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

In the Matter of: MAQSOOD HAMID MIR, Respondent A Member of the Bar of the District of Columbia Court of Appeals Bar Registration No. 421146	:	D.C. App. No. 05-BG-553 Bar Docket No. 445-03

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

INTRODUCTION

This matter comes before the Ad Hoc Hearing Committee on a petition by Bar Counsel instituting a formal disciplinary proceeding based on a Specification of Charges filed on August 3, 2006 against Respondent Maqsood Hamid Mir, Esquire. After reviewing the record and the parties' briefs, the Committee finds there is not clear and convincing evidence that the criminal conduct for which Respondent was convicted involved moral turpitude within the meaning of D.C. Code § 11-2530(a) (2001) or that Respondent violated Rule 1.2(e) of the D.C. Rules of Professional Conduct. However, the record evidence does persuade the Committee that Respondent engaged in conduct that violated Rules 8.4(a), 8.4(b), 8.4(c) and 8.4(d) of the Rules of Professional Conduct as alleged in the Specification of Charges. In addition, the Fourth Circuit's decision affirming Respondent's felony convictions establishes that Respondent was convicted of a "serious crime" under D.C. Bar Rule XI, § 10(c). The seriousness of the crimes at issue

and the fact that Respondent was convicted of 16 separate felony offenses (for which he is currently serving a six-year prison term) leads the Committee to recommend disbarment as the appropriate sanction.

PROCEDURAL HISTORY

This disciplinary proceeding was initiated pursuant to an Order of the District of Columbia Court of Appeals, dated June 15, 2005, suspending Respondent from the practice of law in the District of Columbia pursuant to the "serious crimes" provision of D.C. Bar Rule XI, §10(c). The suspension was based on the Court's receipt of a certified copy of the docket sheet from the U.S. District Court of Maryland evincing Respondent's conviction on 16 felony offenses. The Court of Appeals Order directed the Board on Professional Responsibility (hereinafter "the Board") to initiate a formal proceeding to determine the nature of the final discipline to be imposed, and, specifically, to review the elements of the statutory offenses of which Respondent was convicted for the purpose of determining whether any of the crimes involve moral turpitude within the meaning of D.C. Code § 11-2530(a) (2001). *Id*.

The Board notified Bar Counsel and Respondent of the Court's Order and directed the parties to submit briefs addressing the question whether the crimes of which Respondent stands convicted involve moral turpitude *per se* within the meaning of D.C. Code § 11-2530(a), as interpreted in *In re Colson*, 412 A.2d 1160 (D.C. 1979) (*en banc*). The Board said that in the event it determined that any of the crimes at issue involved moral turpitude *per se*, it would recommend disbarment to the Court pursuant to D.C. Code § 11-2530(a). If, on the other hand, it determined that none of the crimes involve moral turpitude *per se*, it would then direct a hearing panel to examine Respondent's

underlying conduct to determine whether the conduct involved moral turpitude on the facts.

Bar Counsel's brief, filed July 11, 2005, argued that the crime as to which Respondent was convicted does not constitute moral turpitude *per se* because the language of the criminal statute, 18 U.S.C. § 1546(a), ¶ 4, is more in the nature of a false statement offense than a fraud offense. Bar Counsel requested referral of the matter to a hearing committee to determine whether Respondent's criminal conduct involves moral turpitude on the facts, citing *In re Colson*.

Respondent did not file a brief on the issue of moral turpitude, but did argue in an earlier submission that his suspension should be delayed and that any disciplinary proceeding against him was premature until there was final appellate adjudication of his criminal case.

On February 3, 2006, the Board issued an Order concluding that "the offenses do not involve moral turpitude *per se* because the 'least culpable offender' under the statute would not necessarily engage in a crime of moral turpitude." Pursuant to Board Rule 10.2 and the procedure set forth in *Colson*, 412 A.2d at 1165 n.10, and *In re Hirschfield*, 622 A.2d 688, 690 (D.C. 1993), the Board referred this matter to a hearing committee "to determine if the conduct underlying Respondent's conviction involved moral turpitude, and, if not, for a recommendation of appropriate final discipline in light of Respondent's conviction of a serious crime." The Board also invited Bar Counsel to file a petition, if appropriate, charging violations of any disciplinary rules. *Id.*

