THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

FILED
Feb 12 2026 10:29am
Board on Professional Responsibility

In the Matter of:	:	
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KEVIN P. MURPHY,	:	
	:	
Respondent.	:	Board Docket No. 24-BD-062
	:	Disc. Docket No. 2023-D133
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 496103)	:	

REPORT AND RECOMMENDATION OF
AD HOC HEARING COMMITTEE

Respondent, Kevin P. Murphy, is charged with violating the D.C. Rules of Professional Conduct or the Rules of the Executive Office for Immigration Review (EOIR) applicable to immigration practitioners. These charges arose from Murphy's alleged mishandling of his client's petition for Special Immigrant Juvenile status (SIJ) before the United States Citizenship and Immigration Services (USCIS). The charges are as follows:

1. Rules 1.1(a) & (b) or 8 C.F.R. § 1003.102(o) (competent representation, skill and care);
2. Rule 1.3(a) or 8 C.F.R. § 1003.102(q) (diligence);
3. Rules 1.3(b)(1) & (2) (intentional failure to seek lawful objectives and intentional damage to client);
4. Rule 1.3(c) or 8 C.F.R. § 1003.102(q) (promptness);

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

5. Rules 1.4(a) & (b) or 8 C.F.R. § 1003.102(r) (communication, informed decisions);
6. Rule 4.1(a) or 8 C.F.R. § 1003.102(c) (knowing false statement of material fact to third person);
7. Rule 8.4(c) or 8 C.F.R. § 1003.102(c) (dishonesty); and
8. Rule 8.4(d) or 8 C.F.R. § 1003.102(n) (serious interference with the administration of justice).

Disciplinary Counsel contends that Murphy committed all the charged violations and should receive a 90-day suspension. Murphy contends that if Disciplinary Counsel has proven misconduct, he should be put on probation for a year, and if a suspension is warranted, the suspension should be stayed while he is on probation.

As set forth below, the Hearing Committee finds that: (1) the EOIR Rules apply to three charges for conduct that occurred while his client L.C.Q.'s petition was pending before the USCIS, and the D.C. Rules apply to the remaining charges; and (2) Disciplinary Counsel has proven by clear and convincing evidence that Murphy violated each applicable rule, except D.C. Rule 8.4(d).

Based on those violations, the Committee agrees with Disciplinary Counsel and recommends that Murphy receive a 90-day suspension.

I. PROCEDURAL HISTORY

Disciplinary Counsel served Murphy with a Specification of Charges on October 31, 2024, and Murphy filed an answer on November 18. The parties filed

Stipulations on July 8, 2025, and a hearing was held on July 17 before this Hearing Committee. Disciplinary Counsel was represented by Jason R. Horrell, Esquire, and Arquimides Leon, Esquire, and Murphy appeared *pro se*.[1]

Disciplinary Counsel submitted exhibits designated as DCX 1-10, and Murphy submitted exhibits designated as RX 501-512. All exhibits were admitted into evidence without objection. Tr. 6-7.[2] Disciplinary Counsel called three witnesses: (1) Murphy; (2) L.C.Q., the former client who testified with a Spanish language interpreter; and (3) Teresa Lee, the Managing Director (and former Pro Bono Coordinating Attorney) with Kids in Need of Defense (KIND). Murphy testified on his own behalf.

At the end of the hearing, the Hearing Committee made a preliminary, non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations in the Specification of Charges. Tr. 193; *see* Board Rule 11.11. In

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[1] In a witness list filed on July 1, 2025, Disciplinary Counsel noted that the former client's name should be initialized because she was a minor at the time of Murphy's alleged misconduct. It also "defer[red] to the Hearing Committee as to whether [the client's] testimony should be taken in a closed session . . . or whether all parties should identify the witness at the hearing using only her initials." The Committee issued an order on July 8 directing either party to seek a protective order from the Board, if it wanted to protect the identity of the former client. Disciplinary Counsel did so (with Murphy's consent) and recommended that all parties initialize the former client's name during the hearing. The Board agreed. *See* Board Order (July 15, 2025).

[2] "DCX" refers to Disciplinary Counsel's exhibits. "RX" refers to Murphy's exhibits. "Tr." refers to the transcript of the hearing held on July 17, 2025. "FF" refers to the Findings of Fact in this Report.

the sanctions phase of the hearing, Disciplinary Counsel offered no new evidence, and Murphy testified in mitigation. Tr. 193-198.

Disciplinary Counsel submitted Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction (ODC Br.) on August 15, 2025, and Murphy filed his Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction (R. Br.) on September 8. Disciplinary Counsel filed its Reply (ODC Reply) on September 11.

II. FINDINGS OF FACT

The Hearing Committee's findings of fact are based on the testimony and documentary evidence admitted at the hearing and are established by clear and convincing evidence. *See* Board Rule 11.6. "Clear and convincing" evidence is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (quoting *In re Dortch*, 860 A.2d 346, 358 (D.C. 2004)).

A. Murphy's Background

1. Murphy is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on August 14, 2006, and assigned Bar number 496103. DCX 1.

2. Murphy was admitted to the Virginia State Bar in 1994 after graduating from law school. However, he is administratively suspended, having not paid his annual dues or completed mandatory CLE requirements since 2010 or 2011. Tr. 133-134 (Murphy).

3. Since March 2024, Murphy has worked as an independent contractor with various law firms doing case management and document review. Before then, he was a staff attorney at O'Melveny & Myers, LLP, for 17 ½ years, where he worked on antitrust, ERISA, and other litigated matters, including before federal agencies such as the Federal Trade Commission and the Department of Justice. He also has experience working as in-house counsel and for a small, general practice law firm. Tr. 134-139 (Murphy).

4. Murphy has experience with discovery issues and deadlines such as responding to requests for information. Tr. 134-140 (Murphy). Murphy had no experience or familiarity with immigration laws, regulations, or rules. *See* Tr. 115; *see also* Tr. 134-139 (describing his previous experience and current practice).

B. L.C.Q. Comes to the United States as an Unaccompanied Minor and Becomes Murphy's Client

5. In March 2016, L.C.Q. and her younger brother came to the United States from El Salvador. They came without immigration status to escape threats of violence from the gang known as "MS-13." L.C.Q.'s father had also abused and neglected her. She was 16 when she crossed the U.S. border with her brother. They were apprehended by U.S. immigration officials but released pending removal proceedings. They then reunited with their mother, who had previously come to the United States and was living in Virginia. Her father remained in El Salvador. Tr. 28-30 (L.C.Q.); Tr. 143 (Murphy); DCX 10 at 4-8.

6. After she reunited with her mother, L.C.Q. completed an intake with KIND. Tr. 74 (Lee); DCX 10 at 4-8.

7. KIND is a non-profit organization that provides legal services to unaccompanied minors in the United States who are involved in immigration, deportation, and related proceedings. An unaccompanied minor is a child who is without a parent or legal guardian at the time they encounter immigration officials at or near the U.S. border. KIND provides some clients with direct representation through in-house attorneys, while partnering with law firms to match other clients to outside counsel offering pro bono representation. Tr. 51-56, 59-62 (Lee).

8. Attorneys who offer pro bono representation through KIND must be actively licensed to practice law, but they are not required to have any prior immigration experience. KIND provides pro bono attorneys with training, practice guidance, and a mentor. Tr. 64-65 (Lee); *see, e.g.*, DCX 10 at 25-32, 182-184, 239-292. While he admits that KIND makes training available through CLE programs and upon request, Murphy asserts that KIND does not provide any initial training, making online practice guidance available for only a limited period at the initial stage. Tr. 115 (Murphy). Even if these claims are true, the Hearing Committee finds that KIND provides training and guidance that was available to Murphy.

9. KIND mentors are in-house attorneys who are experts in immigration law and practice. These mentors are not co-counsel with, or supervisors of, the pro bono attorney, and KIND has no attorney-client relationship with the child who is referred for pro bono assistance. Tr. 65-68 (Lee). Mentors are consultants who are available when needed to answer questions, review draft pleadings, and conduct moot courts. Tr. 68-69, 80-81 (Lee).

10. Upon intake, KIND determined that L.C.Q. qualified for SIJ status. Tr. 74-75 (Lee); DCX 10 at 7.

11. SIJ status is a classification under the Immigration and Nationality Act that provides certain undocumented immigrant children in the United States a pathway to lawful permanent residency. It is intended to protect children who have been abused, neglected, or abandoned by one or both parents. Stipulations, ¶ 2 (July 8, 2025).

12. To apply for SIJ status, an applicant must submit Form I-360 to the USCIS along with required supporting documentation. Stipulations, ¶ 3.

13. To qualify for SIJ status, an applicant must satisfy four requirements: (1) she must be under 21 years of age at the time she files Form I-360; (2) she must be unmarried at the time she files Form I-360 and at the time her request is adjudicated by USCIS; (3) she must be physically present in the United States; and (4) a state court must have previously declared that (a) she is dependent on the court or has been placed in the custody of a person appointed by the court; (b) she cannot be reunified with one or both of her parents due to abuse, neglect, abandonment; and (c) returning her to her or her parents' country of nationality or last habitual residence would not be in her best interest. Stipulations, ¶ 4.

14. KIND referred L.C.Q. to O'Melveny, which agreed to represent her for free. In late February 2017, Murphy, who was then a staff attorney at O'Melveny, took over representation of L.C.Q. from another attorney at the firm. Tr. 73 (Lee); Tr. 140-141 (Murphy); DCX 4 at 2-3, ¶ 4; DCX 10 at 175. Murphy agreed to

represent L.C.Q. because he was familiar with Prince William County, Virginia, Juvenile and Domestic Relations Court. Tr. 140.

15. Murphy understood that L.C.Q. would seek SIJ status when he became her attorney. He also knew that L.C.Q. was in deportation proceedings at the time. Tr. 142-143 (Murphy); *see* DCX 10 at 182-187. To be in deportation proceedings, also known as removal proceedings, meant that the federal government was actively seeking L.C.Q.'s deportation from the United States. Tr. 76-77 (Lee).

16. Initially, Murphy's KIND mentor was Margot Dankner, who was then Pro Bono Coordinating Attorney for KIND's D.C. office. Tr. 73 (Lee); Tr. 142 (Murphy); DCX 10 at 175-176. In August 2017, Teresa Lee took over as Murphy's mentor when she inherited Ms. Dankner's role and caseload. Tr. 73-74 (Lee); DCX 10 at 458. Ms. Lee served as Murphy's mentor until the end of Murphy's representation of L.C.Q.[3] Tr. 83 (Lee); *see* DCX 10 at 1091-1093.

