *cited with approval in Miller v. United States*, 14 A.3d 1094, 1110 (D.C. 2011). "When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls [under *Brady*]." *Giglio v. United States*, 405 U.S. 150, 154 (1972) (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)). Because a reasonable prosecutor would have known that the evidence tended to negate Guandique's guilt, Respondent Haines had a duty to disclose it. FF 82.

Moreover, there is ample evidence that Respondent Haines actually knew that the Morales debriefing tended to negate Guandique's guilt. FF 38-41. When she

[5] While the government initially identified other confession witnesses, ultimately only Morales testified. *See* Tr. 133:1-17 (Sonenberg).

prepared Morales to testify and he denied having "ever testified, worked for the government, cooperated in any sense of the word [or] ever come forward]," she felt it necessary to "confront" him with the prior debriefing. FF 38. She then worked with Morales to neutralize any cross-examination on the subject: She prepared him to take the "sting" out of the evidence by explaining that the content of his debriefing was inconsequential. FF 39-40; Tr. 1697:5-1690:10 (Haines). All of this, of course, was because she anticipated that, if they knew about it, the defense would use the debriefing to undercut Morales's credibility. Yet based solely on a rationalization Morales alone provided her, she argues that the information was properly withheld – in apparent disregard of the admonition by the Court two months earlier about her own conduct in another case:

> [T]he critical task of evaluating the usefulness and exculpatory value of the information is a matter primarily for defense counsel, who has a different perspective and interest than the police or prosecutor. . . . It is not for the prosecutor to decide not to disclose information that is on its face exculpatory based on an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder.

Zanders, 999 A.2d at164 (internal citation omitted).

Respondent Haines thus knew, as she reasonably should have known, that the evidence of Morales's debriefing tended to negate the guilt of Ingmar Guandique. She intentionally failed to disclose it, and defense counsel did not have the opportunity to challenge Morales with it. His trial testimony was "devastating" to the defense, and Ingmar Guandique was convicted of murder. FF 59-69. Respondent Haines violated Rule 3.8(e).

B. Respondent Haines Violated Rule 8.4(d)

Rule 8.4(d) states that "[i]t is professional misconduct for a lawyer to . . . engage in conduct that seriously interferes with the administration of justice." Rule 8.4(d) is "a general rule" that is "purposely broad to encompass derelictions of attorney conduct considered reprehensible to the practice of law." *In re Uchendu*, 812 A.2d 933, 940 (D.C. 2002) (quoting *In re Alexander*, 496 A.2d 244, 255 (D.C. 1985)).

To establish a violation of Rule 8.4(d), Disciplinary Counsel must show: "(1) that the attorney acted improperly, in that the attorney either [took] improper action or fail[ed] to take action when . . . he or she should [have] act[ed]; (2) that the conduct involved bear[s] directly upon the judicial process (*i.e.*, 'the administration of justice') with respect to an identifiable case or tribunal; and (3) that the conduct taint[ed] the judicial process in more than a *de minimis* way, meaning that it at least potentially impact[ed] upon the process to a serious and adverse degree." *In re White*, 11 A.3d 1226, 1230 (D.C. 2011) (alterations in original) (internal quotation marks omitted) (quoting *In re Owusu*, 886 A.2d 536, 541 (D.C. 2005) (quoting *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996))). The Court has declined to adopt a scienter requirement for Rule 8.4(d), and the Rule can be violated when the conduct was "reckless or somewhat less blameworthy." *In re Evans*, 902 A.2d 56, 69 (D.C. 2006) (appended Board Report) (quoting *Hopkins*, 677 A.2d at 60). *But see In re Hallmark*, 831 A.2d 366, 375 (D.C. 2003) (finding no Rule 8.4(d) violation where the attorney's conduct was "found to be the result of negligence, not fraud").

Each of the elements is met in this case, but as to Respondent Haines only. For the same reasons identified in our discussion of the Rule 3.8(e) violation, we find that Disciplinary Counsel did not meet its burden as to Respondent Campoamor-Sanchez.