On August 3, 2006 Bar Counsel filed a Specification of Charges and Petition Instituting Formal Disciplinary Proceedings (R. Tab 11) asserting the following: (1) that

based upon the jury's guilty verdicts on each of 16 felony immigration fraud counts under 18 U.S.C. §1546(a) ¶ 4, Respondent was convicted of criminal acts involving moral turpitude under D.C. Code § 11-2503(a); (2) that each of the felonies of which Respondent was convicted constitutes a "serious crime" under Bar Rule XI, §10(c); and (3) that Respondent violated Rules of Professional Conduct 1.2 (e) (counseling a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent); 8.4(a) (violating or attempting to violate Bar disciplinary rules, knowingly assisting or inducing another to do so, or doing so through the acts of another); 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(d) (engaging in conduct that seriously interferes with the administration of justice).

Respondent filed an Answer to the Specification of Charges, denying all of the charges.

The Committee Chair denied Respondent's request for postponement of the prehearing conference and the evidentiary hearing, both of which Respondent requested pending the outcome of his appeal of the criminal conviction. The Chair ordered the parties to confer and stipulate facts as to which they agree. No stipulations were filed.

A pre-hearing conference was held on April 24, 2005. Bar Counsel indicated that its case would rest on Bar Counsel's exhibits, and that no witnesses would be called. Respondent took exception to Bar Counsel's approach, contending that it was premature to impose discipline until final appellate adjudication of Respondent's criminal conviction, and that, in any case, Bar Counsel could not prove the charged disciplinary

violations on the basis of the criminal trial transcript because the testimony against him was disputed by his own testimony and the testimony of his witnesses. Respondent also asserted that it was not possible for the Hearing Committee to make credibility determinations based solely upon the written record. Accordingly, Respondent contended, proof of the disciplinary violations charged must be based upon an evidentiary hearing with testimony from witnesses, independent of the evidence at the criminal trial.

HEARING BEFORE AD HOC HEARING COMMITTEE

The Ad Hoc Hearing Committee held an evidentiary hearing in this matter on May 2, 2007. Transcript of Hearing ("HC Tr.").

Bar Counsel requested admission of Bar Counsel's exhibits (HC Tr. at 3-4), including: certified copies of Bar Counsel Exhibit ("BX") B, the Third Superseding Indictment in the underlying criminal case; the transcript of the criminal trial and sentencing proceedings (BX 7); the jury's verdict forms (BX 2); and the docket entry of the criminal conviction (BX 3). Without objection, Bar Counsel's Exhibits A-C and 1-7 were received in evidence. HC Tr. at 37. Neither Bar Counsel nor the Respondent called any witnesses at the hearing. *Id*. at 40.

At that stage, Bar Counsel urged the Hearing Committee to move to the sanctions phase of the hearing based on Respondent's commission of "serious crimes" as evidenced by his conviction of 16 felonies. *Id*. at 41. Respondent accepted that the "serious crime" determination was law of the case based on the D.C. Court of Appeals decision referenced above. *Id*. at 42. As to the moral turpitude charge, Respondent argued that it was premature to move to the sanction phase because the Committee must first determine

the "least egregious sort of conduct that would support his conviction" as a matter of law (*id*. at 43-44). Nevertheless, in mitigation, counsel noted the absence of any prior criminal record or disciplinary sanction. *Id*. at 44. For evidence as to Respondent's background, counsel referred the Committee to the sentencing transcript and Respondent's testimony therein. *Id*. at 44. If Respondent's conviction were overturned on his then-pending appeal, counsel continued, there would be no sanctionable conduct. *Id*. at 44. Respondent argued that if the conviction was affirmed, then a sanction of less than disbarment – "something in the area of a reprimand" – would be appropriate because the jury could have found that Respondent was guilty of no more than "failure to properly supervise the management of his office." *Id*.

After conferring in private, the Committee made a preliminary nonbinding determination that Respondent had committed a "serious crime" as defined by D.C. Bar Rule XI, § 10(c), as set forth in the Specification of Charges No. 7. *Id*. at 49. With regard to sanction, Bar Counsel offered no evidence as to aggravation and rested its case. *Id.* at 50. Counsel for Respondent declined to present further evidence in mitigation, relying instead on his testimony presented at sentencing in the criminal case. *Id*. at 51.

The Committee directed the parties to submit post-hearing briefs addressing the issue of moral turpitude on the facts, and, specifically, whether that determination can be made solely on the basis of the transcript in the underlying criminal proceeding. *Id.* at 58.