C. Murphy's Representation of L.C.Q. Before USCIS

17. On June 14, 2018, Murphy submitted Form I-360 to USCIS on L.C.Q.'s behalf. DCX 10 at 76-106. L.C.Q. met all the eligibility requirements for SIJ status at the time. Stipulations, ¶ 5; *see also* Tr. 75-78 (Lee) (discussing successful acquisition of custody order from state court). Murphy worked with Ms. Lee on

[3] Ms. Lee has held several attorney positions at KIND since graduating from law school in 2015. At the time of her testimony in this matter, she was the Managing Director of KIND, had handled approximately 100 immigration cases as in-house counsel, and has served as a mentor to pro bono counsel in over 400 immigration cases. Tr. 50-53, 57, 72 (Lee).

several iterations of the I-360 before submitting it. Tr. 84-91 (Lee); DCX 10 at 586-612, 615-646. Murphy sent Ms. Lee an email on July 13, 2018, explaining that he "updated the Court that we filed an I-360, which was accepted," and that "we have a priority date for L.C.Q. (June 15, 2018)." DCX 10 at 697; Tr. 91-92.

18. But Murphy failed to respond to the question asking whether L.C.Q. was married. DCX 10 at 79 (Question 7). He accidentally overlooked the checkbox when transferring information from an old version of the form to a new version before submitting it. Tr. 148 (Murphy); *see also* Tr. 89-90 (Lee) (reviewed draft petitions). *Compare* DCX 10 at 591, 623 (draft petitions with Question 7 checkbox marked), *with* DCX 10 at 79 (filed petition with Question 7 checkbox blank).

19. USCIS acknowledged receiving L.C.Q.'s Form I-360 with Form I-797C, known as a "Notice of Action." DCX 10 at 169. USCIS uses Forms I-797 and I-797C to notify parties of certain actions in a case, such as receipt of a document or approval of a petition. Tr. 127-128 (Lee).

20. The Notice of Action provided L.C.Q. with a "priority date" of June 15, 2018. DCX 10 at 169. The priority date is the date on which USCIS receives the I-360 and it determines when a petitioner can apply for lawful permanent residency. Tr. 81-82 (Lee).

21. The Notice of Action was addressed to L.C.Q. and Murphy and mailed to Murphy's office address at O'Melveny. DCX 10 at 169. Murphy reviewed the notice when he received it. Tr. 149-150 (Murphy).

22. Murphy knew at the time he filed L.C.Q.'s petition for SIJ status that USCIS would communicate with him only by U.S. mail. Tr. 149-150 (Murphy). Ms. Lee had previously discussed this fact with him. Tr. 113. Since many attorneys are used to electronic filings and communications, KIND tries to ensure that pro bono attorneys are aware that USCIS communicates only via U.S. mail. Tr. 112-113, 116-117 (Lee). Yet, Ms. Lee was uncertain if, and when, she spoke to Murphy about USCIS communicating only by U.S. mail. Tr. 116-117 (Murphy and Lee). That said, Murphy admits he knew that was the case. *See* Tr. 151, 154.

23. On November 12, 2019, USCIS mailed Murphy a Request for Evidence letter asking for proof that L.C.Q. was unmarried. DCX 10 at 34. USCIS required a response by February 7, 2020, and warned that the case would be dismissed if it did not receive the evidence by that date. *Id.* The request was addressed to both L.C.Q. and Murphy and mailed to Murphy's O'Melveny office address in a window envelope with the agency's return address. DCX 10 at 34-36 (*see* date on postage stamp on envelope).

24. A mailroom clerk placed the envelope containing the Request for Evidence unopened in Murphy's mailbox inside his office at O'Melveny. Tr. 153 (Murphy); DCX 4 at 4-5, ¶ 9. Murphy claims that the envelope was not on top of the mail pile, and he did not see it. DCX 4 at 4-5, ¶ 9. Even if that is not the case, he does not dispute that the envelope was put in his mailbox.

25. Even though he knew USCIS would only communicate with him by U.S. mail and had previously received mail from USCIS regarding L.C.Q.'s case,

Murphy did not routinely go through his office mailbox. Tr. 153-154 (Murphy); DCX 4 at 4-5, ¶ 9.

26. Murphy did not see the envelope containing the Request for Evidence until March 2020 when he was sorting his office mailbox prior to leaving the office due to the COVID-19 pandemic. But he did not open the envelope despite seeing that it was from USCIS and addressed to him and L.C.Q. Instead, he placed the envelope unopened in L.C.Q.'s physical file, which he did not take home with him. Tr. 154-156 (Murphy); DCX 4 at 5, ¶ 10. Murphy put the envelope in the file unopened because he was given short notice that the office would be closing and was hurrying to leave the office due to COVID-19. Tr. 155 (Murphy).

27. On March 31, 2020, USCIS mailed a decision letter to Murphy at his O'Melveny office address. DCX 10 at 37. This letter notified him that L.C.Q.'s SIJ petition had been denied because USCIS received no response to the Request for Evidence. This letter also informed Murphy that the decision could not be appealed, but he could file a motion to reopen or reconsider within 30 days. DCX 10 at 37-42.

28. Under procedures adopted due to the pandemic, the O'Melveny mailroom opened, scanned, and emailed a copy of the letter to Murphy. After reading this letter, Murphy requested that the firm send the physical file to his home. When he received the file, he read the Request for Evidence letter for the first time. Tr. 157 (Murphy); DCX 4 at 5, ¶ 11.

29. Following his review of the denial letter, Murphy panicked. He set the letter aside for a day or two and then decided to research how he might rectify the

situation on his own. He did not reach out to his mentor, the partner at O'Melveny in charge of pro bono matters, or a senior associate at O'Melveny who had previously worked on an unrelated immigration matter and advised him about immigration court procedure. He deliberately chose not to use LexisNexis or Westlaw because he did not want to create a search history that might be visible to someone at his firm. Instead, he consulted Google and the Cornell Law Institute's website. Tr. 159-163 (Murphy).

30. Murphy did not file a motion to reopen or reconsider within the 30 days allowed or request any other relief from USCIS regarding the denial of L.C.Q.'s SIJ petition. Tr. 160 (Murphy); DCX 4 at 6, ¶ 12. He did not explain why he failed to act. Tr. 160 (Murphy).

D. Murphy Conceals and Lies About the Status of L.C.Q.'s Matter

31. On October 19, 2020, Ms. Lee emailed Murphy suggesting that he contact USCIS because the statutory deadline to adjudicate the petition had passed. As far as she knew, USCIS had not issued a decision on L.C.Q.'s SIJ petition. DCX 10 at 959-960. USCIS is statutorily required to adjudicate petitions for SIJ status within six months of filing. Tr. 93 (Lee); *accord* 8 U.S.C. §1232(d)(2). In some cases, adjudication happens relatively quickly, but some cases take longer than the statutory timeframe. Tr. 93 (Lee).

32. Despite knowing that USCIS had denied the petition six months earlier, Murphy nonetheless responded to Ms. Lee that he would "check on the status of L.C.Q.'s SIJS [sic] Petition and advise." DCX 10 at 959.

33. On May 20, 2022, after over a year and a half with no communication about L.C.Q.'s SIJ petition, Murphy emailed Ms. Lee. DCX 10 at 1016. In addition to L.C.Q.'s case, Murphy had filed an SIJ petition for L.C.Q.'s brother. In the May 20, 2022, email, he informed Ms. Lee that he had received an I-797 from USCIS approving the brother's petition and granting him deferred action. *Id.*; Tr. 118-119 (Lee).

34. SIJ status by itself does not confer a legal right to remain in the United States; it is only a pathway to apply for lawful permanent residency. Deferred action grants certain immigrants without legal status protection from deportation and a pathway to apply for employment authorization. At all relevant times, USCIS on its own initiative gave deferred action to SIJ status recipients. SIJ applicants could not seek deferred action from USCIS proactively. Tr. 100-102 (Lee).

35. Regarding L.C.Q., Murphy falsely stated in the May 20, 2022, email that he "ha[d] not received anything for L.C.Q. at this time," and promised that he would "check on her status." DCX 10 at 1016. Ms. Lee understood this to mean that Murphy had not received a decision regarding L.C.Q.'s SIJ petition. Tr. 118-119 (Lee).[4]

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[4] During his cross-examination of Ms. Lee, Murphy attempted to establish that the phrase "ha[d] not received anything for L.C.Q. at this time," referred only to receipt of the I-797. Tr. 117-120 (Murphy and Lee). Ms. Lee disagreed with Murphy's attempt to the narrow the scope of in his email, as do we.

36. Attorneys representing a pair of siblings commonly provide KIND with information about only one sibling, and Ms. Lee assumed that the cases for both L.C.Q. and her brother were on the same track. Tr. 100-101 (Lee). So, she followed up by asking Murphy for the dates of SIJ approval for both L.C.Q. and her brother, since "[t]he last we corresponded, I believe I was under the impression that they were still pending." DCX 10 at 1015.

37. Murphy did not respond to Ms. Lee's request until May 16, 2023, nearly a year later. That day, Murphy spoke with Ms. Lee and finally informed her that USCIS had denied L.C.Q.'s SIJ petition more than three years earlier. Tr. 104-111 (Lee); DCX 4 at 6-7, ¶¶ 14-15; DCX 10 at 1070-1072. Murphy intended to stay on as L.C.Q.'s counsel, and he and Ms. Lee discussed pursuing Asylum for L.C.Q. as an alternate form of relief (because by then, L.C.Q. had nothing pending). Tr. 108.

38. Murphy never told L.C.Q. that USCIS had denied her petition for SIJ status, despite knowing he had an ethical obligation to do so. Tr. 31-32 (L.C.Q.); Tr. 163-164 (Murphy).

39. During the more than three years between his receipt of the denial letter and telling Ms. Lee about it, Murphy reviewed L.C.Q.'s case at least once per year when preparing for master calendar hearings regarding L.C.Q.'s deportation case in immigration court. Tr. 166-168. A master calendar hearing is a periodic status hearing in immigration court for people like L.C.Q. with an active deportation case. Tr. 76 (Lee). Had USCIS approved L.C.Q.'s SIJ petition, Murphy could have asked

the immigration court to terminate these proceedings based on her change in status. Tr. 77-80 (Lee).

40. Each time Murphy had to prepare for a master calendar hearing, he would research whether he could do something to salvage her SIJ petition. Each time, Murphy decided not to reach out to Ms. Lee (who had many resources available to help her), the partner in charge of pro bono matters, or the senior associate at O'Melveny. He also decided each time not to tell L.C.Q. about the denial. Tr. 166-168 (Murphy); *see* Tr. 106-108 (Lee); DCX 10 at 56, 71, 73, 1053 (noting upcoming hearing dates).

41. During the more than three years between his receipt of the denial letter and telling Ms. Lee about it, Murphy communicated intermittently with L.C.Q. by email. In September 2021, more than 17 months after USCIS denied the SIJ petition, he explained to L.C.Q. that the "next step" to obtaining lawful permanent residency was filing a Form I-485, a standardized document individuals use to apply for lawful permanent residency. DCX 10 at 992. He asked L.C.Q. to provide information for him to complete that form, which she did. *Id.* at 992-994, 1031. He told her on several subsequent occasions that he was working on her I-485. DCX 10 at 1004 (email dated September 23, 2021), 1011-1012 (email dated December 21, 2021), 1028-1030 (email dated June 3, 2022); Tr. 128-129 (Lee).