Respondent Haines's failure to disclose Morales's prior debriefing was improper, because she was required to do so both by Rule 3.8(e) and *Giglio*. That misconduct bore upon the judicial process in the Guandique case by affecting the scope of the defense's cross-examination of Respondents' key witness. And the misconduct evidently tainted the judicial process, both by contributing to a guilty verdict that was eventually vacated and by giving rise to post-conviction litigation that required over a dozen hearings before the government eventually dismissed the charges. In *Dobbie*, Board Docket No. 19-BD-018, at 35, the Board found an 8.4(d) violation where the failure to disclose impeachment information led to "the colossal expenditure of resources." Here, Respondent Haines's failure had the same impact. She violated Rule 8.4(d).

C. Respondent Haines Violated Rule 1.6(a)

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

Here, Respondent Haines has admitted that she violated Rule 1.6(a) by forwarding internal prosecution emails to her then-boyfriend. These were contentious emails showing tensions that had developed between Respondent Haines and Respondent Campoamor-Sanchez about their respective responsibilities. The emails also contained confidential information related to the government's strategy for prosecuting the Guandique case. Respondent Haines was not authorized to disclose that information. FF 84-86. She violated Rule 1.6(a).

III. SANCTION RECOMMENDATION

Disciplinary Counsel seeks a six-month suspension in this case. Respondent Haines asserts that no suspension is warranted as to the Rule 3.8(e) and 8.4(d) charges, and that no more than an informal admonition is appropriate with respect to the Rule 1.6 violation. For the reasons described below, we recommend that Respondent Haines be suspended for ninety days.

A. Material-to-Outcome

Because this matter involves a pre-*Kline* prosecution, for purposes of sanction the parties agree that the Committee must determine if the withheld information satisfied the more restrictive *Brady* concept of materiality. *See Kline*, 113 A.3d at 216. In other words, to recommend a sanction in this case the Hearing Committee must determine whether the evidence of the prior debriefing would likely have made a difference at the criminal trial. That standard has been met in this case.

"[E]vidence is material [in the *Brady* sense] only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the

proceeding would have been different A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Catlett v. United States*, 545 A.2d 1202, 1217 (D.C. 1988) (quoting *United States v. Bagley*, 473 U.S. at 682). "[I]mpeaching evidence is exculpatory and thus can be material to guilt or punishment within the meaning of *Brady*." *Bennett*, 797 A.2d at 1256 (alteration in original) (quoting *Lewis*, 408 A.2d at 307); *see also Napue v. Illinois*, 360 U.S. 264, 269 (1959) ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."). In evaluating whether impeachment evidence is material, the Court "consider[s] the importance of the witness to the government's case, the credibility of the witness, and the value of the withheld evidence in undermining the witness' credibility." *Bennett*, 797 A.2d at 1256 (citing *Sterling v. United States*, 691 A.2d 126, 135 (D.C. 1997)).

Morales was the only witness who directly tied Guandique to the murder of Chandra Levy. FF 11; Tr. 1269:18-1270:7 (Campoamor-Sanchez). Thus, the information about Morales's prior debriefing was material to the outcome of the Guandique trial. *See Bennett*, 797 A.2d at 1256 (D.C. 2002) (evidence impeaching credibility of eyewitness was material); *Shelton v. Marshall*, 796 F.3d 1075, 1087 (9th Cir. 2015) (evidence was material "where the concealed evidence would impeach the only witness to provide direct evidence of the defendant's *mens rea*"), *amended on reh'g*, 806 F.3d 1011 (2015); *United States v. Parker*, 790 F.3d 550,

561 (4th Cir. 2015) (impeachment evidence was material where witness's "testimony provided the only direct evidence" of defendant's involvement); *Breakiron v. Horn*, 642 F.3d 126, 135 (3d Cir. 2011) (impeachment evidence was material where witness's testimony was only direct evidence of defendant's intent); *Spicer v. Roxbury Corr. Inst.*, 194 F.3d 547, 560 (4th Cir. 1999) (impeachment evidence was material where "the prosecution presented no physical evidence linking [the defendant] to the crime"). Morales's testimony about a confession was particularly significant in the case: "[a] confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him." *McCoy v. United States*, 890 A.2d 204, 211 (D.C. 2006) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991)).