POST-HEARING BRIEFS

Bar Counsel submitted proposed findings of fact, conclusions of law, and a recommendation as to sanction. Bar Counsel's Post-Hearing Brief, hereinafter, "BC Br.

at __." In its brief, Bar Counsel noted that, pursuant to D.C. Bar Rule XI, §10(c), Respondent is already under an interim Court order for his conviction on 16 felony fraud immigration counts, suspending him from the practice of law in this jurisdiction pending final disposition of this disciplinary proceeding. BC Br. at 5. In addition to the "serious crime" charged in Bar Counsel's Specification, Bar Counsel addresses two remaining bases for proposed discipline by this Committee: (1) the charge that Respondent's convictions under 18 U.S.C. §1546(a) involved moral turpitude on the facts established at trial (BC Br. at 3), and (2) Respondent's violations of Rules 1.2(e), 8.4(a), 8.4(b), 8.4(c), and 8.4(d). BC Br. at 7**.**

Bar Counsel's proposed findings of fact (BC Br. pp. 8-26) are based upon the paper record, including the certified copy of Respondent's criminal trial and sentencing transcripts,[1] and the opinion of the U.S. Court of Appeals for the Fourth Circuit affirming his conviction. BX A-C and 1-7, and the full Board Record in this disciplinary case. In particular, Bar Counsel (BC Br. at 12-26) tracks each of the 16 counts in the criminal indictment on which Respondent was convicted, and cites the criminal trial transcript for the testimony relating to Respondent's conduct that supports conviction on each count. BC Br. at 18-26.

Bar Counsel's proposed conclusions of law (BC Br. at 26-36) are that Respondent's crimes involve moral turpitude on the facts, if not *per se*, and violated the disciplinary rules charged in the Specification of Charges. (BC Br. at 32-36). Bar

[1] Respondent was sentenced to 78 months imprisonment on each count of falsifying immigration documents, sentences to run concurrently, followed by three years of supervised release in which he is prohibited from practicing law. BX 3.

Counsel asserts that disbarment is the only appropriate sanction and does not propose any sanction other than disbarment. BC Br. at 36.

Respondent also filed a post-hearing memorandum. ("Resp. Br."). With regard to the claim of moral turpitude on the facts under D.C. Code § 11-2530(a) (2001), Respondent argues that the crime of which Respondent was convicted, 18 U.S.C. § 1546(a), does not require knowledge that a crime was being committed, and that ignorance does not constitute moral turpitude. *Id.* at 2-3. Respondent characterizes his conduct as "negligen[ce] in the oversight of his business" due to a sudden increase in the volume of aliens seeking legal help during a brief window of amnesty. *Id.* at 5.

Respondent also contends that Bar Counsel failed to prove moral turpitude on the facts because Bar Counsel relies solely upon the paper criminal trial transcript, and not upon live testimony at the hearing, which he argues is required under *Colson*. *Id.* at 6-11. However, if reliance upon the criminal transcript is permitted, Respondent contends, that testimony should be given little weight because Respondent "vehemently denied these allegations throughout the course of the trial." *Id.* at 11. Without live testimony at the hearing as to the facts and circumstances of Respondent's conduct, he argues, there is no opportunity for the Committee to assess the credibility of the witnesses at the criminal trial, and imposing sanctions based on his having committed a crime of moral turpitude under these circumstances would violate of his right to due process. *Id.* at 12. Moreover, Respondent contends that, to date, the crimes of which he was convicted have "not been condemned as an offense that requires disbarment of an attorney." *Id.* at 10-11. Finally, Respondent requests the Committee to reverse its preliminary finding that Respondent committed a "serious crime" under D.C. Bar Rule XI, § 10(b). He contends that, absent

live testimony, Bar Counsel has failed to establish the conduct that should be punished and that the charge of a "serious crime" could not be established merely by the fact of his conviction. *Id.* at 19-20.

As to sanction, Respondent argues that none is warranted because the charges should be dismissed for insufficient evidence. *Id.* at 21-23. Alternatively, he asserts a number of mitigating circumstances (*e.g.*, no prior criminal or disciplinary record; his professed good motive in providing immigration legal services to a vast number of aliens in a brief period of amnesty to protect their interests; and his good character), and contends that censure or reprimand would be the appropriate sanction. *Id.* at 24.