42. Murphy knew the entire time that L.C.Q. could not apply for lawful permanent residency until she received SIJ status. Tr. 169-170 (Murphy). He also knew that, even if L.C.Q.'s SIJ petition had been approved, she was not eligible to

submit an I-485 because USCIS had not yet started processing applications with her priority date—a fact he withheld from her. Tr. 176-177 (Murphy).

43. Ms. Lee informed L.C.Q. of the denial shortly after her phone call with Murphy. L.C.Q. was shocked and disappointed (she cried when she received the news). She had thought her case was on track until that phone call, and she did not know what to do. Tr. 32-33 (L.C.Q.); Tr. 110-112 (Lee).

44. Murphy admits that he was dishonest with L.C.Q., saying during his opening statement that "I did mislead and misrepresent the situation . . . I will admit there was a lie by omission by not telling the full story." Tr. 25 (Murphy).

E. L.C.Q. Obtains New Counsel

45. L.C.Q. terminated Murphy's representation after talking with Ms. Lee. Tr. 34-35 (L.C.Q.); DCX 10 at 1095. KIND then referred L.C.Q. to another lawyer. Tr. 110, 112 (Lee). L.C.Q. hired the new lawyer and provided her with "all copies of everything that [she] had." Tr. 35, 43-44. L.C.Q.'s new lawyer assisted her with filing a disciplinary complaint against Murphy. Tr. 38, 44.

46. L.C.Q.'s new lawyer filed a motion with USCIS to reopen L.C.Q.'s petition, arguing that Murphy had provided ineffective assistance of counsel and that L.C.Q. was otherwise eligible for SIJ status. DCX 6 at 5-82.

47. After initially denying the motion to reopen, USCIS without explanation approved L.C.Q.'s SIJ petition on June 7, 2024. DCX 7 at 5-7; RX 509; Tr. 37 (L.C.Q.).

48. L.C.Q.'s new lawyer helped her obtain employment authorization just over three months after SIJ approval, and L.C.Q. is now working to obtain lawful permanent residency. RX 510; Tr. 37, 46. Unlike Murphy, L.C.Q.'s new lawyer is not working pro bono. Tr. 35-37 (L.C.Q.).

49. Murphy did not respond to successor counsel's efforts to contact him, and O'Melveny sent the client file to successor counsel as instructed by L.C.Q. DCX 6 at 36-37; DCX 10 at 1158-1162.

III. CONCLUSIONS OF LAW

Disciplinary Counsel argues that the rules governing immigration attorneys issued by EOIR, an agency within the Department of Justice, apply to the charged violations except where those rules do not cover the conduct at issue. In those instances, the D.C. Rules apply. Murphy does not address choice of law in his brief.

On the merits, Disciplinary Counsel argues that Murphy's failure to monitor his mailbox caused him to miss the letter from USCIS denying L.C.Q.'s SIJ petition. Disciplinary Counsel contends that after discovering the letter, he failed to take steps to revive L.C.Q.'s case, and this inaction prejudiced L.C.Q. Disciplinary Counsel further contends that Murphy compounded his alleged misconduct by misrepresenting the status of the case to L.C.Q and his KIND mentor. Based on this conduct, Disciplinary counsel argues that Murphy violated the EOIR Rules and the D.C. Rules and should be appropriately sanctioned.

Murphy admits that he did not routinely review his mail and that he did not tell L.C.Q. or his KIND mentor when he discovered that USCIS denied L.C.Q.'s SIJ

petition. Murphy denies that he knowingly made a false statement of fact to a third person or that he seriously interfered with the administration of justice.

For the reasons discussed below, we find that the EOIR Rules apply to three of the charges and the D.C. Rules apply to the remaining charges. Applying the appropriate rule to the conduct at issue, we find that Disciplinary Counsel has proven each charge by clear and convincing evidence, except a violation of D.C. Rule 8.4(d).

A. Choice of Law

D.C. Rule 8.5(b)(1) provides that "[f]or conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise." For any conduct that is not covered by the tribunal's rules, the D.C. Rules apply if the lawyer is only licensed here. D.C. Rule 8.5(b)(2)(i).

Under D.C. Rule 1.0(n), a "Tribunal" includes an "administrative agency, or other body acting in an adjudicative capacity." A body acts in an adjudicative capacity when "a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter." *Id.*

Here, the alleged misconduct stems in part from a matter pending before USCIS, an agency of the U.S. Department of Homeland Security. 6 U.S.C. § 271 (establishing the USCIS). USCIS is a tribunal because, acting as a neutral body, it grants or denies immigration status based on submissions supported by evidence.

Those decisions, which determine the applicant's ability to remain in the United States, are binding unless reconsidered or appealed. *See* 8 C.F.R. pt. 103; *see also In re Osemene*, Board Docket No. 18-BD-105 (BPR May 31, 2022), appended HC Rpt. at 32-33 (Jan. 28, 2022) (finding that the immigration court is a tribunal), *recommendation adopted where no exceptions filed*, 277 A.3d 1271 (D.C. 2022) (per curiam).

Attorneys who practice before the USCIS are subject to discipline under 8 C.F.R. part 1003, the rules of professional conduct issued by the EOIR (EOIR Rules). *See* 8 C.F.R. § 292.3(a). So, the EOIR Rules apply to Murphy's representation of L.C.Q. when her petition was pending before USCIS. *See In re Alexei*, Board Docket No. 21-BD-050 (BPR May 8, 2024), appended HC Rpt. at 17-18 (Sept. 26, 2023) (8 C.F.R. pt. 1003 applies to conduct before USCIS); *see also Osemene*, Board Docket No. 18-BD-105, appended HC Rpt. at 32-33 (finding that EOIR rules applied to matter before immigration court).

The EOIR Rules, however, do not address all of Murphy's conduct, including his alleged dishonesty after USCIS denied L.C.Q.'s petition. For that reason, the D.C. Rules apply to conduct before USCIS not otherwise covered by the EOIR Rules and to conduct occurring after USCIS denied the SIJ petition. *See Osemene*, Board Docket No. 18-BD-105, appended HC Rpt. at 32-33. In effect, where no EOIR Rule addresses the alleged misconduct, any applicable D.C. Rule fills the gap. *Id.*, Board Docket No. 18-BD-105, at 4-5, appended HC Rpt. at 34-35.

For conduct before USCIS, we apply the EOIR Rules to determine Murphy's culpability for the following alleged misconduct: (1) competence and skill and care (§ 1003.102(o)), (2) diligence and promptness (§ 1003.102(q)), and (3) communication and informed decisions (§ 1003.102(r)).

Disciplinary Counsel argues that the D.C. Rules, rather than the EOIR Rules, apply to these charges. But in *Kreiss*, a case involving conduct before the Board of Immigration Appeals, the Board concluded that the EOIR Rules applied under D.C. Rule 8.5(b), and applied the D.C. Rules only where the EOIR Rules did not address the issue covered by the D.C. Rules. *In re Kreiss*, Board Docket No. 23-BD-008, at 14-15, 17-21 (BPR July 29, 2024), *recommendation adopted where no exceptions filed*, 324 A.3d 294 (D.C. 2024) (per curiam).

Disciplinary Counsel acknowledges the finding in *Kreiss* that § 1002.102(r) is comparable to Rule 1.4(b). ODC Br. at 23. More importantly, it concedes that the EOIR Rules and the corresponding D.C. Rules are at least similar. *Id.* at 16-17, 20, 22-23. And Disciplinary Counsel argues that Murphy engaged in misconduct related to competence and skill and care, diligence and promptness, and communication and informed decisions regardless of which rules apply. Although we agree with that conclusion, we apply the EOIR Rules to these charges based on *Kreiss*, but draw on D.C. law when applying the EOIR Rules, as did Disciplinary Counsel

Disciplinary Counsel also asserts that D.C. Rule 1.3(b), which prohibits certain intentional misconduct, has no counterpart in the EOIR Rules. Yet, they note

that in *Kreiss*, the Board found that §§ 1003.102(q)(1)-(2) are comparable to D.C. Rule 1.3(b)(2). ODC Br. 21-22; *see Kreiss*, Board Docket No. 23-BD-008, at 20.

That said, the basis for this finding in *Kreiss* is unclear. By its terms §§ 1003.102(q)(1)-(2) do not appear to require intent, whereas D.C. Rule 1.3(b) explicitly does so. But Disciplinary Counsel undertook the burden to prove intent. If successful, Disciplinary Counsel necessarily shows a violation of both rules whether or not §§ 1003.102(q)(1)-(2) require intent. Consequently, we applied D.C. Rule 1.3(b) to Murphy's conduct while representing L.C.Q. before USCIS.

As to Murphy's conduct after USCIS denied the SIJ petition or not otherwise covered by the EOIR rules, we agree with Disciplinary Counsel that the D.C. Rules apply. *See* ODC Br. at 25-28. For that reason, we apply D.C. Rules 1.3(b), 4.1(a), 8.4(c), and 8.4(d) to such conduct.

B. The Specific Charges

1. Disciplinary Counsel Proved that Murphy Violated 8 C.F.R. § 1003.102(o).

Disciplinary Counsel proved by clear and convincing evidence that Murphy violated § 1003.102(o) because he failed to exercise the skill and care necessary to competently represent L.C.Q. A lawyer is subject to sanction under § 1003.102(o) if they fail to provide "competent representation," which requires the lawyer to exercise the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." It includes "use of methods and procedures meeting the standards of competent practitioners." *Id.*

Disciplinary Counsel does not fault Murphy for inadvertently failing to mark the "Single" box under "Marital Status" in L.C.Q.'s SIJ petition. ODC Br. at 18. Instead, Disciplinary Counsel faults Murphy for failing to:

1. regularly monitor his office mailbox knowing that USCIS would communicate with him by mail;
2. open and read the Request for Evidence letter when Murphy found it in his mailbox (putting it in the physical file unopened instead);
3. file a motion to reopen or reconsider L.C.Q.'s matter despite the denial letter explicitly informing him that he could do so within 30 days; or
4. reach out to others who could have helped him.

Id. at 18-20.