Morales's justification for his delay in reporting the alleged confession, and the defense's futile efforts to challenge that story, was a major theme at trial, surfacing repeatedly during his testimony and in summation. FF 59-68. The impact of Morales's testimony was so dramatic that when he testified "you could hear a pin drop," and after he finished Respondents saw no need to corroborate his claims. FF 65.

Perhaps the clearest proof that Morales's testimony was the *sine qua non* of the prosecution is the government's actions post-trial, once his credibility was undercut. First, it withdrew its opposition to the defense's motion for a new trial, in essence conceding that there was a reasonable possibility that the outcome of the trial would have changed if the defense had had the opportunity to impeach him with

the details of his prior cooperation. FF 75. Then, when the truth about his character ultimately surfaced, it dismissed the charges altogether because his testimony was no longer available. FF 71, 75-76.

Morales was a liar, and the fact of his debriefing "was directly contrary to what his testimony was at trial." FF 14; Tr. 1227:3-1228:8 (Campoamor-Sanchez). The defense could have used the debriefing in myriad ways to attack his credibility. FF 63.[6] It is at least reasonable to believe that the defense's use of the debriefing evidence would have led to a different verdict, and the evidence was thus material to the outcome of the Guandique trial. As a consequence we may, as did the Board in *Dobbie* (which also involved pre-*Kline* conduct), recommend a sanction to be imposed on Respondent Haines.

B. Standard of Review

Attorney discipline serves the public interest, and protects the courts and administration of justice. Although discipline is not intended to punish a respondent, it serves to deter the respondent and other attorneys from engaging in similar

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[6] Defense counsel cogently explained the ways in which evidence of Morales's debriefing could affect the jury's verdict (Tr. 441:6-442:6 (Sonenberg)):

> [I]nformation that goes directly to the heart of a witness' credibility is among the most critical information in trial. These are not minor impeachments . . . . The portrait of this witness that was painted for the jury . . . was someone who really had never had these kinds of encounters before; he'd never approached anyone, anyone in law enforcement; he didn't trust law enforcement before; in fact he didn't even know how to go about relaying this information to the authorities. Having information that not only did he have prior conversations with law enforcement about criminal activity, but that he knew that process makes him no longer someone who is innocent in this game, someone who had this moment of redemption, but now someone who is seasoned, who knows what he can anticipate, and that really does undermine his credibility.

misconduct. *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *Cater*, 887 A.2d at 17.

The general deterrence objective is particularly important with respect to prosecutors, "in light of their pivotal role in the justice system, the great discretion they are given, and the few tools available to oversee their compliance with the legal standards that govern their conduct." *Howes*, 52 A.3d at 23 (citing *Imbler v. Patchman*, 424 U.S. 409, 423-24 (1976)).

Moreover, "[p]rosecutorial misconduct is difficult to detect because critical prosecutorial functions take place with little or no judicial supervision and with minimal scrutiny by superiors." *Id.* (quoting Report of Board Member Deborah Jeffrey). Here, Respondent's misconduct would have remained undiscovered had it not been for a serendipitous inquiry from police in Fresno, California to the Justice Department. FF 70. "Effective general deterrence thus weighs heavily in favor of" a meaningful sanction where prosecutors engage in misconduct. *Id.* (citing Jeffrey Report).

In determining an appropriate sanction the Court looks to:

> (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misappropriation; (4) the presence or absence of violations of other provisions of the disciplinary rules[;] (5) whether the attorney had a previous disciplinary history; (6) whether or not the attorney acknowledged his wrongful conduct; and (7) circumstances in mitigation of the misconduct.

In re Fay, 111 A.3d 1025, 1031 (D.C. 2015) (per curiam) (alteration in original) (quoting *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *Howes*, 52 A.3d at 15). Finally, a sanction must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

C. Assessment of the Sanction Criteria

There is neither dishonesty nor a previous disciplinary history in this case.

1. The Seriousness of the Misconduct

"A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." Rule 3.8, cmt. [1]; *see Dobbie*, Board Docket No. 19-BD-018, at 37 ("[A] violation of Rule 3.8(e) undermines our entire system of criminal justice."); *see also Vaughn*, 93 A.3d at 1253 ("Our adversarial system is premised on the belief that '[s]ociety wins not only when the guilty are convicted but when criminal trials are fair.'" (alteration in original) (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963))).