Bar Counsel filed a reply brief. Relying on *In re Colson* and its progeny, Bar Counsel argues that under D.C. Bar R. XI, §10(f), "a certified copy of the court record or docket entry of a finding that an attorney is guilty of any crime shall be conclusive evidence of the commission of the crime." BC Reply Br. at 2. Bar Counsel asserts that once the conviction is entered into the record, an attorney in a disciplinary proceeding is presumed guilty of the facts that formed the basis of the conviction. Moreover, Bar Counsel argued that the jury's verdict and the court's rulings during sentencing made clear that the jury and judge had not found Respondent to be a credible witness. BC Reply Br. at 3.

As to the "serious crime" disciplinary charge, Bar Counsel points to D.C. Bar R. XI, §10(b), which provides that all felony offenses committed by lawyers are "serious crimes" under that provision. BC Reply Br. at 3.

Finally, Bar Counsel contends that the facts and circumstances that it claims were accepted by the jury (*e.g.*, Respondent's course of conduct occurred over a lengthy period

of time, involved his law practice, and consisted of a scheme that involved clients and others in illegal activity on a repeated basis; he was an experienced immigration lawyer who knew that he was submitting false documents to the government, under penalty of perjury, to induce the government to approve visas to unauthorized persons; and he did it for personal enrichment) should be considered by the Committee. BC Br. p. 3-4.

FINDINGS OF FACT

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals by motion on November 15, 1989, and assigned Bar Number 421146. BX A. Previous to his D.C Bar admission, Respondent was admitted to the Pennsylvania Bar on November 28, 1988. *Id.*

2. Respondent specialized in immigration law and owned and operated his own law firm, Mir Law Associates, L.L.C. ("MLA"), located in Potomac, Maryland. Record, Tab 4, Count I.

3. As part of his immigration practice, Respondent assisted United States employers in completing various immigration forms. First, he assisted them in completing Labor Certifications (also known as ETA Form 750s), which are required whenever an employer wishes to sponsor an alien for work in the United States. Employers must certify that they intend to hire the specific alien listed for a currently available position at the prevailing wage.

4. As part of his immigration practice, once a labor certification was approved, Respondent assisted employers in executing Petitions for Alien Workers, known as Form I-140s, (*i.e.*, applications for "green cards") on behalf of employees who wished to obtain permanent resident alien status in the United States.

5. Between January 1, 1998 and December 31, 2002, Respondent filed approximately 2,000 Labor Certifications and numerous Form I-140s. Concerned that some of these submissions contained falsehoods, the government initiated an investigation of Respondent and his firm with respect to the government's ongoing investigation of possible immigration fraud.

6. On March 31, 2003, a grand jury in the District of Maryland indicted Respondent and one of the employers for whom he worked, with, *inter alia*, labor certification fraud, in violation of 18 U.S.C. §§ 371, 1546 (2000), and with aiding and abetting immigration fraud in violation of 18 U.S.C. § 2.

7. On January 14, 2004, the grand jury returned a sealed Superseding Indictment against Respondent, adding eight additional defendants, including MLA (Respondent's law firm), and adding racketeering charges under 18 U.S.C. § 1961.

8. Based upon further government investigation, the grand jury returned a Third Superseding Indictment, which added a witness tampering charge against Respondent. BX B, Third Superseding Indictment, attached to Bar Counsel's Specification of Charges.

9. During a five-week jury trial, the government called approximately thirty witnesses, including two defendant employers and other United States employers, numerous aliens, and some of Mir's former employees. One of those witnesses, an employer by the name Zulfiqar Ali, testified that Respondent filed Labor Certifications and I-140s on behalf of aliens whom Ali did not know and for whom he had no employment position. BX 7, Trial Tr. of March 18, 2005, p. 61, 76-102. Mr. Ali also testified that Mir told him to stockpile Labor Certifications for future use, and to sell approved Labor Certifications to "substitute aliens" for up to $40,000 so that he and

Respondents could "make money." *Id*. at 100-01. Mr. Ali was vigorously cross-examined at trial by counsel for Respondent.