Murphy does not address these charges specifically. Rather, he argues that he did not see the Request for Evidence letter because it was not at the top of his mail pile. R. Br. at 3. Murphy concedes, however, that he did not regularly review his mailbox because no other matters he worked on involved mail. *Id.* Murphy also admits that he told no one about the denial letter once he discovered it, and that despite attempts over several years to do so, he was unable to find a "solution" other than the motion to reopen or reconsider. *Id.*

We agree with Disciplinary Counsel that Murphy violated § 1003.102(o) by failing to competently represent L.C.Q. USCIS mailed Murphy a Request for Evidence letter on November 12, 2019, in which it asked Murphy to provide proof by February 7, 2020, that L.C.Q. was unmarried. FF 23. Murphy received the envelope in his mailbox. FF 23-24. Even though Murphy knew USCIS would contact him only by mail, he did not regularly review his mail and did not find the

Request for Evidence until March 2020. FF 25-26. When he found the envelope, which was clearly from USCIS and addressed to him and L.C.Q., Murphy did not read it. Instead, he placed it unopened in L.C.Q.'s physical file. FF 26. Because of Murphy's inaction, USCIS denied L.C.Q.'s SIJ petition. FF 27.

Based on this evidence alone, Murphy failed to exercise the reasonable skill, thoroughness, and preparation required by § 1003.102(o). Under any reasonable understanding of competence, a lawyer must implement practices and procedures to ensure that they receive correspondence in cases in which they are involved and review that correspondence when received.

Under similar facts, lawyers have been found to violate corresponding D.C. Rules 1.1(a) & (b).[5] Under Rule 1.1(a), the inquiry focuses on the representation required in a particular case, and under Rule 1.1(b), the inquiry focuses on the practices and skills of similarly situated lawyers. *In re Outlaw*, Bar Docket No. 101-01, at 19-20 (BPR Dec. 23, 2005), *recommendation adopted*, 917 A.2d 684 (D.C. 2007) (per curiam).

In *Outlaw*, the lawyer violated these rules by failing to accurately calculate and keep track of the statute of limitations, which expired without the lawyer filing suit. *Outlaw*, Bar Docket No. 101-01, at 5, 20, 22-23. Similarly, a lawyer violated

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[5] *See* Rule 1.1(a) ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."); Rule 1.1(b) ("A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.").

the rules for "not having in place a reliable system for managing his docket for his various pieces of litigation." *In re Cole*, Bar Docket No. 268-05, at 9 (BPR Dec. 20, 2007), *findings and recommendation adopted*, 967 A.2d 1264 (D.C. 2009). Another lawyer violated the rules because he "did not pay sufficient attention to the case to avoid the expiration of the statute of limitations." *In re Weiss*, Board Docket No. 14-BD-089, at 9 (BPR July 26, 2018), *recommendation adopted where no exceptions filed*, 218 A.3d 227 (D.C. 2019) (per curiam).

Yet, Murphy's misconduct did not end with his failure to open and read the Request for Evidence when he found it. He further violated § 1003.102(o) when, after receiving the letter from USCIS denying the SIJ petition, he chose not to file a motion to reopen or reconsider within 30 days, as was permitted. FF 30.

At a minimum, competency required Murphy to use the available corrective measures—a motion to reopen or reconsider—to salvage L.C.Q.'s petition. *See In re Steinberg*, Bar Docket No. 423-01, at 12 (BPR May 2, 2005) (a lawyer who makes a mistake is obligated under corresponding Rules 1.1(a) and (b) to take corrective measures), *recommendation adopted where no exceptions filed*, 878 A.2d 496 (D.C. 2005) (per curiam); *In re Owusu*, Bar Docket No. 109-02, at 8-9 (BPR July 30, 2004) (lawyer failed to correct mistake in filing of immigration form), *recommendation adopted*, 886 A.2d 536 (D.C. 2005). Instead, compounding his misconduct, Murphy, who claims he panicked, did not ask for help and tried for over three years to find a "solution" other than filing the motion. FF 29, 39-40.

Again, cases applying D.C. Rules 1.1(a) and (b) are instructive. In *Cole*, the Board found a lawyer violated these rules because the lawyer failed to try to reopen asylum proceedings or file an appeal once made aware of his error that asylum was denied. Bar Docket No. 268-05, at 8-9. "'I froze,' is not the competent way to handle such a situation." *Id.* at 9 (quoting the lawyer's answer). As the Board observed, a lawyer must be able to "recover from untold and unforeseen events" in a case. *Id.* Lawyers must not deal with an adverse situation by trying "to hide from it and avoid it," as Murphy did here. *Id.* (citing lawyer's answer); *see also In re Drew*, 693 A.2d 1127, 1131-1133 (D.C. 1997) (per curiam) (appended Board report) (lawyer failed to file appeals in criminal matters and a motion to modify sentence).

We agree with Disciplinary Counsel that the fact that successor counsel eventually obtained approval of L.C.Q.'s SIJ petition and employment authorization does not preclude us from finding incompetence. ODC Br. at 20. As Disciplinary Counsel notes, "a fortuitous lack of injury to the client" does not shield Murphy from culpability. *Id.* (quoting *In re Askew*, 225 A.3d 388, 395 (D.C. 2020) (per curiam)).

No matter the ultimate outcome, ignoring his mailbox, placing the unopened Request for Evidence in the client file, and failing to file a motion to reopen or reconsider as permitted demonstrates ineptitude. And, even if an injury was necessary to find a violation, L.C.Q. was in fact injured because she remained subject to deportation, could not obtain employment authorization, and had to pay successor counsel to salvage her case. FF 34, 39, 42, 48.

For these reasons, Disciplinary Counsel has proven by clear and convincing evidence that Murphy violated § 1003.102(o) (or Rules 1.1(a) & (b)). He failed to exercise the legal knowledge, skill, thoroughness, and preparation necessary to competently represent L.C.Q. before USCIS.

2. Disciplinary Counsel Proved that Murphy Violated 8 C.F.R. § 1003.102(q).

Disciplinary Counsel proved by clear and convincing evidence that Murphy violated § 1003.102(q) by failing to diligently and zealously represent L.C.Q. Under the rule, a lawyer is subject to sanction if they fail to act "with reasonable diligence and promptness in representing a client." § 1003.102(q). The duty to "act with reasonable promptness," includes, but is not limited to, "complying with all time and filing limitations." § 1003.102(q)(2).

Disciplinary Counsel offers four grounds to support its charge that Murphy failed to act with reasonable diligence and promptness. According to Disciplinary Counsel, Murphy did not:

1. check his mailbox despite knowing USCIS would mail him correspondence;
2. open the Request for Evidence letter when he found it;
3. file a motion to reopen or for reconsideration when he received the USCIS' denial; and
4. tell L.C.Q. or Ms. Lee, who could have helped him, about the denial for more than three years.

ODC Br. at 21.

Once again, Murphy does not address the charge. But he admits he did not check his mailbox regularly, tell anyone about the denial letter, or seek help from anyone. R. Br. at 3-4.

Failing to act with reasonable diligence is a form of neglect. As has been noted with respect to corresponding D.C. Rule 1.3(a), "[n]eglect of client matters is a serious violation of the obligation of diligence."[6] D.C. Rule 1.3, cmt [8]. Under Rule 1.3(a), neglect is "indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1255 (D.C. 1997) (per curiam) (appended Board Report). A lawyer who neglects a case for a significant period violates the duty to act promptly whether or not the client suffers any prejudice. *See In re Dietz*, 633 A.2d 850 (D.C. 1993) (per curiam) (applying corresponding D.C. Rule 1.3(c)).[7]

Based on the evidence presented, Murphy did not act diligently or promptly in violation of § 1003.102(q), thereby frustrating L.C.Q.'s objectives. Murphy neglected his mailbox and ignored the Request for Evidence, which he placed unopened in a file. FF 23-26. When he received the denial letter, he did not promptly file a motion to reopen or reconsider as permitted. Instead, he took no action to

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[6] *See* Rule 1.3(a) ("A lawyer shall represent a client zealously and diligently within the bounds of the law.").

[7] *See* Rule 1.3(c) ("A lawyer shall act with reasonable promptness in representing a client.").

salvage her case other than trying to find a "solution" other than the permitted motion and sought no help from anyone. He dithered for more than three years before telling Ms. Lee that L.C.Q.'s petition had been denied. FF 27-30, 37-39.

That Murphy's neglect violated § 1003.102(q) is supported by case law applying corresponding D.C. Rules 1.3(a) & (c). In *Steele*, the lawyer violated those rules because he failed to file an opposition to a motion for summary judgment and failed to notify the client of the result. *In re Steele*, 868 A.2d 146, 150 (D.C. 2005). The lawyer in *Cole* violated the rules because he failed to file a new asylum application and to move to reopen or appeal the court's initial deportation order. *Cole*, Bar Docket No. 268-05, at 9-10. These failures, the Board concluded, frustrated the client's objectives and demonstrated a lack of promptness in representing the client. *Id.*

Similarly, a lawyer violated Rule 1.3(a) when he failed to file appeals and a motion to modify sentence as clients requested. *In re Drew*, 693 A.2d at 1133 (appended Board report). And in *Grigsby*, the lawyer violated D.C. Rule 1.3(c) because for more than two years, he failed to file a motion for post-conviction relief as promised. *In re Grigsby*, Board Docket No. 14-BD-103 *et al*., (BPR Nov. 14, 2016), appended HC Report at 68 (June 20, 2016), *recommendation adopted where no exceptions filed*, 167 A.3d 551 (D.C. 2017) (per curiam).

For these reasons, Disciplinary Counsel has proven by clear and convincing evidence that Murphy violated § 1003.102(q) (or D.C. Rules 1.3(a) & (c)). He

neglected his duties by failing to exercise reasonable diligence and promptness in representing L.C.Q. before USCIS.

3. Disciplinary Counsel Proved that Murphy Violated D.C. Rules 1.3(b)(1) & 1.3(b)(2).

Disciplinary Counsel proved by clear and convincing evidence that Murphy violated D.C. Rules 1.3(b)(1) & (2) because he intentionally neglected L.C.Q.'s case causing her to suffer prejudice or damage. Rule 1.3(b) provides that a lawyer shall not intentionally:

> (1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or
>
> (2) Prejudice or damage a client during the course of the professional relationship.

Disciplinary Counsel argues Murphy violated D.C. Rule 1.3(b) largely for same reasons he violated § 1003.102(q):

1. he knew USCIS sent him the Request for Evidence but did not open it;
2. he knew he had to file a motion to reopen or reconsider after he received USCIS denial but did not do so;
3. he did not ask for help after receiving the denial; and
4. he did not to tell L.C.Q. or Ms. Lee about the denial for over three years, despite periodically reviewing her case.

ODC Br. at 22.

Murphy does not specifically address the charges under Rule 1.3(b)(1), but he claims that L.C.Q. suffered no prejudice as required by Rule 1.3(b)(2). R. Br. at 11, 13-14.

a. Murphy violated D.C. Rule 1.3(b)(1).