Respondent Haines withheld evidence that was material to the guilty verdict, as a consequence of which Ingmar Guandique was incarcerated. FF 69, 77. This

Rule 3.8(e) violation, which resulted in the unjust deprivation of an individual's liberty, is of the utmost severity.

2. Prejudice to the Client

The failure to disclose the entire Zaldivar letter resulted in an extensive and costly post-trial investigation by the Justice Department. FF 70-71; Tr. 710:13-711:11, 712:22-718:5 (Evangelista).

3. Violations of Other Disciplinary Rules

Respondent Haines violated three separate disciplinary Rules in this case. However, we note that the Rule 8.4(d) violation is fundamentally based on the same conduct as the Rule 3.8(e) violation. *See, e.g.*, *Dobbie*, Board Docket No. 19-BD-018, at 34-37.

4. Acknowledgement of Wrongful Conduct

Respondent Haines has accepted responsibility for the violation of Rule 1.6 only.

5. Other Circumstances in Aggravation and Mitigation

In mitigation, Respondent Haines asserts that "[t]his process has ruined her career, and it has harmed her physical and emotional health." Resp. Haines Br. Regarding Sanctions at 13. She also claims that "[s]he's also been driven out of the law completely." *Id.* However, the fact that Respondent has been involved in the disciplinary process is not a factor that this Committee may consider in mitigation. *Howes*, 52 A.3d at 18 & n.22 (declining to consider the respondent's argument that any sanction should be mitigated due, in part, to the "cloud" over his reputation

during the pendency of the disciplinary matter because he "suffered no more embarrassment at the publication of charges than any other attorney facing disciplinary sanction").

On the other hand, our assessment of an appropriate sanction must account for the Court's decision in *Zanders*, issued two months before the *Guandique* trial. In *Zanders*, Respondent Haines acted as both trial counsel and appellate counsel of record. Based on the trial record in *Zanders*, the Court clearly laid out a series of fundamental principles which it expected prosecutors to obey:

- It is not for the prosecutor to decide not to disclose information that is on its face exculpatory based on an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder.

- the disclosure must be timely if the defense is to have a fair opportunity to pursue leads before they turn cold or potential witnesses become disinclined to cooperate with the defense.

- Any doubts should be resolved in favor of full disclosure made well before the scheduled trial date, unless there is good reason to do otherwise (such as substantiated grounds to fear witness intimidation or risk to the safety of witnesses), upon request by the defense.

999 A.2d at 164. It is apparent that Respondent Haines disregarded these admonitions during the Guandique prosecution, and we view this as a serious aggravating circumstance.

6. Sanctions Imposed for Comparable Misconduct

The Court has considered the appropriate sanction for violations of Rule 3.8(e) on two occasions.

In *Kline*, the Court implied that it would have approved a thirty-day suspension for the respondent's wrong, but not unreasonable, understanding concerning whether Rule 3.8(e) applied to non-disclosures that did not meet the materiality element of *Brady*. 113 A.3d at 215-16. Noting that other jurisdictions had "imposed discipline that range[d] from public reprimand or censure to a six-month suspension from the practice of law," the Court held that a thirty-day suspension was "within the wide range of sanctions that generally would be appropriate." *Id.* In doing so, it noted (a) that, unlike this case, the USAO had provided no separate training on a prosecutor's Rule 3.8(e) disclosure obligations and (b) unlike this case, no companion violations were found. 113 A.3d at 216. Notably, in *Kline*, unlike here, the failure to disclose did not lead to the conviction and incarceration of a defendant because the defendant was convicted at a second trial after disclosure of the relevant evidence. *Id.* at 205-06.

In *Howes*, 52 A.3d at 5-7, a prosecutor was disbarred for failing to disclose witness voucher payments to trial court judges. He was also knowingly dishonest and took advantage of a system that made his dishonesty hard to detect, an aggravating factor. *Howes* involved Rule violations not present in this case, dishonesty, and a pattern of conduct in multiple cases. *See Howes*, 52 A.3d at 10 ("respondent committed twenty ethical violations (seventeen stipulated and three non-stipulated) of seven ethical rules in three separate groups of cases").