10. Other employers testified that they had worked in conjunction with Respondent to list their businesses on applications for Labor Certification and I-140s when they did not actually need or otherwise qualify to hire the alien named on those documents. One particular employer, Raghib Shourbaji, testified that Respondent directed him to make up names for additional labor certification, which could be transferred from one employee to another if the employee "doesn't work out." BX 7, Trial Tr. of March 21, 2005, Tr. at 168, 174-75, 181. Another employer, Abdul Javaid, testified that Respondent filed applications for Labor Certifications on behalf of him and Potomac Automotive, a company he no longer owned at the time Respondent filed the applications. BX 7, Trial Tr. of March 23, 2005, Tr. at 6, 15-17 -78. Javaid also testified that one of the applications for Labor Certification in his name was forged (Tr. at 22), and that Respondent filed false tax documents that overstated Potomac Automotive's gross income in order to support future hiring. *Id*. Finally, numerous aliens testified that Respondent filed false statements on their behalf. Each of the government's witnesses was cross-examined by counsel for Respondent and the other defendants.

11. At the close of trial, the judge instructed the jury on, *inter alia*, the elements of the crime of immigration fraud under 18 U.S.C. §1546(a), ¶ 4. BX 7, Trial Transcript of April 8, 2005, Tr. 77-78. The jury instructions that are relevant to this disciplinary proceeding are paraphrased below.

Instruction 58 tracks the language of 18 U.S.C. §1546(a): "A person commits a false swearing in an immigration case if he/she does the following -- knowingly makes

under oath or under penalty of perjury or knowingly subscribes as true any false statements with respect to a material fact in any application . . . or other documents required by immigration laws or regulations prescribed thereunder, or knowingly presents any such application . . . or other document which contains any such false statements or which fails to contain any reasonable basis in law or fact." A "false swearing" (Instruction 59, *see infra*) requires a finding that the defendant (a) made a false statement, (b) under oath, (c) in a document required by federal immigration laws. *Id*.

Instruction 19 defines the terms "knowingly" and "willfully" for purposes of 18 U.S.C. §1546(a) as follows: "A person acts knowingly if he acts intentionally and voluntarily and not because of ignorance, mistake, accident, or carelessness. Whether the defendant[] acted knowingly may be proven by the defendant['s] conduct and by all of the facts and circumstances surrounding the case. 'Willfully' means to act with knowledge that one's conduct is unlawful and [done] with the intent to do something the law forbids. That is to say, with the bad purpose to disobey or to disregard the law." (Trial Tr. at 45).

Importantly, Instruction 19 goes on to say that "[t]he government can meet its burden of showing that the defendant had knowledge of the falsity of the statements if it establishes beyond a reasonable doubt that he acted with deliberate disregard of whether the statements were true or false or with a conscious purpose to avoid learning the truth. If the government establishes that the defendant acted with deliberate disregard for the truth, the knowledge requirement will be satisfied unless the defendant actually believed the statements to be true. This guilty knowledge, however, cannot be established by

demonstrating that the defendant was merely negligent, or foolish, or mistaken." *Id*., Trial Tr. 45-46.

Instruction 61 states that the government must prove that defendant knew the statement was false and/or failed to contain any reasonable basis in law or fact when made, and that he acted willfully. It states that an act is done knowingly if done purposely and voluntarily as opposed to mistakenly or accidentally. It states that an act is done willfully if it is done with the intention to do something the law forbids. *Id*. at 79.

Instruction 62 states that the defendant's good faith belief in a statement's accuracy is an absolute defense to the charges in counts 1-22 in the Third Superseding Indictment. *Id*. at 79. It states that the government must prove bad faith or knowledge of falsity beyond a reasonable doubt. *Id*., Tr. 80.

11. Respondent was convicted of sixteen counts of falsifying immigration documents (Counts 7-22). He was acquitted on charges of conspiracy to file false statements (Count 1), conspiracy to harbor aliens (Count 2), certain other charges of falsifying immigration documents (Counts 3-6), racketeering (Count 23), and witness tampering (Count 24). BX 2.

12. On May 6, 2008, the U.S. Court of Appeals for the Fourth Circuit affirmed Respondent's convictions on the 16 counts of falsifying immigration documents. *United States v. Mir*, 525 F.3d 351 (4th Cir. 2008).