We find that Murphy violated D.C. Rule 1.3(b)(1) because he intentionally failed to seek L.C.Q.'s lawful objectives through reasonably available lawful means. Under the rule, the failure to pursue a client's interest is treated as intentional when "the neglect is so pervasive that the lawyer must have been aware of it" or "when a lawyer's inaction coexists with an awareness of his obligations to his client." *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) (citations omitted). Neglect can be intentional under the rule when the attorney knows they are neglecting the matter but nonetheless continues to do so. *In re Vohra*, 68 A.3d 766, 781 (D.C. 2013) (appended Board Report).

Disciplinary Counsel need not prove prejudice to L.C.Q. to show a violation of Rule 1.3(b)(1). The Court has found neglect violating the predecessor rule where the client suffered no prejudice at all. *In re Landesberg*, 518 A.2d 96, 96-97 (D.C. 1986) (per curiam) (applying DR 7-101(A)(1), a prior version of the Rule). Intentionally failing to "seek the lawful objectives of a client through reasonably available means" is a violation even if there is no "material prejudice" other than delay. *In re Lewis*, 689 A.2d 561, 563-564 (D.C. 1997) (per curiam) (appended Board Report).

"Knowing abandonment of a client is the classic case of a Rule 1.3(b)(1) violation . . . ." *Id.* at 564. In essence, Murphy abandoned L.C.Q. because he knowingly neglected her matter over an extended period. Once Murphy read the USCIS denial, he knew he had 30 days to file a motion to reopen or reconsider. FF

27-29. Even so, he did not file a motion or otherwise seek relief of any kind for three years. FF 30, 39-40. Although Murphy knew what to do, he intentionally refused and failed to seek L.C.Q.'s lawful and essential objectives through available means. *See Drew*, 693 A.2d at 1133 (appended Board report) (lawyer intentionally failed to pursue appeals and sentence modification).

That Murphy was aware of his neglect is also demonstrated by his failure to tell L.C.Q. or Ms. Lee that USCIS denied the SIJ petition. For three years, he concealed the information from them while trying half-heartedly to find a "solution" other than filing a motion. He sought no help and even avoided using LexisNexis or Westlaw for his research to prevent anyone from discovering that something was wrong. FF 29, 32, 35. Finally, aware that L.C.Q. remained subject to deportation after the SIJ was denied, Murphy continued to conceal the denial even as he prepared for periodic immigration court hearings. FF 27, 29, 32-43. His secrecy and attempt to find a "solution" (other than the one available) demonstrate that he knew he had an obligation to his client that he was neglecting.

b. Murphy violated D.C. Rule 1.3(b)(2).

Based on the same facts, we find that Murphy intentionally caused L.C.Q. prejudice violating Rule 1.3(b)(2). The rule does not require proof that a lawyer formed the intent to harm the client. Rather, Disciplinary Counsel need only prove that Murphy was "demonstrably aware" that the conduct at issue would damage or prejudice L.C.Q. *In re Rachal*, 251 A.3d 1038, 1042 (D.C. 2021) (per curiam) (lawyer was aware that his public filing accused clients of making

misrepresentations). A violation can occur where a lawyer '"knowingly created a grave risk"' that the client would be harmed and understood that harm was "substantially certain" to follow. *In re Wright*, Bar Docket Nos. 377-99 *et al*., at 24-25 (BPR Apr. 14, 2004) (appended Board Report)), *findings and recommendation adopted*, 885 A.2d 315, 316 (D.C. 2005) (per curiam).

Although Rule 1.3(b)(2) does not require actual intent, it does require Disciplinary Counsel to show "actual prejudice or damage to the client." *In re Cohen*, 847 A.2d 1162, 1165 n.1 (D.C. 2004). For instance, the Court found actual prejudice in *Rachal* because the lawyer made a public filing accusing clients of acting deceitfully. 251 A.3d at 1042. In another case, the Court found a client suffered actual damage where the lawyer failed to file a client's tax returns before a deadline thereby forfeiting the client's requests for tax refunds. *Robertson*, 612 A.2d at 1250 (appended Board Report).

Here, the evidence shows that Murphy was "demonstrably aware" that his conduct would cause actual prejudice to L.C.Q. Murphy knew he had to file a motion to reopen or reconsider her SIJ petition for the petition to be granted. Until the petition was granted, Murphy knew L.C.Q. could not obtain employment authorization and would not be protected from deportation. He was also aware that absent SIJ status, L.C.Q. could not apply for lawful permanent residency. FF 27-30, 34, 42.

That he was "demonstrably aware" that his conduct was prejudicial is further evidenced by the fact that he concealed the information for three years while trying

half-heartedly to find a "solution" and avoiding asking for help. FF 27-30, 32, 35, 39-40. "[P]erpetual lies" regarding the status of a case demonstrates that a lawyer is "demonstrably aware" of his neglect, and thus, it is intentional. *In re Ponder*, Board Docket No. 12-BD-069, at 15 (BPR July 31, 2014), *recommendation adopted where no exceptions filed*, 114 A.3d 1289 (D.C. 2015) (per curiam); *see also Rachal*, 251 A.3d at 1042.

In defense, Murphy argues that L.C.Q. suffered no prejudice. According to him, although her SIJ status was delayed, L.C.Q. ultimately received that status with successor counsel, and having to pay that lawyer was not necessarily prejudicial. R. Br. at 13-15 (citing federal case law to show hiring successor counsel is not prejudicial). He further claims that "[a]t no time was L.C.Q. more or less likely to be removed from the United States (deported) by either USCIS or the Immigration Court by [his] actions." *Id.* at 15. SIJ status, according to him, does not "provide extra protection to an undocumented alien from deportation." *Id.*

Disciplinary Counsel counters that L.C.Q. suffered actual prejudice because there was a three-year delay in receiving SIJ status and employment authorization. ODC Reply at 8. As to paying new counsel, Disciplinary Counsel argues that the delay rather than paying counsel was the prejudice, and bringing new counsel up to speed compounded the delay. *Id.* at 9. Quoting *Lenoir*, Disciplinary Counsel argues that "prejudice includes the seemingly minor 'inconvenience and frustration of dealing with an unethical lawyer,'" which is present here. *Id.* at 10-11 (quoting *In re Lenoir*, 585 A.2d 771, 785 (D.C. 1991) (per curiam) (appended Board Report)).

We agree that the fact that L.C.Q. ultimately received SIJ status with successor counsel's help does not mean she suffered no prejudice. The delay itself in obtaining SIJ status constitutes prejudice. In *Vohra*, a lawyer's "delay and procrastination . . . seriously prejudiced" the clients even though successor counsel obtained retroactive visa status for them. *Vohra*, 68 A.3d at 777, 781 (appended Board Report). Similarly, in *Francis*, a lawyer's "complete lack of zeal" delayed the client's case, which was dismissed on procedural grounds, and the fact it was reinstated and dismissed again was immaterial to a finding that the client suffered actual prejudice. *In re Francis*, Board Docket No. 13-BD-089, at 14 (BPR Mar. 17, 2015), *recommendation adopted*, 137 A.3d 187 (D.C. 2016) (per curiam); *see also* Rule 1.3, cmt. [8]. Murphy's inaction for more than three years delayed L.C.Q.'s ability to seek employment authorization and lawful permanent residency until she hired successor counsel to salvage her SIJ petition. FF 34, 41-43, 45-48.

Finally, contrary to Murphy's claims, the evidence presented shows that the delay left L.C.Q. without protection from deportation. As Disciplinary Counsel notes, USCIS generally gives SIJ recipients deferred action protecting them from deportation. ODC Reply at 8-9; *see also* FF 34. Murphy had to prepare for periodic status hearings in immigration court because L.C.Q. had an active deportation case. FF 39. Consequently, having SIJ status would have made deportation less likely for L.C.Q. Under these circumstances, Murphy "knowingly created a grave risk" that L.C.Q. might be deported and had to understand that harm was "substantially certain" absent steps to terminate deportation proceedings.

For these reasons, Disciplinary Counsel has proven by clear and convincing evidence that Murphy violated D.C. Rules 1.3(b)(1) & (2) (or § 1003.102(q)). He neglected to seek L.C.Q.'s lawful objectives through reasonably available lawful means, and he was aware of his neglect. He also was "demonstrably aware" that his neglect would cause actual prejudice and harm to L.C.Q.

4. Disciplinary Counsel Proved that Murphy Violated 8 C.F.R. § 1003.102(r).

Disciplinary Counsel proved that Murphy violated § 1003.102(r) by failing to adequately communicate with L.C.Q. during the representation. A lawyer violates § 1003.102(r) if they "[f]ail[] to maintain communication with the client throughout the duration of the client-practitioner relationship." Among other things, proper communication requires a lawyer to "[r]easonably consult with the client about the means by which the client's objectives are to be accomplished," and "[k]eep the client reasonably informed about the status of the matter." §§ 1002.102(r)(2)-(3).

Disciplinary Counsel argues that Murphy did not tell L.C.Q. that her petition was denied and misled L.C.Q. by telling her he was working on the "next step" of applying for permanent residency. ODC Br. at 24. And because L.C.Q. assumed everything was on track, she could not make informed decisions about her case for three years, until Ms. Lee told her about the denial and reason for it. *Id.* at 24-25. Murphy does not specifically address this charge.

We agree with Disciplinary Counsel that Murphy violated §§ 1003.102(r)(2) and (3). Murphy had a duty to affirmatively reach out to L.C.Q. when necessary to provide her with crucial information about her case. *See In re Bernstein*, 707 A.2d

371, 376 (D.C. 1998) (under corresponding D.C. Rule 1.4(a), a lawyer has a duty to initiate contact when necessary). Despite that duty, Murphy chose not to tell L.C.Q. that USCIS had denied her petition or the reasons for the denial. FF 38, 40.

He compounded his misconduct by misleading L.C.Q. and Ms. Lee for over three years about the status of the case. During that time, they thought L.C.Q.'s case was on track when he knew it was not. FF 32, 35-41. At each turn, Murphy, who knew the true status of her case and his role in creating it, left L.C.Q. in the dark so she was unable to make an informed decision about the representation.

Cases applying corresponding D.C. Rules 1.4(a) and (b) support our conclusion that Murphy violated § 1003.102(r).[8] The lawyer in *Cole* violated Rules 1.4(a) and (b) because he lied to his client about the status of an asylum application that the lawyer had failed to file and did not tell the client he was subject to a deportation order. *Cole*, Bar Docket No. 268-05, at 11-12. In *Outlaw*, the lawyer violated these rules because she withheld from her client that the statute of limitations had expired, leaving the client "unable to assess whether to retain new counsel to pursue her claim." *Outlaw*, Bar Docket No. 101-01, at 28-29. As the Court noted in *Outlaw*, concealing or suppressing a material fact is as '"fraudulent as a positive direct misrepresentation"' and clearly establishes a violation of these rules. *Outlaw*, 917 A.2d at 688 (quoting *In re Mitchell*, 727 A.2d 308, 315 (D.C. 1999));

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[8] *See* Rule 1.4(a) ("A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."); Rule 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.").

see also In re Kaufman, Bar Docket No. 338-05 (BPR Nov. 12, 2010), appended HC Rpt. at 12 (Sept. 13, 2010) (finding Rule 1.4(a) violation when lawyer did not tell client that her lawsuit had been dismissed), *recommendation adopted where no exceptions filed*, 14 A.3d 1136 (D.C. 2011) (per curiam).