In *Dobbie*, which remains pending before the Court of Appeals, the Board recommended that the respondents be suspended for six months for their violations

of Rule 3.8(e) and 8.4(c). The Board recommended a more significant sanction than that in *Kline* because the respondents had also engaged in dishonesty that was difficult to detect. Board Docket No. 19-BD-018 at 39.[7]

In the absence of dishonesty or misappropriation, the typical sanction for a Rule 1.6 violation ranges from an informal admonition to a brief suspension. *See, e.g.*, *In re Koeck*, 178 A.3d 463, 464 (D.C. 2018) (per curiam) (sixty-day suspension with fitness where the respondent violated Rule 1.6(a) on four separate occasions and refused to participate in disciplinary proceedings); *In re Gonzalez*, 773 A.2d 1026, 1032 (D.C. 2001) (informal admonition for revealing client secrets in a motion to withdraw); *In re Hecht*, Bar Docket No. 2010-D307 (Letter of Informal Admonition Dec. 29, 2011) (same).

Based on our assessment of all of these factors, we recommend that Respondent Haines be suspended for ninety days.

In doing so, we recognize that the:

> United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose . . . interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done. . . . [W]hile [she] may strike hard blows, [she may not] strike foul ones.

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[7] We recognize that in *In re Cockburn*, Bar Docket No. 2009-D185 (Letter of Informal Admonition Mar. 13, 2014), the respondent received an informal admonition for violations of Rules 3.8(e) and 8.4(d). While the Committee may properly rely on informal admonition letters issued by Disciplinary Counsel in determining the appropriate range of sanctions, *see In re Winstead*, 69 A.3d 390, 399 (D.C. 2013), the *Cockburn* informal admonition letter was issued one year prior to the Court's *res nova* determination in *Kline* and thus, it is of limited value in determining a consistent sanction for comparable misconduct.

United States v. Berger, 295 U.S. 78, 88 (1935). We are also mindful of the Court's admonition in *Howes* that "prosecutorial actions such as these can place another's liberty interests in the balance. The appropriate sanction should reflect this gravity." 52 A.3d at 22.

Finally, as explained in *Howes*, prosecutors play a pivotal role in the justice system and have great discretion. Yet there are "few tools available to oversee their compliance with the legal standards that govern their conduct," and their misconduct "'is difficult to detect because critical prosecutorial functions take place with little or no judicial supervision and with minimal scrutiny by superiors.'" *Id.* at 23 (quoting Jeffrey Report). The disciplinary system is the only mechanism by which to hold Respondent Haines "accountable for disregarding [her] ethical responsibilities": she is "neither civilly liable for [her] misconduct as a prosecutor nor punishable by the USAO, as [she] is no longer an employee." *See id.* A meaningful sanction should be imposed to make sure that all prosecutors in D.C. courts understand they have a personal ethical obligation to adhere to the disclosure admonitions repeatedly articulated by the Court of Appeals. *See In re Cleaver-Bascombe*, 986 A.2d 1191, 1199-1200 (D.C. 2010) (per curiam) ("In the interest of effective general deterrence, the severity of a sanction should take into account the difficulty of detecting and proving the misconduct at issue" (quoting *In re Cleaver-Bascombe*, 892 A.2d 396, 414 (D.C. 2006) (Glickman, J., dissenting in part))). We believe that a suspension of ninety days will achieve that objective.

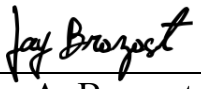
IV. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent Haines violated Rules 1.6(a), 3.8(e), and 8.4(d), and should be suspended for ninety days from the practice of law in the District of Columbia. *See* D.C. Bar Rule XI, § 1(a). We further recommend that Respondent Haines's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c). We further recommend that the charges against Respondent Campoamor-Sanchez be dismissed.

AD HOC HEARING COMMITTEE

Robert C. Bernius, Esq., Chair

Dr. William V. Hindle, Public Member



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