ANALYSIS AND CONCLUSIONS OF LAW

I. Respondent's Conviction on Felony Immigration Fraud Constitutes a "Serious Crime" under D.C. Bar Rule XI, § 10(b).

As Respondent concedes (HC Tr. at 50-53), final conviction on a felony charge establishes commission of a "serious crime" for purposes of D.C. Bar R. XI, §10(b). *See*

In re McBride, 578 A.2d 1102 (D.C. 1990). As noted above, the U.S. Court of Appeals for the Fourth Circuit affirmed Respondent's conviction on 16 felony counts of falsifying immigration documents. *United States v. Mir*, 525 F.3d 351 (4th Cir. 2008). Accordingly, the D.C. Court of Appeals' suspension of Respondent on the ground of a felony conviction remains in effect pending final disposition of this disciplinary proceeding. D.C. Bar R. XI, § 10(d).

II. Bar Counsel Has Not Established by Clear and Convincing Evidence that the Conduct Underlying Respondent's Criminal Convictions Involved Moral Turpitude on the Facts.

The Board determined that the criminal statute under which Respondent was convicted does not constitute moral turpitude *per se* and remanded for determination by the Hearing Committee whether the conduct underlying Respondent's conviction constitutes moral turpitude on the facts.

Under D.C. Code § 11-2530(a), a crime of moral turpitude on the facts requires a determination of what conduct the defendant was found to have engaged in when he committed the crimes of which he was convicted. In a case where Bar Counsel relies exclusively on the record of the criminal trial to prove its case, the Hearing Committee's task to weigh the evidence and examine the underlying facts is particularly difficult. Without a full explication of the facts by Bar Counsel, we are left to determine (1) what conduct the *jury* found the Respondent to have engaged in with respect to the crimes of which he was convicted, and (2) whether that conduct meets the test for moral turpitude as set forth in D.C. Code § 11-2530(a) and the decisional law applying that provision. The former question requires consideration of all the facts and "the circumstances of the transgression." *In re McBride (II)*, 602 A.2d 626, 635 (D.C. 1992) (*en banc*). That is,

what were the specific facts of the individual offense? *See In re Colson*, 412 A.2d at 1164-65. The latter question requires examination of whether that conduct "offends the generally accepted moral code of mankind" or, alternatively stated, whether the conduct is base, vile, and depraved so as to be "contrary to . . . good morals." *Id.* at 1168. If the Respondent's conduct – as determined by the jury – was fundamentally immoral, then the Respondent's crimes involved moral turpitude on the facts.

Having examined the trial testimony, jury instructions, and jury verdict in the underlying criminal trial, the Hearing Committee concludes that Bar Counsel has not met its burden of proving by clear and convincing evidence that Respondent engaged in conduct involving moral turpitude. The government in the criminal trial presented a wealth of evidence from which the jury *could have* concluded that Respondent had actual knowledge that his law firm was submitting false certifications to the immigration authorities, and, further, that he discussed and planned submitting false documents before doing so. The government argued forcefully at trial that Respondent not only possessed such actual knowledge, but that he conspired to commit immigration fraud and participated in a criminal racketeering enterprise. But Respondent took the stand at trial and denied having engaged in any criminal activity. Respondent testified that his law practice became extremely busy during the "amnesty window" created by Congress's passage of the Legal Immigration Family Equity Act and that his standing instructions to his staff were that they should not turn anyone away and should make certain to meet the deadlines established for the amnesty program. Respondent's theory at trial was that while he might have been negligent in running his law firm during this very busy period, he was not aware of any criminal conduct and did not intend to commit any crimes.

As evidenced by its conviction of Respondent on 16 counts of falsifying immigration documents, the jury plainly did not accept Respondent's "negligence" theory with respect to the 16 certifications underlying the counts on which he was convicted. But the same jury that convicted Respondent of those crimes acquitted him of one count of conspiring to falsify immigration documents, one count of conspiring to harbor aliens, four counts of falsifying immigration documents, and one count of racketeering. Moreover, while the jury was instructed that Respondent must have "willfully" committed the crimes of which he was charged in order to be found guilty, the jury was also given a "deliberate-disregard" instruction. Under that instruction, the jury need not have found that Mir actually knew that false certifications were being submitted in order to find him guilty of falsifying immigration documents. Rather, according to the instruction, "[t]he government can meet its burden of showing that the defendant had knowledge of the falsity of the statements if it establishes beyond a reasonable doubt that he acted with deliberate disregard of whether the statements were true or false or with a conscious purpose to avoid learning the truth." BX 7, Trial Transcript of April 8, 2005, Tr. 45-46. Accordingly, the jury could have found Respondent guilty of immigration fraud if it concluded that he deliberately turned a blind eye to whether false certifications were being submitted to immigration authorities, and that he did so willfully. The Committee believes that the jury instructions, taken together, permitted the jury to convict Respondent of falsifying immigration documents if it found that he consciously decided not to ascertain the truth or falsity of the documents underlying the 16 counts on which he was convicted despite realizing that he was under an obligation to do so. The question for the Committee is whether this conduct meets the test for moral turpitude.