For these reasons, Disciplinary Counsel has proven by clear and convincing evidence that Murphy violated §§ 1003.102(r)(2) and (3) (or D.C. Rules 1.4(a) & (b)). L.C.Q. had a reasonable expectation that Murphy would promptly inform and consult with her about decisions and circumstances of her case and keep her informed about the status of her case, and Murphy unequivocally failed to fulfill that duty. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (noting importance of client's expectations).

5. Disciplinary Counsel Proved that Murphy Violated D.C. Rule 4.1(a).

Disciplinary Counsel proved that Murphy violated D.C. Rule 4.1(a) by knowingly making false statements of material fact to a third person. Rule 4.1(a) provides that "[i]n the course of representing a client," a lawyer "shall not knowingly . . . [m]ake a false statement of material fact or law to a third person."

In this context, "knowingly" means "actual knowledge of the fact in question" where knowledge can be inferred from circumstances. Rule 1.0(f). Actual knowledge can be found based on a "logical inference from [a] sequence of events." *In re Sumner*, 665 A.2d 986, 987, 989-990 (D.C. 1995) (per curiam) (appended Board Report) (knowing and false statement about ordering and receiving transcripts). A "false statement" can be found where there are "partially true but

misleading statements or omissions that are the equivalent of affirmative false statements." Rule 4.1, cmt. [1]. And a "third person" is "any person or entity other than the lawyer's client." *Id.*

Disciplinary Counsel argues that Ms. Lee asked Murphy on several occasions for an update on L.C.Q.'s SIJ petition, and each time, Murphy withheld the truth. ODC Br. at 25. On one occasion, they contend that Murphy knowingly and falsely told Ms. Lee that he had not received anything from USCIS regarding L.C.Q.'s case. *Id.* at 25-26.

Murphy admits his statements were deceptive misrepresentations but claims that they were not "false statements" because he did not knowingly communicate something untrue. R. Br. at 11-12. He asserts vaguely and without explanation that under the circumstances, including Ms. Lee's alleged lack of communication and supervision, "there are questions as to what Material Facts may have been disclosed." *Id.* at 12.

Disciplinary Counsel counters that technical truths can still be dishonest and misleading if the attorney withholds material information, and that even if affirmative statements were required under Rule 4.1(a), he lied to Ms. Lee when he told her, he "ha[d] not received anything for L.C.Q." and "would check on her status." ODC Reply at 3 (citing *In re Krame*, 284 A.3d 745, 757-758 (D.C. 2022)).

We find that Murphy violated Rule 4.1(a) by making knowingly false and misleading material statements to Ms. Lee about the status of L.C.Q.'s petition. Not knowing that USCIS had denied the petition, Ms. Lee recommended that Murphy

contact USCIS. FF 31. Knowing that USCIS had denied the petition, Murphy replied only that he would "check on the status . . . and advise." FF 32. This statement to Ms. Lee that he would check on the status was knowingly misleading because it implied the SIJ petition was still pending when he knew it was not.

In a much later email to Ms. Lee, discussing both L.C.Q. and her brother, Murphy stated he had "not received anything for L.C.Q. at this time," and that he would "check on her status." FF 35. The claim that he had received nothing was blatantly false since he had in fact received and read the denial.

These statements to Ms. Lee, who was not his client, involved a material fact because the status of a client's case is material. *See In re Reback*, 487 A.2d 235, 239-240 (D.C. 1985) (per curiam), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc).

For these reasons, Disciplinary Counsel has proven by clear and convincing evidence that Murphy violated D.C. Rule 4.1(a). He knowingly made false statements to Ms. Lee, a third person, about a material fact—the status of L.C.Q.'s SIJ petition.

6. Disciplinary Counsel Proved that Murphy Violated D.C. Rule 8.4(c).

Disciplinary Counsel proved that Murphy violated D.C. Rule 8.4(c) by engaging in dishonest conduct. Under the rule, a lawyer commits misconduct if they "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

Dishonesty includes "fraudulent, deceitful or misrepresentative conduct" and "conduct evincing a lack of honesty, probity or integrity in principle; a lack of

fairness and straightforwardness." *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (per curiam) (citation omitted). The Court holds lawyers to a "high standard of honesty, no matter what role the lawyer is filling." *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994) (per curiam) (appended Board Report). Lawyers have a higher duty than ordinary citizens to always be "scrupulously honest . . . , for honesty is 'basic' to the practice of law." *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc) (quoting *Reback*, 513 A.2d at 231).

If the dishonest conduct is "obviously wrongful and intentionally done," performing the act alone is sufficient to show the required intent. *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Intent can also be established by proof of recklessness. *Id.* at 315-317. Recklessness requires clear and convincing evidence that a lawyer "consciously disregarded the risk" created by their actions. *Id.* For instance, recklessness was found where a lawyer falsely represented to Disciplinary Counsel that medical bills had been paid, without trying to verify his memory of events more than four years before and despite recently receiving notice of non-payment from one provider. *In re Boykins*, 999 A.2d 166, 171-172 (D.C. 2010). The entire context of the lawyer's actions, including credibility, is relevant to determining intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-797 (D.C. 2019) (per curiam).

Disciplinary Counsel asserts that Murphy's statements to Ms. Lee about the status of L.C.Q.'s petition were dishonest. ODC Br. at 27. It also contends that Murphy acted dishonestly when he failed to tell L.C.Q. that USCIS denied her

petition and to share the reasons with her. *Id.* Murphy, according to Disciplinary Counsel, intentionally misled L.C.Q. for three years that her case was on track. *Id.*

Murphy does not deny that he acted dishonestly. Though he does not specifically address the Rule 8.4(c) charge, he claims, seemingly in mitigation, that his conduct did not prejudice L.C.Q. R. Br. at 11-12, 14.

We agree with Disciplinary Counsel that Murphy intentionally engaged in dishonest conduct that violated Rule 8.4(c). First, conduct that violates Rule 4.1(a) can also violate Rule 8.4(c). In *Corizzi*, the lawyer violated both rules when he misled and lied to opposing counsel. *In re Corizzi*, 803 A.2d 438, 441 & n.5 (D.C. 2002). Another lawyer violated both rules when he made false statements about the status of a personal injury lawsuit and certain indebtedness. *In re Mitchell*, 822 A.2d 1106, 1109 (D.C. 2003) (per curiam). Because a statement can violate both rules, the *Mitchell* Court noted that the lawyer would not prevail even if he had not waived the argument that Rule 4.1(a) and 8.4(c) violations were cumulative. *Id.* at 1109 n.6.

Second, Murphy violated Rule 8.4(c) because he intentionally misled L.C.Q. and Ms. Lee about the status of L.C.Q.'s case. Murphy deliberately withheld from them the fact that USCIS denied the petition and the reasons for the denial. FF 35-39. And, more than 17 months after the denial, Murphy knowingly misinformed L.C.Q. that the "next step" was filing Form I-485, the means to apply for lawful permanent residency. FF 41. He also requested information from her, which L.C.Q. provided, and then repeated he was working on the I-485. *Id.* Murphy knew that L.C.Q. could not apply for lawful permanent residency unless she received SIJ status, which he

knew she had not received. FF 42. Murphy's conduct—deliberately withholding information and knowingly misleading his client—was obviously wrongful and intentionally done.

The Court and the Board have found that dishonesty about the status of a client's case violates Rule 8.4(c). In *Reback*, the lawyers violated the predecessor rule by failing to tell the client that they filed a second complaint (and forged her signature) after her first one was dismissed. *Reback*, 487 A.2d at 239-240. In another case, the lawyer violated the rule when he repeatedly led the client to believe the case was proceeding, including promising to file an amended complaint, even though the complaint had been dismissed. *In re Schoeneman*, 891 A.2d 279, 280, 284-285 (D.C. 2006) (per curiam) (appended Board Report).[9] In *Weiss*, the lawyer violated the rule when he led his client to believe that the case was progressing even though no lawsuit had been filed and the statute of limitations had expired. *Weiss*, Board Docket No. 14-BD-089, at 1-2, 11-12; *see also Outlaw*, Bar Docket No. 101-01, at 31-33 (failed to disclose statute of limitations expired and misled client that case was progressing).

For these reasons, Disciplinary Counsel has proven by clear and convincing evidence that Murphy violated D.C. Rule 8.4(c) (or § 1003.102(c)[10]). He

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[9] The violation of Rule 8.4(c) in *Schoeneman* also rested on the fact that the lawyer failed to tell his client that he had been suspended from practice. *See id.* at 280.

[10] If 8 C.F.R. § 1003.102(c) applied instead of D.C. Rules 4.1(a) and 8.4(c), Murphy would still be culpable. Under § 1003.102(c), a lawyer is subject to discipline if the lawyer "[k]nowingly or with reckless disregard makes a false statement of material

purposefully concealed the fact that USCIS denied the SIJ petition and knowingly made misleading statements to L.C.Q. and Ms. Lee about the status of the petition.

7. Disciplinary Counsel Failed to Prove that Murphy Violated D.C. Rule 8.4(d).

Disciplinary Counsel has not proven by clear and convincing evidence that Murphy violated D.C. Rule 8.4(d), which prohibits a lawyer from engaging in "conduct that seriously interferes with the administration of justice."[11]

To establish a violation, Disciplinary Counsel had to demonstrate by clear and convincing evidence that:

1. Murphy acted improperly or failed to act when he should have under the circumstances;
2. the conduct bore directly upon the judicial process as to an identifiable case or tribunal; and
3. the conduct potentially tainted the judicial process in more than a *de minimis* way, meaning that it at least potentially impacted the process to a serious and adverse degree.

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fact or law, or willfully misleads, misinforms, threatens, or deceives any person . . . concerning any material and relevant matter relating to a case." By its terms, the rule proscribes either reckless or knowing misstatements of material fact to any person. Essentially, it combines aspects of D.C. Rules 4.1(a) and 8.4(c) but is not identical to either rule. Nonetheless, the evidence showing that Murphy violated Rules 4.1(a) and 8.4(c) also shows that Murphy violated § 1003.102(c). He knowingly withheld from L.C.Q. and Ms. Lee that USCIS denied the SIJ petition and made misleading statements to each of them about the status of L.C.Q.'s case.

[11] Even though D.C. Rule 8.4(d) applies, the result would be the same under § 1003.102(n), which sanctions conduct "prejudicial to the administration of justice." The prohibition under Rule 8.4(d) of conduct that "seriously interferes with the administration of justice" includes conduct proscribed under former rule DR 1-102(A)(5) as "prejudicial to the administration of justice." D.C. Rule 8.4, cmt. [2].

In re Hopkins, 677 A.2d 55, 60-61 (D.C. 1996) (applying predecessor rule). A lawyer also violates Rule 8.4(d) if their conduct causes unnecessary expenditure of time and resources in a judicial proceeding. *See Cole*, 967 A.2d at 1266.

Disciplinary Counsel argues that all three *Hopkins* conditions are satisfied here. First, Murphy failed to "take numerous actions when he should have and then acted improperly to cover up his misconduct." ODC Br. at 28. Second, the misconduct occurred in a specific case—L.C.Q.'s petition and by extension her deportation proceedings in immigration court. *Id.* Finally, the conduct had more than a *de minimis* impact on the judicial process because "both L.C.Q. and successor counsel had to expend time and money unnecessarily to save her case, which USCIS then had to review and act upon." *Id.*

Murphy disagrees, arguing that his conduct did not "interfere or prevent USCIS from granting L.C.Q. the SIJS [sic] she sought." R. Br. at 12. For support, he cites the Hearing Committee's finding in *Cole* that although the lawyer's actions prejudiced the client, those actions did not interfere with, or prevent, the immigration court from ruling on the client's motion to reopen. *Id.* (quoting 967 A.2d at 1266 n.5).

Disciplinary Counsel counters that prejudice is unnecessary for a Rule 8.4(d) violation and that the evidence shows that successor counsel and USCIS expended unnecessary time and resources to revive L.C.Q.'s case. ODC Reply at 4-5. They also note that in *Cole*, the Board and Court disagreed with the Hearing Committee's

conclusion and found sufficient impact on the judicial process to violate the rule. *Id.* at 5 n.2.

We find that Disciplinary Counsel has not shown by clear and convincing evidence that Murphy violated Rule 8.4(d). Disciplinary Counsel has proven the first two *Hopkins* conditions. Murphy failed to act, and acted improperly, when he ignored his mailbox, chose not to file a motion to reopen or reconsider, and misrepresented the status of L.C.Q.'s SIJ petition. FF 25-26, 30, 32, 35, 41-42. His conduct also bore directly on a judicial process in a specific case because it related to L.C.Q.'s SIJ petition pending before USCIS.

As to the third *Hopkins* condition, however, Disciplinary Counsel did not offer clear and convincing evidence that Murphy's conduct caused unnecessary expenditure of time and resources. Disciplinary Counsel asserts that "both successor counsel and USCIS had to expend *additional, unnecessary* time and resources to correct, revive, and adjudicate the client's otherwise meritorious claim." ODC Reply at 4 (emphasis added). Despite that claim, Disciplinary Counsel did not offer evidence demonstrating what time or resources successor counsel or USCIS expended to address Murphy's misconduct.

Of course, successor counsel did something to revive the SIJ petition and L.C.Q. had to pay successor counsel for that effort. But we do not have that information. We know only that successor counsel filed a motion to reopen, arguing in part ineffective assistance of counsel. FF 46. That motion may have required additional time and resources beyond what Murphy would have expended had he

filed a motion to reopen or reconsider in 2020. But we cannot make that determination absent evidence of what successor counsel did.

More importantly, Disciplinary Counsel did not offer any evidence about the time or resources USCIS expended responding to successor counsel's motion. Although the impact on the client may be relevant, the focus under the rule is the impact on the judicial process. *See In re Mance*, Bar Docket No. 031-01, at 25 n.11 (BPR July 23, 2004), *recommendation adopted where no exceptions filed*, 869 A.2d 339 (D.C. 2005) (per curiam). Here, we know only that USCIS initially denied successor counsel's motion but then granted the SIJ petition without explanation. FF 47.

Obviously, USCIS had to expend some time and resources to address that motion. Perhaps that required time and resources would not have been required had Murphy filed a motion to reopen or reconsider in 2020. But we cannot make that determination because we do not know what time and resources USCIS expended to address successor counsel's motion.

The deficiencies in Disciplinary Counsel's proof are illustrated by *Cole*, a case on which Disciplinary Counsel relies. ODC Reply at 5. Cole was retained to represent a client in connection with an asylum application. *Cole*, Bar Docket No. 268-05, at 3. At a hearing, the immigration court directed Cole to file a new asylum application within 60 days because the client's *pro se* application was deficient. Cole, however, did not prepare or file a new application or ask the court for more time to do so. *Id.* at 3-4. Subsequently, the immigration court issued a "voluntary

removal order" and then, when the client did not leave the United States, a "removal order." *Id.* at 4-5. Cole did not tell the client that he failed to submit a new asylum application or received the removal orders. *Id.* at 5. He also did not try to reopen the asylum proceedings or appeal the deportation order. *Id.* at 6.

Successor counsel filed a motion to reopen the asylum proceedings, arguing in part that the client's failure to file a new asylum application was Cole's fault. Bar Docket No. 268-05, at 6-7. Immigration and Customs Enforcement opposed the motion and the court denied it. *Id.* The client appealed to the Board of Immigration Appeals, and Immigration and Customs Enforcement sought summary affirmation, which was granted. As a result, the client was denied asylum, leaving him subject to deportation. *Id.* at 7.

Based on this evidence, the Board found that Cole's conduct tainted the process in two ways. First, the client lost the opportunity to obtain permanent residency based on his political asylum claim. Had Cole informed the client about the voluntary removal order, the client would have likely succeeded in reopening the matter, and the decision to withhold the information delayed and obstructed the judicial process. *Id.* at 13.

Second, Cole's conduct led to the immigration court expending unnecessary time and resources in response to the belated steps to try and fix the situation Cole created. *Id.* at 13-14. The Board cited the motion to reopen the removal order two and a half years after that order was issued, the opposition to that motion, the immigration court's 13-page decision denying the motion, and the subsequent

briefing and opinion on appeal. Bar Docket No. 268-05, at 14. This activity, the Board concluded, constituted "a significant taint of the judicial process." *Id.*

To be sure, as in *Cole*, Murphy's failure to file a motion to reopen or reconsider and tell anyone for three years about the denial caused a lengthy delay. But, in *Cole*, the Board did not reach its conclusion based solely on the two-and-a-half-year delay, *see id.*, and the Court does not seem to rely on the delay at all when it affirmed the sanction. *See Cole*, 967 A.2d at 1267-1270. Both the Board and the Court note that the client lost his ability to seek asylum and, more significantly, focused on the extensive judicial proceedings when the client's new counsel sought to salvage the case. *See id.* at 1267-1268; Bar Docket No. 268-05, at 13-15.

Disciplinary Counsel does not offer any similar evidence. In fact, they offered no evidence concerning what occurred when successor counsel filed the motion to reopen with USCIS. And they cite no cases in which a delay of any length standing alone demonstrated sufficient taint to the judicial process to constitute a violation of Rule 8.4(d). There is no reason to conclude that the mere passage of time required USCIS to expend more time or resources to consider successor counsel's motion than it would have expended addressing a timely motion from Murphy three years earlier.

In fact, the passage of time might have prompted USCIS to summarily reject successor counsel's motion. Rule 8.4(d) is not violated by an obviously defective filing or request that a tribunal can easily dispose of. So, in *Rachal*, the Board found no violation where the court summarily denied without comment a clearly improper

filing less than a week after it was filed. *Rachal*, Board Docket No. 14-BD-062 at 44-45 (BPR July 6, 2017). Here, USCIS may have acted in a similar manner, but we do not know because Disciplinary Counsel offered no evidence about what USCIS did, making it impossible to know whether its efforts were more than *de minimis*.

Finally, Disciplinary Counsel suggests that Murphy's misconduct also occurred "by extension" in L.C.Q.'s deportation proceedings. ODC Br. at 28. L.C.Q. had periodically scheduled immigration court hearings because she was subject to deportation. SIJ status likely would have resulted in deferred action protecting L.C.Q. from deportation. *See* FF 34, 39.

As Disciplinary Counsel implicitly acknowledges, the relationship between Murphy's conduct and the immigration court proceedings are attenuated at best. Assuming, however, the misconduct also occurred in the immigration court, Disciplinary Counsel has not shown how those proceedings were impacted by Murphy's misconduct.

No doubt, the immigration court expended some time and resources that it might not have expended had L.C.Q. received deferred action earlier. But Disciplinary Counsel offered no evidence of how often L.C.Q.'s case came before the immigration court over the three-year period after USCIS denied the SIJ petition and what might have occurred during those hearings.

The only information we have about those hearings is a comment by Murphy during his opening statement. He told the Hearing Committee that the hearings continued throughout his representation of L.C.Q. Tr. 19. That suggests that the only

impact on the immigration court might have been scheduling the hearings. Absent any other evidence about those proceedings, we have no basis to find that the immigration court was negatively impacted at all, let alone in more than a *de minimis* way.

For these reasons, Disciplinary Counsel has not proven by clear and convincing evidence that Murphy violated Rule 8.4(d) (or § 1003.102(n)).

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel asks the Hearing Committee to recommend a 90-day suspension. ODC Br. at 34. Murphy requests that if the Hearing Committee finds that Disciplinary Counsel has proven at least one rule violation, he should receive at most a stayed suspension. R. Br. at 17. For the reasons described below, we agree with Disciplinary Counsel and recommend a sanction of 90-days suspension.

A. Standard of Review

The Court of Appeals applies D.C. law to determine the appropriate sanction even when "evaluating misconduct under the rules of another jurisdiction." *In re Tun*, 286 A.3d 538, 543 (D.C. 2022). Professional discipline is not intended to punish the lawyer; it serves instead to maintain the integrity of the legal profession, protect the public and courts, and deter future or similar misconduct by the respondent and other lawyers. *See In re Kanu*, 5 A.3d 1, 16 (D.C. 2010); *Reback*, 513 A.2d at 231. The sanction must not "foster a tendency toward inconsistent

dispositions for comparable conduct" or "otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1).

To determine the appropriate sanction, the Court of Appeals considers the following factors:

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;
4. the presence or absence of violations of other provisions of the disciplinary rules;
5. whether the attorney has a previous disciplinary history;
6. whether the attorney has acknowledged his wrongful conduct; and
7. circumstances in mitigation or aggravation.

See In re Martin, 67 A.3d 1032, 1053 (D.C. 2013). The Court also may consider "the moral fitness of the attorney" and "the need to protect the public, the courts, and the legal profession." *In re Howes*, 52 A.3d 1, 15 (D.C. 2012) (quoting *In re Cleaver-Bascombe*, 986 A.2d 1191, 1195 (D.C. 2010) (per curiam)).