While the Committee finds this to be a close and difficult question, we are unable to conclude that Respondent committed crimes of moral turpitude on these facts. The jury's verdict does not establish clearly and convincingly that Mir knew or intended that false certifications would be submitted to the government. Rather, what can be fairly inferred from the verdict is that in 16 separate instances (all of which occurred prior to September 2001), Respondent was consciously indifferent to the truth or falsity of information he was supplying to immigration authorities for the ultimate purpose of obtaining green cards for foreign nationals desiring to work in the United States. The reasons for his indifference are not clear from the record. However, it is noteworthy that the jury acquitted Respondent of conspiring to falsify immigration documents, conspiring to harbor illegal aliens, and engaging in a racketeering enterprise. These acquittals suggest that while the jury was persuaded that Respondent violated 18 U.S.C. §1546(a), it was not necessarily persuaded that the false immigration documents were part of an overarching criminal scheme. That was the government's theory, but there is no clear indication that the jury accepted it.

In this regard, the Committee distinguishes *In re Susman*, 876 A.2d 637, 637-638 (D.C. 2005) (per curiam) and *In re White*, 698 A.2d 483 (D.C. 1997) (per curiam). In those cases, the Court of Appeals affirmed determinations by the Board that the crimes of which the defendants were convicted involved moral turpitude on their facts. But in each case, the respondent was convicted of actively assisting in criminal conduct by knowingly falsifying documents with actual knowledge of an underlying criminal purpose that was separate and distinct from the filing of the false documents. In *Susman*, the attorney falsified documents in order to assist his client in hiding the client's looting

of a company retirement fund. 209 F.3d at 232-35. In *White*, the attorney provided a client with a false birth certificate and social security number for use in fraudulently obtaining a U.S. passport, and submitted a false affidavit saying he had known the client for five years and believed him to be a U.S. citizen. 698 A.2d at 484. The Hearing Committee in *White* further found that the respondent in that case had "perjured himself in the testimony which he gave at the criminal trial." *Id.* at 485. In the present case, by contrast, the jury's verdict did not require a finding that the false certifications were tied to an overarching criminal objective, and the jury acquitted Respondent of conspiracy and racketeering counts that explicitly charged a criminal scheme. The jury could well have rejected the evidence presented by the government regarding the Respondent's intent and motive and nevertheless convicted him of the 16 counts.

In summary, the Committee concludes that conduct underlying the crimes of which Respondent was convicted do not exhibit vileness, baseness or depravity. Accordingly, the Committee finds that Respondent's convictions do not involve moral turpitude on their facts.

III. Respondent's Conduct Violated Rules 8.4(a), 8.4(b), 8.4(c) and 8.4(d) of the D.C. Rules of Professional Conduct.

The Hearing Committee concludes that the conduct underlying Respondent's criminal convictions violated Rules 8.4(a), 8.4(b), 8.4(c) and 8.4(d) of the D.C. Rules of Professional Conduct.

The charged violation of Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct) was conclusively established by Respondent's convictions on 16 felony charges and the affirmance of those convictions by the U.S. Court of Appeals for the Fourth Circuit. *United States v. Mir*, 525 F.3d 351 (4th Cir. 2008). We also have

no trouble concluding that Respondent's conduct reflects adversely on his fitness to practice law, and therefore violates Rule 8.4(b), because he *repeatedly and deliberately* turned a blind eye to whether false certifications were being submitted to state and federal immigration authorities by his law firm on behalf of his clients. Respondent's conscious disregard of his responsibilities as an attorney very clearly casts a cloud over his fitness to practice.

Rule 8.4(c) provides that an attorney shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent was convicted of 16 counts of falsifying documents submitted to state and federal labor and immigration authorities. Whether Respondent actually knew that the certifications were false or simply turned a blind eye to their truth or falsity, his conduct surely involved dishonesty and misrepresentation (even if not fraud or deceit). Therefore, the Committee finds that the Rule 8.4(c) charge has been established.