A non-suspensory sanction is normally imposed for a first instance of neglect by an attorney with no disciplinary history. *Outlaw*, Bar Docket No. 101-01, at 37 (citing *Reback*, 513 A.2d at 232). But cases of dishonesty are viewed as more serious than inadvertent neglect. *Outlaw*, 917 A.2d at 689. So, when neglect is coupled with dishonesty, suspension may be warranted. *Outlaw*, Bar Docket No. 101-01, at 37. A suspensory sanction in cases involving dishonesty to a client serves the purpose of the disciplinary rules by "making clear to the public that the legal profession and this

court do not tolerate" neglect and dishonesty. *Id.* (quoting *In re Ontell*, 593 A.2d 1038, 1043 (D.C. 1991)).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Murphy engaged in serious neglect and dishonesty. He failed to properly monitor his mail, he chose not to file a motion to reopen or reconsider when USCIS denied the SIJ petition, and he intentionally concealed the denial and misled L.C.Q. and Ms. Lee about the status of the case for more than three years.

2. Prejudice to the Client

As discussed above, L.C.Q. was prejudiced by Murphy's failure to properly respond to the USCIS denial of the SIJ petition and his deceit. His dishonesty was prejudicial standing alone because a client is entitled to honesty from their lawyer. Further, due to Murphy's dishonesty, L.C.Q. was unable to make informed decisions about her case and Murphy's representation of her.

More practically, Murphy's conduct was prejudicial because, until she gained SIJ status, L.C.Q. could not obtain employment authorization, she was not protected from deportation, and she could not apply for lawful permanent residency. She also had to retain counsel to correct the harm resulting from Murphy's misconduct,

3. Dishonesty

Dishonesty is at the heart of Murphy's misconduct. For more than three years, he intentionally chose not to tell L.C.Q. or Ms. Lee that USCIS had denied the SIJ petition due to his neglect.

4. Violations of Other Disciplinary Rules

Murphy committed all the charged rule violations except for Rule 8.4(d).

5. Previous Disciplinary History

Murphy has not been disciplined before.

6. Acknowledgement of Wrongful Conduct

At the hearing, Murphy apologized directly to L.C.Q. and Ms. Lee and to the Hearing Committee and acknowledged that he had been dishonest. *See* Tr. 16, 25, 38, 114, 190-191. Even so, Murphy does not fully accept responsibility for his misconduct. First, as discussed, he insists that L.C.Q. suffered no prejudice even though she obviously did so. *See* R. Br. at 11, 14-15; Tr. 191, 197.

Second, he also tries to minimize his dishonesty, insisting that while he misled by omission, he should be credited for not having lied by commission. R. Br. at 11; Tr. 25, 190-191, 197. As he put it, his communications with Ms. Lee "were carefully worded . . . leading to misrepresentation, but at no point did [he] Knowingly [sic] communicate to Ms. Lee something that was not true." R. Br. at 11. He did in fact communicate intentionally false information about the status of L.C.Q.'s petition, and his failure to acknowledge that fact demonstrates he is unable or unwilling to fully grasp the nature of his misconduct.

Third, he tries to take credit for telling Ms. Lee about the denial on his "own initiative," but she was unaware of the decision only because he chose to withhold the information for more than three years. R. Br. at 14. Finally, he suggested that Ms. Lee may be at fault for failing to properly supervise him, even though he is solely responsible for ignoring his mailbox and choosing not to file a motion in the wake of the denial. R. Br. at 12.

7. Other Circumstances in Aggravation and Mitigation

Disciplinary Counsel did not offer evidence of any specific aggravating factors beyond the evidence to support the charged violations. Similarly, Murphy did not offer evidence of any specific mitigating factors, but he does offer several reasons to support his request that any suspension be stayed in favor of one year of probation. *See* R. Br. at 17. We do not find those reasons justify imposing a lesser sanction as Murphy requests.

Murphy claims that any sanction should be less severe than Disciplinary Counsel's proposed 90-day suspension for the following reasons:

1. He informed Ms. Lee about the denial on his own initiative. R. Br. at 14.
2. L.C.Q. was not prejudiced by his misconduct because the consequences of his misconduct were not irreversible, L.C.Q. was not more or less likely to have been deported, and she still would have had to wait to apply for permanent residency. R. Br. at 14-15; Tr. 191, 197 (Murphy).
3. He has been sufficiently punished because he lost his job with O'Melveny and now earns less than half his previous salary as a contract attorney. R. Br. at 16.
4. He cooperated with KIND in transferring the matter to successor counsel and with Disciplinary Counsel in this disciplinary matter. R. Br. at 15.

5. He worked on other pro bono matters while a staff attorney at O'Melveny. R. Br. at 15; Tr. 24-25 (Murphy).
6. He has been a long-time coach and volunteer with Special Olympics Virginia. R. Br. at 15-16; Tr. 25 (Murphy).
7. He had favorable reviews while employed by O'Melveny. R. Br. at 16; Tr. 24 (Murphy).

None of the reasons Murphy offers justify imposing a lesser sanction. Murphy intentionally misled Ms. Lee for three years and deserves no credit for eventually sharing information he had a duty to disclose but purposefully withheld. And his conduct prejudiced L.C.Q., not only because he was dishonest with her. The economic impact of his misconduct on him may be severe but that falls outside the sanction regime of the rules. As to cooperation, he seems to have done no more than would be expected from a lawyer who has engaged in misconduct.

Finally, the fact that Murphy may be a person of good character, as the last three reasons suggest, is not grounds for a less severe sanction in this instance. The time to display good character was when he received the denial from USCIS and discovered his error. Admitting errors can be difficult because they are embarrassing and call into question our competence and self-understanding. For that reason, errors can be a test of our character. Murphy's character was tested and found wanting when it mattered.

C. Sanctions Imposed for Comparable Misconduct

As noted above, Disciplinary Counsel asked the Hearing Committee to recommend a 90-day suspension. We agree with Disciplinary Counsel that

dishonesty is at the heart of Murphy's misconduct. So, the proper comparators are cases involving neglect and dishonesty, including Rule 8.4(c) violations.

In those cases, the Court has imposed suspensions ranging from 30 days to one year, with only one instance of a stay in favor of probation with conditions:

- 30-day suspension stayed in favor of one year probation with conditions. The lawyer failed to file a promised post-sentencing motion, ignored a court order resulting in dismissal of an appeal, and failed to inform the client or take action to reinstate the appeal. The lawyer had a history of similar violations. *In re Evans*, Board Docket No. 14-BD-030, at 3-4, 18-19 (BPR Nov. 16, 2016), *recommendation adopted where no exceptions filed*, 187 A.3d 554 (D.C. 2018) (per curiam).
- 30-day suspension. The lawyer failed to file an asylum application and lied to the client about the status of the matter. Mitigating factors included: no prior discipline, candor with successor counsel, help reversing the impact of the lawyer's failures, an apology to client, a refund of the fee, and truthfulness and remorse during hearing. *In re Cole*, 967 A.2d 1265, 1267-1268, 1270 (D.C. 2009).
- 30-day suspension. The lawyer neglected two cases. In one, he failed to respond to discovery resulting in a default judgment and dismissal that the lawyer did not tell the client about. In the other case, he failed to prosecute a lawsuit leading to dismissal and told the client he had obtained a judgment. *In re Ontell*, 593 A.2d 1039-1040 (D.C. 1991) (applying predecessor rules).
- 60-day suspension. The lawyer missed a statute of limitations, failed to tell the client the statute of limitations had lapsed, ignored her client, and misrepresented the status of the client's claim over several years. *In re Outlaw*, 917 A.2d 685-686 (D.C. 2007).
- 90-day suspension. The lawyer missed a statute of limitations and over several years, withheld that information from his client, lied about filing the lawsuit, and made up a settlement offer. *In re Weiss*, Board Docket No. 14-BD-089, at 1-2, *recommendation adopted where no exceptions filed*, 218 A.3d 227-228 (D.C. 2019) (per curiam).
- 120-day suspension. Over a two-year period, the lawyer neglected three cases, lied to the clients about the status of those cases, and concealed from

them that he had been suspended from the practice of law. *In re Schoeneman*, 891 A.2d 280, 282-283 (D.C. 2006) (per curiam) (appended Board Report).

- Six-month suspension with fitness requirement and restitution. The lawyer failed to pursue an immigration appeal, which was ultimately dismissed, and over a six-year period, lied about filing a brief, and claimed the immigration authorities had lost the client's file. Notably, the lawyer defended his conduct by claiming that as a convicted drug offender, the client should not be permitted to stay in the U.S. *In re Chisholm*, 679 A.2d 495, 497-499, 505-506 (D.C. 1996) (applying predecessor rules).
- One-year suspension with fitness requirement. In an immigration matter, the lawyer failed to correct an erroneous notice of appeal, requested additional time to file a brief but never filed one, resulting in the appeal being dismissed. The lawyer's request to reopen or reconsider was denied, and the lawyer charged the client significant fees to pursue a remedy in federal court, which had no jurisdiction. The lawyer had prior discipline and showed a lack of remorse. *In re Kreiss*, Board Docket No. 23-BD-008, at 5-9, 31-36 (BPR Jul. 29, 2024), *recommendation adopted where no exceptions filed*, 324 A.3d 294 (D.C. 2024) (per curiam).

Based on these cases, a 90-day suspension falls with the range of sanctions imposed for comparable misconduct involving neglect and dishonesty. Further, the cases do not indicate that staying the suspension is justified in this instance, particularly for any of the reasons Murphy offers.

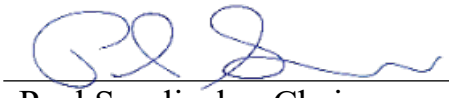
Having intentionally misled Ms. Lee for three years, Murphy deserves no credit for eventually sharing information he had deliberately withheld. His conduct prejudiced L.C.Q., the economic impact of his misconduct on him falls outside the sanction regime of the rules, and he did no more to cooperate with successor counsel that would otherwise be expected. The fact that Murphy may generally be a person of good character does not help here.

Most importantly, Murphy has not fully accepted responsibility for his misconduct. As discussed, he insists that L.C.Q. suffered no prejudice even though she obviously did so. He tries to minimize his dishonesty, insisting that while he misled by omission, he should be credited for not having lied by commission. He tries to take credit for telling Ms. Lee about the denial even though he was responsible for withholding that information. And, finally, he suggested that Ms. Lee may be at fault for failing to properly supervise him. For these reasons, staying any suspension is not justified and the comparator cases do not suggest otherwise.

V. CONCLUSION

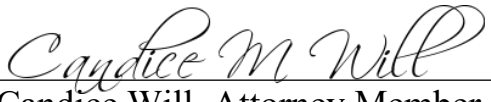
For the foregoing reasons, the Committee finds that Murphy violated 8 C.F.R. §§ 1003.102(o), (q) & (r), and D.C. Rules 1.3(b)(1) & (2); 4.1(a); and 8.4(c), and for those violations, recommends he should be sanctioned with a 90-day suspension.

AD HOC HEARING COMMITTEE



Paul Smolinsky, Chair

Anthony Bell, Public Member



Candice Will, Attorney Member