Rule 8.4(d) prohibits a lawyer from engaging in conduct that seriously interferes with the administration of justice. Respondent's conduct (viewed in its most innocent form) involved running a labor certification mill without regard to whether the information being submitted federal and state authorities was true or false. The jury's verdict establishes that in at least 16 instances, Respondent consciously turned a blind eye to the truth or falsity of certifications prepared and submitted to government agencies, thus creating the very real possibility that green cards would be issued to persons who were not eligible for entry into the United States. The Committee has no difficulty concluding that Respondent's conduct seriously interfered with the proper administration

and functioning of the U.S. immigration system and laws, and therefore seriously interfered with the administration of justice in violation of Rule 8.4(d).

IV. Bar Counsel Has Not Established That Respondent's Conduct Violated Rule 1.2(e) of the D.C. Rules of Professional Conduct.

Finally, we conclude that Bar Counsel has not established the charged violation of Rule 1.2(e), which provides that a lawyer "shall not counsel a client to engage, or assist a client, in conduct that *the lawyer knows* is criminal or fraudulent." (Emphasis added). Again, while there was testimony that would have permitted the jury to find that Respondent knowingly counseled and assisted clients in illegal conduct, the jury's verdict could have been based on a "deliberate indifference" theory. Under that theory, Respondent need not have actually known whether the labor certifications were false or that any conduct planned or engaged in by his clients was illegal. Moreover, the jury need not have found that Respondent counseled clients to violate the law in order to find him guilty of Counts 7-22 of the Third Superseding Indictment. The Committee therefore concludes that Bar Counsel has not established this charge by clear and convincing evidence.

RECOMMENDED SANCTION

The fact that Respondent stands convicted of 16 separate felony offenses leads the Committee to recommend disbarment as the appropriate sanction. Although we have found that Respondent's crimes did not involve moral turpitude on their facts, we believe that the nature and scope of the misconduct is serious enough to warrant disbarment. The jury found that on at least 16 separate occasions in 2000 and 2001, Respondent submitted false labor certifications with conscious disregard to whether those certifications were

true or false.[2] Respondent has been sentenced to six years of imprisonment, followed by three years of supervised release during which he may not practice law. BX 3. Accordingly, under the terms of his criminal sentence, Respondent will not be able to practice law for approximately nine years following his criminal conviction in 2005. Even so, the Committee believes that disbarment is appropriate. Even if the jury convicted under a "deliberate disregard" theory, it necessarily found that defendant consciously turned a blind eye to the truth or falsity of documents being submitted to state and federal labor and immigration authorities on 16 separate occasions. Even an isolated occurrence of an attorney's deliberate disregard of his professional responsibilities in this manner could warrant a serious sanction. The Committee believes that 16 such felony occurrences (and possibly many more) warrant the most serious discipline. While this case is distinguishable from cases in which attorneys have been disbarred for offenses such as subornation of perjury (*In re Corrizzi*, 803 A.2d 438 (D.C. 2002)) or repeatedly and intentionally failing to pay income taxes and hiding assets from tax authorities (*In re Shorter*, 570 A.2d 760 (D.C. 1990)), the Committee believes the number of felony offenses of which Respondent was convicted and the lengthy prison term to which he was sentenced demand the strongest possible disciplinary response. The testimony presented on Respondent's behalf at his sentencing hearing does not persuade the Committee otherwise, particularly given our inability to evaluate the credibility of that testimony based on the cold paper record. As noted above, Respondent

[2] While the Fourth Circuit found that "[t]he government established [at trial] that Mir had filed over one hundred false Labor Certifications and Form I-140s" (*United States v. Mir*, 525 F.3d 351, 355 (4th Cir. 2008)), the jury made no explicit findings on the verdict form regarding how many false documents were submitted, and the jury need not have found that Respondent submitted any more than the 16 false certifications at issue in Counts 7-22 of the Third Superseding Indictment in order to convict him on those counts.

did not present any live testimony in mitigation in the sanctions phase of the disciplinary hearing.

Accordingly, the Hearing Committee recommends disbarment as the appropriate sanction in this case.

AD HOC HEARING COMMITTEE

/BMB/
BRADFORD M. BERRY, ESQUIRE, CHAIR

/FCD/
FIONA C. DRUY

/PCV/
PAUL C. VITRANO, ESQUIRE

Dated: March 10, 2009